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More on The Death Penalty in the U.S.A.

Human Rights Watch strongly opposes the imposition of the death penalty on offenders whose crimes were committed when they were below the age of eighteen. The United States is a world leader in executing juvenile offenders.1 Few other countries on which the Human Rights Watch Children's Rights Project has information can match its record. Nine juvenile offenders have been executed in the United States since the death penalty was reinstated in 1976, and executions of juvenile offenders are on the rise - four of the nine were executed during the last six months of 1993. In addition, more juvenile offenders sit on death row in the United States than in any other country.2

In most countries, execution of juvenile offenders is increasingly rare. More than seventy countries which retain the death penalty by law have abolished it for offenders under eighteen years of age. In 112 nations, the execution of minors is prohibited by treaty or legislation.3 However, nine countries have carried out such executions in the last fifteen years, including: Bangladesh (one execution)4, Barbados (one)5, Iran (an unknown number)6, Iraq (although the total number is unknown, at least thirteen children were executedbetween November and December 1987)7, Nigeria (one)8, Pakistan (four)9, Saudi Arabia (one)10, Yemen (one)11, and the U.S.A. (nine).12

The United States continues to execute juveniles in clear contravention of international agreements and standards prohibiting such executions. These international standards recognize that the death penalty, "with its uniquely cruel and irreversible character, is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions."13

Recommendations:

Human Rights Watch recommends that:

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."[65] It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.[66] In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.[67]

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:[68] were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.[69] A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.[70] Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.[71] This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.[72] Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.[73] Furthermore, the Supreme Court has recognized that "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."[74] That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.[75] Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.[76]

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.[77] Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.[78] Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.[79]

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.[80]

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.[81] He was seventeen years old at the time he committed the robbery and murder for which he was convicted.[82] In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.[83] He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).[84]

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.[85] Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He

also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

In most countries, execution of juvenile offenders is increasingly rare. More than seventy countries which retain the death penalty by law have abolished it for offenders under eighteen years of age. In 112 nations, the execution of minors is prohibited by treaty or legislation.3 However, nine countries have carried out such executions in the last fifteen years, including: Bangladesh (one execution)4, Barbados (one)5, Iran (an unknown number)6, Iraq (although the total number is unknown, at least thirteen children were executedbetween November and December 1987)7, Nigeria (one)8, Pakistan (four)9, Saudi Arabia (one)10, Yemen (one)11, and the U.S.A. (nine).12

The United States continues to execute juveniles in clear contravention of international agreements and standards prohibiting such executions. These international standards recognize that the death penalty, "with its uniquely cruel and irreversible character, is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions."13

Recommendations:

Human Rights Watch recommends that:

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the

Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their

statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which

prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The United States continues to execute juveniles in clear contravention of international agreements and standards prohibiting such executions. These international standards recognize that the death penalty, "with its uniquely cruel and irreversible character, is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions."13

Recommendations:

Human Rights Watch recommends that:

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."[14]

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.[15]

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.[16] The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."[17] The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.[18]

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."[19]

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.[20] However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.[21] Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.[22] The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"[23] - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.[24] The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."[25] This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.[26] To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."[27] This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.[28] In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.[29] The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;[30] the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility

makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some

lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108

However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for

money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

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145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

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Recommendations:

Human Rights Watch recommends that:

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."[14]

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.[15]

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.[16] The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."[17] The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.[18]

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."[19]

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.[20] However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.[21] Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.[22] The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"[23] - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.[24] The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."[25] This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.[26] To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to

stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation

[of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Human Rights Watch recommends that:

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."[14]

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.[15]

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.[16] The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."[17] The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.[18]

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."[19]

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.[20] However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.[21] Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.[22] The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"[23] - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.[24] The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."[25] This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two

persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals

filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his

grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara

LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The United States abolish the death penalty in federal and state laws;

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not

impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary

nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age

seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at

night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October

1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v.*

Oklahoma, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena

Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

responsible authorities, state and federal, commute all death sentences now outstanding;

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use

of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international

law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents"

cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97

Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court,

Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is

not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

as a step toward abolition, the United States enact legislation to end the death penalty for persons who committed the crimes for which they were convicted when they were under eighteen years of age; and prosecutors, state and federal, refrain from seeking the death penalty in juvenile offender cases;

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express

consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the

consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

the United States rescind its reservation to the International Covenant on Civil and Political Rights regarding capital punishment for juvenile offenders; and

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use

of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international

law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents"

cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97

Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court,

Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is

not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

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111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

the United States ratify the United Nations Convention on the Rights of the Child without reservation to the prohibition of the imposition of death sentences for persons under eighteen years of age at the time of their offense.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

International Law

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be

overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American

Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is

supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

International agreements and standards on the death penalty unequivocally prohibit the use of death sentences for offenders who were under eighteen years of age at the time of the offense for which they were convicted. Several international and regional human rights instruments contain clear dictates against the use of the death penalty for juvenile offenders, including: the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the U.N. Convention on the Rights of the Child (CRC), and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice of 1986 (also known as the "Beijing Rules"). In addition, the U.N. Economic and Social Council adopted a series of safeguards in 1984 guaranteeing the rights of those facing the death penalty and ruling out the death penalty for those under eighteen years of age at the time of the offense. In 1989, the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/3 which urged countries still applying the death penalty to juvenile offenders to take legislative and administrative steps to end this practice.

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child, adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other

minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week

prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not

presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former

aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was

shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile

Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial

considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF.

39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November

1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The ICCPR states in article 6(5) that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights, article 4(5), orders that "capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." The U.N. Convention on the Rights of the Child,

adopted in November 1989, provides at article 37(a) that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Article 17(2) of the Beijing Rules states: "Capital punishment shall not be imposed for any crime committed by juveniles." Number three of the safeguards adopted on May 25, 1984 by the U.N. Economic and Social Council reads as follows: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death."14

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such

age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile

offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students,108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses

committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express

contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial

disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The death penalty standards of the treaties listed above are binding upon signatory countries and are widely adhered to in practice. Moreover, at least seventy-two countries have domestic legislation that prohibits the execution of persons for crimes committed when they were below eighteen years of age.15

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not

impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary

nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age

seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at

night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October

1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v.*

Oklahoma, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena

Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

United States Law

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting

or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed

and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on

the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is

squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was

carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority

offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

In 1988, the Supreme Court held that offenders whose crimes were committed before the age of sixteen may not be executed pursuant to a capital punishment statute that specifies no minimum age.16 The Court's rationale for this decision was based upon the premise that the Eighth Amendment (prohibiting cruel and unusual punishment) requires "special care and deliberation in decisions that may lead to the imposition of [the death penalty]."17 The Court explained that in enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances:

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be

overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American

Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is

supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

[t]here is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15-year-old defendants death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a some minimum age for death eligibility.18

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great

weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote

against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on

behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The Court concluded that because the available evidence suggests a national consensus forbidding the imposition of capital punishment for crimes committed before the age of sixteen, petitioner and others whose crimes were committed before that age "may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution."19

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these

jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which

prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

This ruling by the Supreme Court stands as good law today. Currently, no state which has a minimum age limit in its death penalty statute permits executions for crimes committed while below the age of sixteen.20 However, the Court has not decided whether a death penalty statute permitting the execution of juveniles under sixteen years of age would be per se unconstitutional.21 Thus, there is no ruling to prevent a state from legislating in the future to introduce a minimum age of fifteen or below in its capital punishment statute.

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to

any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of

the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence

quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson

was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the

age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

In 1989, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment does not prohibit the use of the death penalty for crimes committed at age sixteen or seventeen.22 The majority opinion stressed that in determining what constitutes a violation of the Eighth Amendment - namely, conduct that violates "evolving standards of decency"23 - the Court looked only to U.S. standards of decency (as indicated by federal and state laws) and not to the sentencing practices of other countries that do not impose the death penalty for juvenile offenders.24 The dissent, however, argued that one objective indicator of contemporary standards of decency is the fact that "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved."25 This Supreme Court ruling also remains good law.

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop

their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-

defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions.

Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be

incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and

Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Arguments that the death penalty for juveniles is unconstitutional have focused primarily on the Eighth Amendment's prohibition of cruel and unusual punishment. In Supreme Court cases regarding the use of the death penalty on adults, arguments have been made that executions violate additional constitutional guarantees of equal protection and substantive due process. The Supreme Court has rejected both arguments.26 To date, the Supreme Court has not heard arguments on these constitutional issues in juvenile death penalty cases.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason

behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible

death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and

write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents

typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S.*

Reservations, Understandings, and Declarations to the ICCPR (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."27 This clause has been interpreted to mean that classes of people may be treated differently, but that the difference in treatment must be rationally related to a legitimate government interest.28 In *Wilkins v. Missouri*, the American Society for Adolescent Psychiatry argued unsuccessfully in an *amicus brief* that the practice of separating sixteen- and seventeen-year-olds from other minors and subjecting them to execution violates the Equal Protection Clause by failing to bear a rational relationship to a legitimate governmentinterest.29 The Supreme Court has determined that deterrence and retribution are legitimate purposes for imposing capital punishment;30 the brief argued, however, that sixteen- and seventeen-year-olds, like other minors, lack the maturity and experience to be as blameworthy as adult offenders, and that their adolescent sense of indestructibility makes them poor candidates for deterrence.31

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and

Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence

or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents

typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S.*

Reservations, Understandings, and Declarations to the ICCPR (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Substantive due process, according to the Supreme Court, requires the Court to determine whether a practice so "shocks the conscience" as to be violative of guarantees implicit in the Constitution.32 For example, the Court, in *Rochin v. California*, found that forcible extraction of the contents of a suspect's stomach in order to obtain evidence violates due process because such conduct "shocks the conscience" and offends "a sense of justice."33 Though the Supreme Court has rejected the argument that executions of adults by current methods are so painful and degrading as to "shock the conscience" and violate due process,34 the use of current execution methods on juvenile offenders has yet to be challenged before the Supreme Court as violative of substantive due process. Legal scholars have argued the validity of this constitutional challenge in articles and commentaries.35

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop

their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-

defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions.

Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be

incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and

Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Thirty-eight states and the federal government have statutes providing the death penalty for certain forms of murder. Fourteen of these jurisdictions (34 percent) have expressly chosen eighteen as the minimum age at the time of the crime for death penalty eligibility in their statutes.36 Four states (11 percent) have chosen age seventeen as the minimum.37 The remaining twenty-one death penalty jurisdictions use sixteen as the minimum age, either through a statute (nine states)38 or through a court ruling (twelve states).39 Thirteen American jurisdictions do not have the death penalty at all: Alaska, District of Columbia, Hawaii,Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.40

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to

stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation

[of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The imposition of this most severe punishment on juvenile offenders contrasts with U.S. laws in several other areas that recognize that minors are not fully mature, and therefore are less able to exercise good judgment and restraint. In all states, the minimum age for voting or sitting on a jury is eighteen. In forty-nine states, the age of majority is at least eighteen. Most states impose several other restrictions on those under eighteen; including, for example, the right to purchase alcohol and gamble, and to marry without parental consent. Such age-based classifications "reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility."41 Moreover, these civil laws indicate that society views those under eighteen as needing special treatment and protection, and recognizes their lesser responsibility. This recognition should be reflected in the criminal law as well, and supports the argument for abolishing the death penalty for juvenile offenders. As the Supreme Court recognized in *Eddings v. Oklahoma*:

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile

death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her

car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use

of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its

own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

[Y]outh 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. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment expected of adults. Even the normal sixteen year old customarily lacks the maturity of an adult.42

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the

purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the

support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to

the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the

United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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86 Ibid.

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91 Streib, *Juvenile Death Penalty Today*, p. 17.

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105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

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107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

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119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

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132 Ibid.

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134 *Wilkins v. Missouri*, p. 2992.

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139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

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142 Ibid.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

United States Compliance With International Law

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which

prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The United States government signed both the ICCPR and the American Convention on Human Rights in 1977 and ratified the ICCPR in September 1992. The U.S. made reservations, however, to article 6 of the ICCPR, which states that death shall not be imposed upon those who were under eighteen years of age at the time of their crimes. The U.S. reservation to the Covenant reserves the prerogative to use capital punishment to the extent that it is permitted under the U.S. Constitution.43 The U.S. is the only country that has entered a formal reservation concerning the execution of juveniles. Moreover, the following countries are on record opposing this U.S. reservation as undermining the purpose of the covenant: Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain and Sweden.44 The U.S. signed the Convention on the Rights of the Child on February 16, 1995. However, this convention has not yet beensent to the Senate for ratification. President Bush refused to sign the convention during his years in office. He stated the reason behind his refusal as follows: "it [the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen."45

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established

practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be

less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Though the United States has not ratified the American Convention on Human Rights or the Convention on the Rights of the Child and has not enacted implementing legislation for the ICCPR,46 it is still bound as a signatory not to act in a manner that would defeat the purpose of the treaties.47 International legal scholars have argued that this prohibits the U.S. from committing acts which would themselves contradict the object or purpose of the treaty - i.e., that the U.S. is bound not to impose the death penalty on juvenile offenders.48

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."[65] It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.[66] In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.[67]

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:[68] were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.[69] A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.[70] Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.[71] This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.[72] Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.[73] Furthermore, the Supreme Court has recognized that "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."[74] That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.[75] Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.[76]

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.[77] Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.[78] Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.[79]

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.[80]

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.[81] He was seventeen years old at the time he committed the robbery and murder for which he was convicted.[82] In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.[83] He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).[84]

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.[85] Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He

also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The United States is also bound by customary international law, which is derived from the general acceptance by countries of established practices which are followed out of a sense of legal obligation. Such law is binding on all nations, without the necessity of their express consent. The virtually universal ban on the death penalty for juveniles, it can be argued, qualifies as a norm of customary international law.49 Thus, the United States continues to violate customary international law each time it executes a child offender. This is especially ironic since the U.S. speaks strongly about the need for international respect for human dignity and human rights and is "commonly acknowledged to be a principal [state] ancestor of the contemporary idea of rights."50

