

Mr. Banks, a man with no prior criminal record, is most likely innocent of the charge that put him on death row. Fearing a tragic miscarriage of justice, three former federal judges (including William Sessions, a former director of the F.B.I.) have urged the U.S. Supreme Court to block Wednesday's execution.

So far, no one seems to be listening.

"The prosecutors in this case concealed important impeachment material from the defense," said Mr. Sessions and the other former judges, John J. Gibbons and Timothy K. Lewis, in an extraordinary friend-of-the-court brief.

They said the questions raised by the Banks case "directly implicate the integrity of the administration of the death penalty in this country."

Most reasonable people would be highly disturbed to have the execution of a possibly innocent man on their conscience or their record. But this is Texas we're talking about, a state that prefers to shoot first and ask no questions at all. Fairness and justice have never found a comfortable niche in the Texas criminal justice system, and the fact that the accused might be innocent is not considered sufficient reason to call off his execution.

(One of the most demoralizing developments of the past couple of years is the fact that George W. Bush has been striving so hard to make all of the United States more like Texas.)

Delma Banks was convicted and sentenced to death for the murder of 16-year-old Richard Whitehead, who was shot to death in 1980 in a town called Nash, not far from Texarkana. There was little chance that this would have been a capital case if both the accused and the victim had been of the same race. Or if the accused had been white and the victim black.

But Mr. Banks is black and Mr. Whitehead was white, and that's the jackpot combination when it comes to the death penalty. Blacks convicted of killing whites are the ones most likely to end up in the execution chamber. In Texas this principle has been reinforced for years by the ruthless exclusion of jurors who are black.

Just two weeks ago the Supreme Court handed down a ruling that criticized courts in Texas for ignoring evidence of racial bias in a death penalty case. Lawyers in the case noted that up until the mid-1970's prosecutors in Dallas actually had a manual that said, "Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or well-educated."

The significant evidence against Mr. