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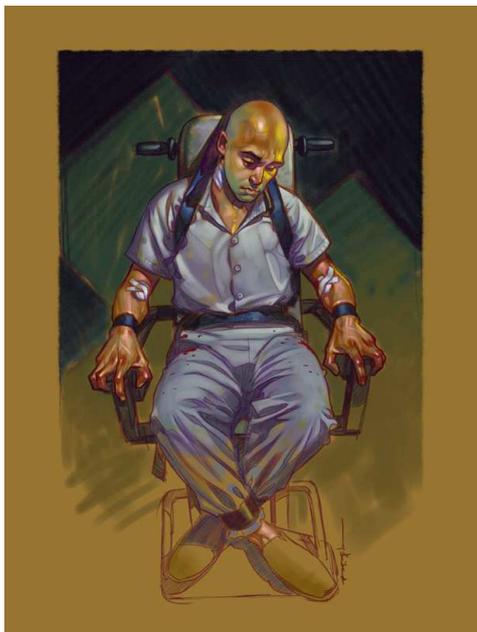
USA: Cruel, inhuman, degrading

40th execution of the year approaches

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The imposition and execution of the death penalty are obviously cruel in the dictionary sense. But the penalty has not been considered cruel and unusual punishment in the constitutional sense because it was thought justified by the social ends it was deemed to serve.
US Supreme Court Justice Byron White, *Furman v. Georgia* 1972



Artist's sketch of Brandon Rhode strapped into restraint chair as witnessed by his lawyer on afternoon of Rhode's suicide attempt on 21 September 2010. © Private

Within 12 hours of President Barack Obama making human rights a central theme of his speech to the United Nations General Assembly, state executioners carried out the USA's 39th execution of the year. Tonight they are set to carry out the 40th.

At 10am in New York on 23 September, President Obama reminded the UN General Assembly that one of its first actions had been to "adopt a Universal Declaration of Human Rights in 1948", adding that "we stand up for universal values because it's the right thing to do". Article 3 of the Declaration states that "everyone has the right to life" while under Article 5 "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

A little under 12 hours after President Obama's speech, Teresa Lewis was led into Virginia's execution chamber, strapped down and killed by lethal injection. She had been assessed as having "borderline mental retardation" but was still sentenced to death as the "mastermind" of the murders in 2002 of her husband and stepson. The actual gunmen – one of whom, according to evidence obtained by Lewis's lawyers, had been the driving force behind the crime – are serving life sentences.

Now, under 24 hours after that execution, Brandon Rhode is scheduled to be put to death at 7pm in Georgia on 24 September for a crime committed in 1998 when he was just 18 years old. Brandon Rhode has been diagnosed as suffering from organic brain damage, and earlier this year experts concluded that he suffered from a Fetal Alcohol Spectrum Disorder (FASD). The deficits associated with FASD, the experts concluded, "only exacerbate the impairments associated with adolescent brain immaturity", meaning that Brandon Rhode had effectively been functioning at a "considerably younger level than his chronological age" at the time of the crime.

Brandon Rhode was scheduled to be put to death at 7pm on 21 September, but early that morning he tried to kill himself. He sliced open his right arm with a razor blade, causing a deep wound. He had then cut open his left arm, before slicing a four centimetre-deep cut on the right side of his neck. He was transferred out of death row to a regional hospital for emergency treatment. On 22 September, his lawyer learned that “Brandon had been in full ‘code’, meaning that he was in immediate danger of losing his life. He had lost massive amounts of blood”.

The Georgia Supreme Court granted an emergency stay of execution, but only until 23 September. The Georgia authorities reset the execution for 9am on 24 September. Brandon Rhode’s lawyers appealed to a federal judge to stop the execution. They pointed out that under Georgia’s execution procedures, at least two officers must “observe the condemned at all times during Death Watch” in the 36 hours prior to the scheduled execution. The protocol also expressly prohibits the condemned prisoner from being provided with “razors or blades, belts, or t-shirts”. They claimed that Brandon Rhode had been given a razor blade by a correctional officer on or around 17 September, the day of his unsuccessful clemency hearing, and more generally that the state had failed in its duty to protect their client from self-harm during the “death watch” period despite knowing that he had been treated for depression on death row. They also pointed to the suicide nine months earlier of Leeland Braley in the cell next to Brandon Rhodes, and to the death by suicide or murder in December 2009 of another death row prisoner Timothy Pruitt, as evidence of a pattern of security problems on death row that should be considered by the judge.