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5

percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to

be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was

seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In

1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

The United States has faced strong international condemnation for its continued execution of juvenile offenders. The Inter-American Commission on Human Rights decided on March 27, 1987 that the U.S. Government had violated provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man by permitting the execution of two persons, Terry Roach andDalton Prejean, convicted of crimes committed before they were eighteen years of age.51 The Commission found the U.S. to have violated human rights standards applicable in the inter-American system, even though the U.S. had not ratified the American Convention on Human Rights. The Commission held that the rule prohibiting execution of juvenile offenders had acquired the authority of jus cogens,52 a norm of international law from which no derogation is permitted.53

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that

Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights

to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty

obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Moreover, these two violations attracted international protests against the United States. On January 9, 1986, the Secretary General of the Organization of American States cabled Governor Dick Riley of South Carolina urging him to stay the execution of Terry Roach. He appealed to the governor to "follow the current tendency of almost all the countries of this hemisphere" and stay the execution for "humanitarian reasons." Then-Secretary General of the U.N., Javier Perez de Cuellar, also appealed to the governor to grant clemency to Roach.54 The impending execution of Dalton Prejean in Louisiana similarly resulted in worldwide protests in 1990. Amnesty International, the European Parliament, and the American Civil Liberties Union (ACLU) all urged Louisiana Governor Buddy Roemer to set aside the execution. Over one thousand letters appealing for clemency, many from overseas, flooded the governor's office in the week prior to the execution.55

CHARACTERISTICS OF JUVENILE OFFENDERS CONDEMNED TO DEATH

Statistical Overview

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Nine executions have been imposed on offenders whose crimes were committed as juveniles in the last twenty-one years, representing 4 percent of total executions since 1973.56 Periods on death row awaiting executions in recent years have ranged from six to sixteen years; no juvenile offenders have been executedwhile still under eighteen in the United States.57 Moreover, all executed juvenile offenders since 1973 were at least seventeen years of age when their crime was committed. The last individual executed for a crime committed at an age younger than seventeen was Leonard Shockley, who was sixteen at the time of the crime and who was executed in Maryland on April 10, 1959.58

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were

imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the

robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital

punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

According to Bureau of Justice statistics, a total of 137 juvenile death sentences have been handed down since 1973, representing 2.5 percent of total death penalty sentences imposed on all offenders.59 Only forty-one (30 percent) of these sentences remain currently in force. Nine (7 percent) resulted in execution and eighty-seven (64 percent) were reversed on appeal.60 Two-thirds of the 137 juvenile death sentences were imposed on individuals who were seventeen years old at the time of their offenses; the other one-third were imposed on individuals who were sixteen or fifteen years old at the time of their crimes. Of the nine executions of juvenile offenders that have been carried out since 1973, five executed offenders were white, three were African-American, and one was Latino.61

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing

hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-

depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own

name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified

in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York*

Times, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Only ten states have imposed more than five such sentences, and almost all offenders sentenced to death have been male.62 Texas and Florida lead all other states in this area. Between January 1973 and October 1994, Texas imposed twenty-eight sentences on juvenile offenders, and Florida imposed eighteen such sentences. Mississippi, the state with the third highest rate of death sentences for juveniles, imposed nine death sentences during this time.63 Most recently, in September 1994, two seventeen-year-old Houstonteenagers were sentenced to death for their roles in the gang rapes and murders of two teen-age girls in June 1993. The jury took less than fifteen minutes to hand down the sentence for one of the juveniles.64

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals

filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his

grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara

LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Characteristics of Juvenile Offenders Executed or on Death Row

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed

and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on

the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is

squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was

carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority

offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Evidence suggests that many juvenile offenders on death row suffered from inadequate judicial proceedings and legal representation. In many cases, the defendant's youth was not presented as a mitigating factor at the sentencing phase of the trial or was rejected by the trial court. This contradicts a Supreme Court ruling that "the chronological age of a minor is itself a relevant mitigating factor of great weight."65 It also is contrary to a Supreme Court ruling in *Lockett v. Ohio* that the Eighth and Fourteenth Amendments require the sentencing judge or jury to consider any circumstances that might be presented in mitigation before choosing between a life or death sentence.66 In other cases, trial courts rejected evidence of the defendant's deprived or abused background as irrelevant at the sentencing hearing, also in violation of *Lockett v. Ohio*.67

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that

"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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade.

Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences*

and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994 (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of

existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Evidence suggests that a large majority of juvenile offenders sitting on death row or already executed suffered from acutely deprived backgrounds:68 were seriously physically and/or sexually abused; regularly abused drugs or alcohol from an early age; have parents with histories of alcoholism, drug abuse, and mental illness; suffer from mental illness or brain damage; or are of below-average intelligence or mentally retarded. However, in many of these cases, the juries which heard their cases were not informed of this background information and, thus, were not able to consider the juvenile's mental capacity or background as mitigating factors against a possible death sentence. Furthermore, in many cases the defendant's young age at the time of the crime was not mentioned or fully considered as a mitigating circumstance at the sentencing hearing.69 A study of juvenile offenders on death row, conducted in 1986 and 1987 by a team of psychiatrists and neurologists, concluded that juveniles who have committed capital offenses are "uniquely vulnerable" and lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense.70 Therefore, they are dependent on family testimony for assistance in preparing their defense, though their families most often are unable to provide the support and aid these adolescents need.

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students,108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses

committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express

contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial

disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Mitigating factors of youth, a troubled background and mental and emotional disabilities are inordinately important in the cases of juveniles accused of capital crimes. Because they have not yet reached maturity, these juveniles have not had the opportunity to develop their personalities and overcome the cruelties and suffering of their childhoods.71 This exacerbates the general tendency of children to be less capable of controlling their emotions, less mature in their judgment and sense of responsibility, less capable of seeing the consequences of their actions and more vulnerable to influences by others.72 Thus, psychiatrists have found that "homicidal adolescents" cannot and should not be considered as responsible as adults for their offenses.73 Furthermore, the Supreme Court has recognized that "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."74 That the mitigating factors of youth and reduced responsibility in general are not always presented before the courts, and even if presented, often do not prevail, illustrates the arbitrary nature of the process. In capital cases, this arbitrariness has unique and irreparable consequences.

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that

Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights

to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty

obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Amnesty International has prepared a summary of findings in twenty-three juvenile death penalty cases from sentencing reports, appeals filed, court judgments, clemency petitions, and psychiatric testimony.75 Their findings demonstrate the mitigating circumstances present in most juvenile death penalty cases - circumstances that often were not recognized or considered at trial or during sentencing.

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing

these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an

unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile*

Offenders, Updates As of July 1994 (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a

whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

In at least fourteen cases, Amnesty International found evidence of mental illness or brain damage. In six cases, prisoners had long

histories of psychiatric illness or mental disorders dating from early childhood. Though all fourteen defendants were found competent to stand trial, there was evidence in many cases that the psychiatric evaluations were inadequate. Eleven prisoners had an intelligence quotient below 90. Four of the juveniles fell within a borderline mentally retarded range, and one was significantly mentally retarded. Two were illiterate at the time of trial.

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation

[of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Furthermore, most of the juveniles were represented by court-appointed attorneys or public defenders who spent little time preparing these cases for trial. In nine cases, the lawyers handling the appeals found important mitigating evidence that had not been given at trial or at the sentencing hearing. Information on the defendant's mental illness, mental retardation, or abusive childhood often was not presented because the trial lawyer had failed to conduct an adequate investigation into the juvenile's background or psychiatric history. In several cases, lawyers failed to get adequate pre-trial psychiatric evaluations despite a juvenile's history of mental disorder. Some lawyers blamed this failure on a lack of funds.76

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen,

Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Case Histories

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that

Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights

to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty

obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

An in-depth look at several death penalty cases highlights the level of mitigating circumstances present in juvenile offender cases. Even more disturbing is the fact that most of these mitigating factors are not considered at trials or sentencing hearings.

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her

car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use

of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its

own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

David Blue: Blue, an African-American male, is on death row in Mississippi; he was sentenced on April 12, 1993.77 Blue was seventeen years old at the time he committed the crime of robbery and murder in June of 1992.78 Blue's co-defendants, all older than he, pleaded to lesser charges and testified against Blue. Their testimony was uncorroborated. All charges against these co-defendants have since been dropped.79

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He

also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Blue grew up in extreme poverty: his family contained twenty-one people who lived in a small house with no beds. He was determined to be mentally retarded at age four by mental health officials.80

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for

capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman

during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a

valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the

ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and

Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Joseph John Cannon: Cannon, a white male, remains on death row in Texas.81 He was seventeen years old at the time he committed the robbery and murder for which he was convicted.82 In 1989, Cannon's lawyers requested a stay of execution on the grounds of insanity and incompetency to be executed. Cannon's jury was told he was illiterate and only seventeen years old at the time of his crime; however, they were not informed of his extensive psychiatric problems. Tests before and after Cannon's trial show him to be disturbed and immature for his age.83 He has been on anti-depressants for most of his life, and he has an IQ of 79 (borderline mentally retarded).84

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an

unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile*

Offenders, Updates As of July 1994 (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a

whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Cannon has a history of injury and abuse. At age four he was hit by a truck and suffered a fractured skull, broken leg, and perforated

lungs. He was in the hospital for eleven months. When released, Cannon was placed in an orphanage by his mother. The head injury left him hyperactive and suffering from a speech impediment that prevented him from speaking clearly until age six.85 Cannon was expelled from school in the first grade because of learning disabilities and received no other formal education. Before he was ten years old he began to sniff glue, solvent and gasoline. At age ten he was diagnosed with organic braindamage resulting from this solvent abuse. He also was "diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age."86

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He

was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a

recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico,

New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white

victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Amnesty International's report on the Cannon case presents further evidence of Cannon's tortured upbringing:

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is

supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Cannon was severely sexually abused by his stepfather (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he could not remember anything good that ever happened to him. He suffered from severe depression and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.87

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses

committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express

contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial

disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Though Cannon suffered from severe depression and a history of psychiatric disorders, attempts to have him committed to a state mental institution failed because of the long waiting lists at such institutions.88 At the time of his crime, Cannon was high on marijuana, unidentified pills, and whiskey.

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson

was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the

age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Cannon has reportedly adapted well to the structure of prison life: he has not suffered any behavioral problems, has learned to read and write, and is taking Bible classes by correspondence.89

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Ron Chris Foster: Foster, an African-American male, was convicted of capital murder during the course of a 1989 armed robbery and was sentenced to death in January of 1991.90 At the time of his crime, Foster was seventeen years old.91

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was

seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In

1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Foster was convicted by a predominantly white jury (nine white jurors and three black jurors). The trial record indicates that the state used six of its ten peremptory challenges to remove black males from the jury.92 Foster's co-defendant, who was indicted with Foster for capital murder, testified against Foster at trial in exchange for the right to plead guilty to being an accessory after the fact,93 a crime that carries a maximum sentence of five years in Mississippi.94 Notably, the prosecution withheld its end of the pleabargain until Foster's co-defendant completed his testimony against Foster.95 This co-defendant testimony was uncorroborated.96

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97 Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen,

Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Foster was raised in poverty by illiterate parents. During the trial, the district attorney made fun of Foster's father for being illiterate.97

Foster is mentally disabled; he suffered two significant head injuries at the age of twelve and dropped out of school in the eighth grade. Moreover, medical reports detail that Foster has a below-average IQ.98

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court,

Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is

not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

William Holley: Holley, a white male, remains on death row in Mississippi for a crime he committed on July 12, 1992 at age seventeen.99 Holley was sentenced to death on March 3, 1993 for robbery and murder.100

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents

typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S.*

Reservations, Understandings, and Declarations to the ICCPR (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Holley grew up in a single-parent family. His mother was very young when he was born, and he was raised part of the time by his grandparents. None of Holley's relatives attended his trial.101 Holley had a history of suicide attempts back to his early childhood, though his lawyers failed to bring this fact, or his young age, to the jury's attention at the sentencing hearing. Furthermore, at the time of the crime, Holley had just moved to Mississippi from Chicago; he had been living in Mississippi for under a year. Holley's two co-defendants, both of whom pled to lesser charges and one of whom testified against him, were long-time local residents.102

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121

This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human

Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Levi James Jackson: Levi James Jackson, a white male, was sentenced to death on January 26, 1994 in Pima County, Arizona. Jackson was sixteen years old at the time he committed the car-jacking and murder for which he was convicted.103

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death

penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the

American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years

old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

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48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Jackson grew up in a troubled home and a "dysfunctional family" -- Jackson's family history was "traumatic, disruptive and marked by abandonment."104 His father was totally immersed in a religious cult;his mother neglected and abused him, telling Jackson he was an unwanted and unplanned-for child, beating him physically, and emotionally abandoning him at an early age.105 When Jackson was seven or eight years old, his mother left the family and his father married his mother's sister.106 Jackson lived with his father and former aunt, though he still saw his mother occasionally. It was at this time that Jackson began getting into trouble. He had several minor brushes with the law and a few stints in juvenile court.107 Jackson was in trouble in school -- often fighting with other students.108 However, Jackson's probation officer spoke well of him and stated that when Jackson was serving probation, his behavior improved as a result of the structure in his life and the attention and feedback he was receiving.109

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the

time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child

Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During

and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York*

Times, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Jackson moved out of his father's house at age sixteen and started living with two older men. It is believed, though not substantiated, that Jackson was prostituting himself to cover his rent and living expenses, since he was not working at the time.110 These two older men were with Jackson at the time of his crime and took part in the car-jacking. One man turned state's witness and received a lighter sentence; the other has also been sentenced to death.111 Evidence given at trial established that Jackson was prodded by these two men to commit murder. Both encouraged Jackson to shoot the victim, taunting him that he "didn't have the heart" to kill.112

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that

Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their

prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow

Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Jackson is believed to suffer from brain damage, though no complete mental evaluation has been run on him to date. His trial lawyer failed to present any of the above evidence at trial, including Jackson's troubled background and young age.113

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara

LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

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115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Frederick Lashley: Frederick Lashley, an African-American, was executed by the state of Missouri on July 28, 1993. Lashley was seventeen years old at the time of his crime which qualified him as an "adult" in the eyes of Missouri law.114 Lashley was high on phencyclidine ("PCP") when he killed his cousin, whowas also his foster mother, in the course of robbing her of fifteen dollars and her car. This cousin had reared Lashley from the time he was two years old, until a few weeks before the killing.115

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that

he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr.,

"Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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116 Ibid.