On 23 September, US District Judge William Duffey, noting that how Brandon Rhode obtained the razor blade was disputed, refused to block the execution, ruling that it appeared to him that “the remedy to which [Brandon Rhode] may be entitled is, at most, an order that the Lethal Injection Procedure be properly enforced until [Rhode] is executed tomorrow”. He therefore ordered the state authorities to search Brandon Rhode’s cell or any other area to which he would have access for razors, belts or t-shirts, to ensure that two guards were assigned continuously to observe Brandon Rhode in his cell or elsewhere in the time leading up to his execution, to prevent Rhode from “aggravating” the injuries he inflicted upon himself on 21 September, and to protect against the infliction of “any further injuries to his person”. Then the state could kill the prisoner by injecting him with lethal drugs.

The Georgia Department of Corrections rescheduled Brandon Rhode’s execution from 9am to 7pm on 24 September to allow some more time for litigation to continue. Brandon Rhode’s lawyers are continuing to seek a stay of execution from the courts.

Ten years ago, Amnesty International wrote about how “in one of the 20th century’s final insults to the



Universal Declaration of Human Rights, five US prisoners were put to death in the 30 hours leading up to Human Rights Day 1999”.¹ The first of the five to be killed was of an inmate with a long history of mental illness who had attempted suicide by drug overdose two days earlier. David Long was treated in intensive care in hospital, before being flown back to the Texas death chamber, accompanied by a full medical team to ensure his safe arrival, and executed. A similarly macabre ritual is being played out a decade later in Georgia.

In August 2010, the US administration filed its report to the UN on the USA’s

Brandon Rhode’s stitched neck wound. © Private

human rights record for the UN Universal Periodic Review process. The values on which the USA is founded, the report asserts, “including a commitment to human rights, are clearly engrained in our own national conscience, but they are also universal”, adding that the leadership of Eleanor Roosevelt had been “crucial to the adoption of the Universal Declaration of Human Rights”.

What the USA fails to mention is that any reference to the death penalty was removed from the text of the Declaration because, “in the words of Eleanor Roosevelt, there was a movement underway in some States to abolish capital punishment... There was even an attempt to make the declaration overtly abolitionist. But in the end prudence dictated a less precise statement... In this way it accurately served the purpose of the Declaration, which was to be a manifesto whose scope could evolve over time...”²

The USA is being left behind by the evolution. Today, 139 countries have abolished the death penalty in law or practice, in line with the abolitionist outlook of the Universal Declaration. Meanwhile, the USA has killed more than 1,000 people in its execution chambers in the past two decades.

In 1972, US Supreme Court Justice Byron White said that he believed that the death penalty as it was being administered had come to constitute “the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes”, and was therefore unconstitutionally cruel. In April 2008, Justice John Paul Stevens reached the same conclusion after more than three decades on the Supreme Court: “Full recognition of the diminishing force of the principal rationales for retaining the death penalty should lead this Court and legislatures to re-examine the question... ‘Is it time to Kill the Death Penalty?’ The time for a dispassionate, impartial comparison of the enormous costs that death penalty litigation imposes on society with the benefits that it produces has surely arrived.”

The time for the USA to recognize that the death penalty is incompatible with the Universal Declaration of Human Rights is surely long overdue.

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¹ USA: Failing the future. Death penalty developments, March 1998 – March 2000. April 2000, <http://www.amnesty.org/en/library/info/AMR51/003/2000/en>

² See William A. Schabas, *Abolition of the Death Penalty in International Law*, Second Edition, Cambridge University Press, 1997, pages 42-44.