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119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

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127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Lashley was abandoned by his natural mother and beaten by his natural father as an infant and young child. He started drinking heavily when he was ten and had been suicidal from an early age, requiring psychiatric care. At the time of the murder, Lashley was living on the streets. Lashley's case was his trial lawyer's first capital murder trial, and this lawyer admits he had not received any training in death penalty litigation at the time of Lashley's case.116

Dalton Prejean: The state of Louisiana executed Dalton Prejean by electrocution in May 1990 for the murder of a police officer.117 He was seventeen years old at the time of the crime. Although an African-American male,118 Prejean was tried by an all-white jury; the judge changed the trial location to a predominantly white area and the prosecutor excluded all four prospective black jurors from the jury panel.119

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of

extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme

Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

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According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is

supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Prejean's youth was not mentioned as a possible mitigating factor at his sentencing hearing. The jury was not informed of his state of extreme intoxication at the time of his crime, nor were they informed of his history of childhood neglect and abuse, mental illness and brain damage.120 One member of Prejean's jury made an appeal for clemency shortly before Prejean's execution, claiming she would have voted against death and for treatment if she had known of this mitigating evidence: "I would, if I had another opportunity, vote against the death penalty in favor of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty."121 This was significant, because under Louisiana's law, a jury's vote for death must be unanimous. If a single juror votes against the death penalty, the sentence must be life without parole.

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

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1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

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4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number

of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority

offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Amnesty International's report on Prejean's case illustrates the psychiatric disorders from which he suffered during childhood and at the time of his crime. Amnesty reports:

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given

drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

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9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

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24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

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27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

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30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress.122

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on

behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

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13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

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19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

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27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

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49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Prejean was confined to various institutions in Louisiana between 1972 and 1976.123 He was diagnosed as suffering from schizophrenia and depression. In 1974, when Prejean was fourteen, doctors conducted another psychiatric evaluation of Prejean and recommended "a lengthy confinement [in a mental hospital], followed by transfer to permanent facilities."124 Despite their finding that Prejean was "a definite danger to himself and others," he was released from this institution without supervision in 1976, though doctors cautioned that Prejean must have "adequate supervision" in "a fairly stable environment."125 Within seven months, Prejean killed the police officer.126

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in

Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

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55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

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74 *Eddings v. Oklahoma*, p. 115, n. 11.

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116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Heath Wilkins: A state of Missouri court sentenced Heath Wilkins, a white male, to death on June 27, 1986, for fatally stabbing a woman during the robbery of a liquor store.127 The court accepted Wilkins' plea of guilty and his waiver of his right to counsel and to a jury trial, even though there was evidence regarding Wilkins' mental health that suggested he was not competent to make these decisions. Moreover, Wilkins was only sixteen years old at the time of his offense.128 At present, he is still on death row in Missouri.129

According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the

diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the

director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress

of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

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92 *Foster v. State of Mississippi*, p. 1279.

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95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

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117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

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127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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132 Ibid.

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134 *Wilkins v. Missouri*, p. 2992.

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139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

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145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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According to the state-appointed psychiatrist who prepared an evaluation on Wilkins at the request of the Missouri Supreme Court, Wilkins had a very negative upbringing:

Mr. Wilkins . . . was raised in a rather poor socioeconomic environment [and] reportedly had an extremely chaotic upbringing during his childhood. He was physically abused by his mother; sometimes the beatings would last for two hours. . . . Mr. Wilkins' mother worked at night and slept during the day; thus the children were left alone at night by themselves.130

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

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PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to

the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States.* These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the

United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

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140 Ibid., p. 991.

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

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2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

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16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York*

Times, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

According to the Missouri Capital Punishment Resource Center:

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

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18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

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25 Ibid., p. 390.

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28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

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30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

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49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

135 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Wilkins was subjected to severe emotional and physical abuse as a child. Confined to his room for long periods of time, he was given drugs as a small child and was beaten frequently and severely by his mother for minor infractions. Before the age of ten, Wilkins had attempted suicide and had attempted to poison his mother. At the age of ten, Wilkins was admitted to a mental health center; the diagnosis indicated severe depression with homicidaland suicidal ideation and possible childhood psychosis. . . . [The] recommendation [of the center was for] intensive psychotherapy.131

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a

recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

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30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

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55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

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74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

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87 Ibid., pp. 19-20.

88 Ibid., p. 20.

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116 Ibid.

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119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

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132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Instead, at age eleven, Wilkins was transferred to the Butterfield Youth Farm. He lived there for the next three years. At age fourteen, Wilkins was transferred to a psychiatric facility for children where the staff predicted that a major psychotic breakdown was imminent.132

Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

A significant body of professional opinion in the United States has rejected the use of capital punishment in juvenile offender cases. In 1983, the American Bar Association's House of Delegates adopted a resolution opposing in principle the use of capital punishment for anyone convicted of an offensecommitted while under eighteen years of age.139 The association stressed that "justifications" for the use of capital punishment on adults "lose much of their persuasiveness when applied to an adolescent's case."140 For example, retribution or "legal vengeance" against children for their crimes "seems quite beyond justification."141 Also, according to the association, capital punishment does not act as a deterrent for children: "[T]hreatening a child with death does not have the same impact as threatening an adult with death."142 The resolution concludes: "[S]uch irreversible giving up upon a person even before they emerge from childhood is squarely in opposition to the fundamental premises of juvenile justice and comparable socio-legal systems."143

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a

recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

* * *

This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico,

New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

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92 *Foster v. State of Mississippi*, p. 1279.

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95 *Foster v. State of Mississippi*, p. 1285.

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97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

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120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

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139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

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Six months later, however, Wilkins was released from the hospital "against the recommendation of treating physicians."133 Wilkins was shuffled between foster homes and his mother's home; eventually, he ended up living on the street with a group of runaway children. Wilkins used drugs and alcohol almost continuously. Often he went without any sleep or food for days, and he began to steal for money.134 On the day of his crime, Wilkins had consumed a large quantity of alcohol and had taken the drug lysergic acid diethylamide ("LSD").135

Wilkins' present attorney has developed considerable evidence to prove Wilkins was incompetent to plead guilty and to waive his rights to an attorney and a jury trial.136 In addition, a state-appointed forensic psychiatrist diagnosed Wilkins after his trial and concluded that he had a "conduct disorder, undersocialized-aggressive type" with a borderline personality disorder that made him aggressive and self-destructive when faced with stressful situations.137 Wilkins' natural father was committed to a mental institution in Arkansas when Wilkins was a boy. Wilkins' brother was diagnosed to be suffering from schizophrenia and was admitted to a mental hospital at a young age.138

PROFESSIONAL AND LEGAL VIEWS

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

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1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

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7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

129 Streib, *Juvenile Death Penalty Today*, p. 14.

130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

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9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

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16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

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25 Ibid., p. 390.

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30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

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49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

85 Ibid.

86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

94 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

97 Ibid.

98 *Foster v. State of Mississippi*, p. 1303.

99 Streib, *Juvenile Death Penalty Today*, p. 15.

100 Ibid., p. 17.

101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

102 Ibid.

103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

106 Sentencing Report, p. 25.

107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

109 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

110 Ibid.

111 Heather Newman, "Teen's Role in Killing Disputed," *The Tuscon Citizen*, September 25, 1993.

112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

113 HRW/Children's Rights Project telephone interview with Arizona Capital Representation Project, January 21, 1995.

114 Streib, *Juvenile Death Penalty Today*, p. 13.

115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

124 Ibid.

125 Ibid.

126 Ibid.

127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

131 HRW/Children's Rights Project telephone interview with the Mississippi Capital Punishment Resource Center, September 14, 1994.

132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

143 Ibid.

144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

In 1988, the National Council of Juvenile and Family Court Judges passed a resolution opposing the death penalty for offenses committed while under eighteen years of age. As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be used for persons whose crimes were committed when they were under eighteen. And, in 1971, the National Commission on Reform of Federal Criminal Laws stated its position that eighteen should be the minimum age at the time of the offense for the death penalty.144

A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the

age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

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53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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92 *Foster v. State of Mississippi*, p. 1279.

93 Ibid., p. 1284.

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95 *Foster v. State of Mississippi*, p. 1285.

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97 Ibid.

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120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

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124 Ibid.

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A number of professional and religious organizations have opposed the death penalty for minors in *amicus curiae* briefs to the Supreme Court. For example, in *Stanford v. Kentucky*, briefs against the imposition of the death penalty were filed by the Child Welfare League of America, the National Parents and Teachers Association ("PTA"), the National Council on Crime and Delinquency, the American Society for Adolescent Psychiatry, and the American Orthopsychiatric Association. In *Thompson v. Oklahoma*, briefs were filed on behalf of the petitioner by: the American Bar Association, the American Law Institute, Amnesty International, the International Human Rights Law Group, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Society for Adolescent Psychiatry. The Child Welfare League of America filed briefs on behalf of Thompson in their own name with the National PTA, the National Council on Crime and Delinquency, the Children's Defense Fund, the National Black Child Development Institute, the National Youth Advocate Program, and the American Youth Work Center.

In addition, lawyers, judges, and other legal professionals recognize that death row conditions in the United States are especially harsh and very different from conditions in the general prison population.145 Unlike inmates in the general prison population, death row inmates in most states do not have access to prison work, vocational or training programs, or educational classes. Death row residents typicallyexperience a lack of exercise, poor diet, small quarters, social isolation, strained family relations, and infrequent family visits. Death row inmates spend a great majority of time in their cells.146 The solitude and lack of programmed activities is especially hard on the juvenile inmates. Though rehabilitation is considered "inapplicable," juvenile offenders often spend years in such conditions before having their sentences reduced to life-sentences on appeal.147 Thus, they could have benefitted from rehabilitation earlier on in their prison sentences. The Federal District Court of Louisiana has held that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution."148 Similarly, the 9th Circuit has held that a prisoner's complaint concerning inadequate exercise is a valid eighth amendment claim.149

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

Human Rights Watch Children's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director: Juan E. Mndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director and Michelle India Baird is counsel.

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention

on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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This report was written by Shannon Hill, a consultant to the Human Rights Watch Children's Rights Project, and edited by Lois Whitman, director of the Project, and Michael McClintock, deputy program director of Human Rights Watch.

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17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

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49 Ibid., p. 620.

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52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a

whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

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57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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81 Streib, *Juvenile Death Penalty Today*, p. 13.

82 Ibid., p. 18.

83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

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92 *Foster v. State of Mississippi*, p. 1279.

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52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

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77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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83 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 18.

84 Ibid., p. 19.

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

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119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

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139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

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145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

Human Rights Watch Children's Rights Project

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1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

3 United Nations, *Member States and Their Positions on the Death Penalty for Crimes Committed by Persons Below 18 Years of Age* (New York: United Nations, 1994).

4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties

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12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

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24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

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27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

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48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

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75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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81 Streib, *Juvenile Death Penalty Today*, p. 13.

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112 Mary Bustamante, "Pal: Teen Killed on a Dare," *The Tuscon Citizen*, January 20, 1994.

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145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

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149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

1 The phrase "juvenile offender" is used in this report to indicate individuals whose crimes were committed when they were below the age of eighteen.

2 Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders* (New York: Amnesty International, 1991), p. 2. This report was updated as of July 1994. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Updates As of July 1994* (New York: Amnesty International, 1994). *See also*, Michael Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

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72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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25 Ibid., p. 390.

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37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white

victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

65 *Eddings v. Oklahoma*, p. 104.

66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

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45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

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48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

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52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States

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63 Streib, *Juvenile Death Penalty Today*, p. 8.

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

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75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

80 Ibid.

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92 *Foster v. State of Mississippi*, p. 1279.

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95 *Foster v. State of Mississippi*, p. 1285.

96 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

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140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

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4 One execution of a minor was reported in Bangladesh in 1986. U.N., *Member States.* This was in direct violation of Bangladesh's treaty obligations under the Convention on the Rights of the Child. U.N., *Member States.*

5 Barbados has since raised the minimum age for executions to eighteen years. U.N., *Member States.*

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States*.

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8 Amnesty International reports that the sentencing of juveniles to death in Nigeria has occurred since 1990, though the specific number of juveniles sentenced and/or executed is unknown. Amnesty International also reports that at least one execution of a juvenile was carried out in Nigeria between 1980 and 1987. Amnesty International, *Death Penalty and Juvenile Offenders*, p. ii. Nigeria's execution of a person below eighteen years of age violates the ICCPR and the Convention on the Rights of the Child, both of which Nigeria has signed and agreed to follow. Furthermore, Nigeria's laws permit the execution of persons seventeen years and older, which is an express contradiction of both of these international treaties. U.N., *Member States.*

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we

are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

37 Georgia, New Hampshire, North Carolina, and Texas.

38 Alabama, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, and Wyoming.

39 Arizona, Arkansas, Delaware, Florida, Idaho, Montana, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Washington.

40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

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11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

13 Amnesty International, *Death Penalty and Juvenile Offenders*, p.1.

14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

15 U.N., *Member States.*

16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

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25 Ibid., p. 390.

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28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

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30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

31 Adolescent Psychiatry Brief, pp. 21-22.

32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

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49 Ibid., p. 620.

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51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

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101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

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149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

6 According to the *International Children's Rights Monitor*, three girls ages fourteen, fifteen, and sixteen were accused of "sympathies with the opposition" and executed at Shiraz in mid-1983 after one and a half years in prison. The youngest children on whom death sentences have been carried out in Iran in the last ten years, about whom we have information, were only eleven years old - a girl in Isfahan and a boy in Fasa. *International Children's Rights Monitor*, vol. 11, no. 1(1984), p.7. These judicially-ordered executions violate Iran's treaty obligations under the ICCPR and the Convention on the Rights of the Child, as well as its own national legislation, which prohibits the execution of minors. U.N., *Member States.*

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104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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122 Ibid., p. 36.

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128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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134 *Wilkins v. Missouri*, p. 2992.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

7 U.N., *Member States*. These executions violate Iraq's obligations under the ICCPR, the Convention on the Rights of the Child, and its own national laws which do not permit the execution of minors. U.N., *Member States.*

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9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

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12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

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16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

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25 Ibid., p. 390.

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27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

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49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

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55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

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70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

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72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

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73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

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78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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86 Ibid.

87 Ibid., pp. 19-20.

88 Ibid., p. 20.

89 Ibid., p. 19.

90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

91 Streib, *Juvenile Death Penalty Today*, p. 17.

92 *Foster v. State of Mississippi*, p. 1279.

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

105 HRW/Children's Rights Project telephone interview with the Arizona Capital Representation Project, October 19, 1994; and Sentencing Report, p. 24.

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107 Ibid.

108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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115 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

116 Ibid.

117 Streib, *Juvenile Death Penalty Today*, p. 12.

118 Ibid.

119 *State of Louisiana v. Prejean*, 379 So.2d 240, 247 (1979).

120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

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124 Ibid.

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127 Streib, *Juvenile Death Penalty Today*, p. 17,

128 HRW/Children's Rights Project telephone interview with the Missouri Capital Punishment Resource Center, September 14, 1994.

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130 *Wilkins v. Missouri*, 109 S.Ct 2969, 2992 (1989).

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132 Ibid.

133 Ibid.

134 *Wilkins v. Missouri*, p. 2992.

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136 Ibid.

137 *Wilkins v. Missouri*, P. 2992.

138 Ibid.

139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

141 Ibid., p. 990.

142 Ibid.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

147 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 71.

148 *Sinclair v. Henderson*, 331 F.Supp. 1123, 1131 (1971).

149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

9 These four executions have been carried out since December 1985. U.N., *Member States.* They are in direct violation of the Convention on the Rights of the Child, which Pakistan has ratified. Furthermore, Pakistan's national laws are in contradiction with these treaties because they expressly permit the execution of persons who have reached puberty. U.N., *Member States.*

10 U.N., *Member States.* This execution took place in 1992 and was in direct conflict with Saudi Arabia's domestic law which prohibits the executions of minors. U.N., *Member States.* Saudi Arabia has not ratified any international instruments prohibiting the executions of juvenile offenders.

11 U.N., *Member States.* The most recent judicially-ordered execution of a child in Yemen was in 1993. The offender was thirteen years old at the time of his execution. The execution was in violation of the U.N. Convention on the Rights of the Child, which Yemen ratified in 1991, and the ICCPR, which Yemen also has ratified. Human Rights Watch/Middle East, "Yemen: Human Rights in Yemen During and After the 1994 War," *A Human Rights Watch Short Report*, vol. 6, no. 1, October 1994, p.29.

12 NAACP Legal Defense Fund, *Death Row, U.S.A.* (New York: NAACP LDF, 1994). There may be additional executions of which we are unaware.

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14 U.N. ECOSOC Council, Resolution 1984/50 (May 25, 1984).

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16 *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

17 Ibid., p. 854.

18 Ibid., p. 857.

19 Ibid., pp. 857-58.

20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

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23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

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27 U.S. Constitution amendment XIV, s. 1.

28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

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32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

33 Ibid., p. 172.

34 *See* footnote 28 above.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated

Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

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57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

64 Special to the New York Times, "Death Row for 5th Youth in Two Killings; Families of Victims Happy at Verdicts," *New York Times*, September 25, 1994, p. A36.

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66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

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23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth

Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

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26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

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35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

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Law, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

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23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

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51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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65 *Eddings v. Oklahoma*, p. 104.

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67 *Hegwood v. State of Florida*, 575 So.2d 170, 173 (1991).

68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

76 Ibid., p. 5.

77 Streib, *Juvenile Death Penalty Today*, pp. 15, 17.

78 Ibid.

79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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81 Streib, *Juvenile Death Penalty Today*, p. 13.

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87 Ibid., pp. 19-20.

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90 *Foster v. State of Mississippi*, 639 So.2d 1263 (1994).

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92 *Foster v. State of Mississippi*, p. 1279.

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95 *Foster v. State of Mississippi*, p. 1285.

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98 *Foster v. State of Mississippi*, p. 1303.

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101 HRW/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 15, 1994.

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103 Gabrielle Fimbres, "Trial As Adult Ordered In Killing Here," *The Tuscon Citizen*, February 19, 1993.

104 Sentencing Report for Levi James Jackson, No. CR-40896, Superior Court of Arizona for the County of Pima, Tuscon, Arizona, January 26, 1994, p. 24.

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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120 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 35.

121 Ibid., p. 37.

122 Ibid., p. 36.

123 *State of Louisiana v. Prejean*, p. 248.

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127 Streib, *Juvenile Death Penalty Today*, p. 17,

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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20 Victor Streib, *The Juvenile Death Penalty Today: Present Death Row Inmates Under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes, January 1, 1973 to October 15, 1994* (Cleveland: Cleveland Marshall College of Law, October 1994), p. 4.

21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

Attempts to have current methods of execution banned as too "shocking to the conscience" and thus violative of substantive due process have also failed. *See Glass v. Louisiana*, 471 U.S. 1080 (1985); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), cert. denied, 463 U.S. 1237 (1983).

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28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

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32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

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35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

36 The fourteen jurisdictions are: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, and the Federal Government.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

43 The reservation is as follows: "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." Reservation (2), *U.S. Reservations, Understandings, and Declarations to the ICCPR* (October 5, 1992).

44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox, "United States in Violation," p. 601.

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56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

63 Streib, *Juvenile Death Penalty Today*, p. 8.

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146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

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50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

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21 *Thompson v. Oklahoma*, p. 817.

22 *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

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34 *See* footnote 28 above.

35 Michael Spillane, *Execution of Juvenile Offenders*, p. 113.

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40 Streib, *Juvenile Death Penalty Today*, p. 5.

41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

42 *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

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139 American Bar Association, Criminal Justice Section, *Report with Recommendations to the House of Delegates*, Report No. 117A (August 1983).

140 Ibid., p. 991.

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144 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 74.

145 *See* Robert Johnson, *Condemned to Die: Life Under Sentence of Death* (New York: Elsevier, 1981).

146 Barbara Ward, "Competency for Execution: Problems in Law and Psychiatry," *Florida State University Law Review*, vol. 14, Spring 1986, pp. 35, 38.

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23 The Supreme Court has emphasized that in determining what constitutes "cruel and unusual punishment" under the Eighth Amendment the Court "must draw its [the Eighth Amendment's] meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337 (1981). In *Rhodes v. Chapman*, the Supreme Court applied the Eighth Amendment to a challenged prison condition for the first time. Ibid., pp. 344-45.

24 *Stanford v. Kentucky*, p. 369.

25 Ibid., p. 390.

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28 Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988), p. 1440.

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31 Adolescent Psychiatry Brief, pp. 21-22.

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44 United Nations, "Reservations, Declarations, Notifications and Objections Relating to the ICCPR and the Optional Protocols Thereto" (New York: United Nations, 1994), ICCPR/C/2/Rev.4, pp. 40, 49-57.

45 Timothy J. McNulty, "U.S. Out in Cold, Won't Sign Pact on Children," *Chicago Tribune*, September 30, 1990, p. 4.

46 The United States deposited its instrument of ratification in 1992, but Congress has yet to enact implementing legislation for the ICCPR. One reservation the U.S. made when it ratified the ICCPR was to state that the treaty is not self-executing in this country. To be incorporated as part of domestic law, the United States Congress must first adopt enacting domestic legislation.

47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

49 Ibid., p. 620.

50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

53 Inter-American Commission on Human Rights, Res. 3/87, Case No. 9647, OAS/Serv.L./VII.71, Doc. 9 (1987), as cited in Fox,

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54 Nicholls, "Too Young To Die," p. 619.

55 Wire Dispatches and Staff Reports, "Top of the News, Nation," *Washington Times*, May 21, 1990, p. A2. *See also*, E.J. Dionne Jr., "Capital Punishment Gaining Favor as Public Seeks Retribution," *Washington Post*, May 17, 1990, p. A12.

56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

60 Ibid.

61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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66 *Lockett v. Ohio*, 438 U.S. 586 (1978).

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

69 Amnesty International, *Death Penalty and Juvenile Offenders*, p. 6.

70 Lewis et al., "14 Juveniles Condemned to Death," p. 584.

71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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91 Streib, *Juvenile Death Penalty Today*, p. 17.

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93 Ibid., p. 1284.

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57 Ibid.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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56 Streib, *Juvenile Death Penalty Today*, p. 3.

57 Ibid.

58 Ibid.

59 Ibid., p. 6.

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61 Streib, *Juvenile Death Penalty Today*, p. 3. The discrimination issues arising in cases involving juveniles are beyond the scope of this paper. However, it is worth noting that of the forty-one juvenile offenders currently on death row, nearly two-thirds are minority offenders. Nineteen are African-American (46 percent) and eight are Latino (20 percent). Streib, *Juvenile Death Penalty Today*, p. 10.

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62 United States Department of Justice, *Sourcebook of Criminal Justice Statistics 1992*, p. 673, Table 6.132 (1993); and United States Department of Justice, *Capital Punishment 1992*, p. 1 (1993). Note, these statistics have been updated to October 15, 1994 in Streib, *Juvenile Death Penalty Today*.

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65 *Eddings v. Oklahoma*, p. 104.

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68 *See, e.g.,* Lawrence Vanore, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," *Indiana Law Journal*, vol. 61, Fall 1986, p. 757.; Amnesty International, *Death Penalty and Juvenile Offenders*; and Dorothy Otnow Lewis, M.D., Jonathan H. Pincus, M.D., Barbara Bard, Ph.D, Ellis Richardson, Ph.D., Leslie Prichep, Ph.D, Marilyn Feldman, M.A. and Catherine Yeager, M.A., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," *American Journal of Psychiatry*, vol. 145, May 1988.

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71 *Thompson v. Oklahoma*, pp. 834-35.

72 The Supreme Court recognizes this general tendency in several cases, including *Bellotti v. Baird*, 443, U.S. 622 (1979) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

73 Lewis et al., "Characteristics of 14 Juveniles Condemned to Death," pp. 588-89.

74 *Eddings v. Oklahoma*, p. 115, n. 11.

75 Amnesty International, *Death Penalty and Juvenile Offenders*, pp. 4-7.

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79 Human Rights Watch/Children's Rights Project telephone interview with the Mississippi Capital Defense Resource Center, November 1994.

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108 Maria Elena Lopez, "Teen Could Get Death for Slaying, Carjacking," *The Tuscon Citizen*, January 26, 1994. *See also*, Maria Elena Lopez, "Slain Woman's Family Grateful Killer Got Death Sentence," *The Tuscon Citizen*, January 27, 1994.

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149 *Franklin v. State of Oregon*, 662 F.2d. 1337, 1346 (9th Circuit 1981). *See also*, *Spain v. Procunier*, 600 F.2d. 189, 199 (9th Circuit 1979). Vol. 7, No. 2March 1995

26 The Supreme Court rejected the equal protection argument that the death penalty violates the Fourteenth Amendment because racial considerations influenced decisions of federal courts to sentence convicted persons to death. *McCleskey v. Kemp*, 479 U.S. 806 (1987).

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29 Amicus Brief for the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association, *Wilkins v. Missouri*, 492 U.S. 361 (1989). As cited in Michael J. Spillane, "The Execution of Juvenile Offenders: Constitutional and International Law Objections," *University of Missouri-Kansas City Law Review*, vol. 60, Fall 1991, p. 113.

30 *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

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32 *Rochin v. California*, 342 U.S. 165, 172 (1952).

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34 *See* footnote 28 above.

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41 Justice Brennan writing for the dissent in *Stanford v. Kentucky*, p. 2988.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

48 Julian Nicholls, "Too Young To Die: International Law and the Imposition of the Juvenile Death Penalty in the United States," *Emory International Law Review*, vol. 5, Fall 1991, pp. 617-22.

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50 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 65.

51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

52 "Jus cogens" is a norm of customary international law that is "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted...." Vienna Convention on the Law of Treaties, art. 53, U.N. Doc. A/CONF. 39/27 (1969). Jus cogens is an even higher standard of law than "ordinary" customary law since absolutely no derogation is permitted.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

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51 Donald T. Fox, "Inter-American Commission on Human Rights Finds United States in Violation," *American Journal of International Law*, vol. 82, July 1988, p. 601. The Commission held that these executions violated Article I of the American Declaration of the Rights of Man, which states: "Every human being has the right to life...." The Commission also concluded that the United States has violated Article II of the American Convention of Human Rights (right to equality before the law) by failing to preempt actions of its constituent states regarding the right to life and thus allowing "a pattern of legislative arbitrariness." Fox, "United States in Violation," p. 602.

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47 Under Article 18 of the Vienna Convention of the Law of Treatises, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty, subject to ratification. U.N. Doc. A/CONF. 39/27 (1969). Though the U.S. is not party to the Vienna Convention, it is still bound to follow its guidelines because the Convention is regarded as being "declaratory of existing international law," and thus binds even non-parties. Henkin, Pugh, Schachter, and Smit, *International Law 387* (2d ed. 1987).

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Considerable work has been done concerning discriminatory factors in death penalty sentencing and the execution of the death penalty in the United States. A 1990 General Accounting Office ("GAO") report found that in 82 percent of studies conducted to investigate racial disparities in capital cases, the race of the victim was found to influence sentencing. One such study noted that the killer of a white victim was three times more likely to be sentenced to death than the killer of a black victim. Moreover, 73 percent of the federal death penalty prosecutions have been sought against African-American defendants. Half of the remaining 27 percent of federal prosecutions have been against Latino defendants. Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, 1993), pp. 135-36.

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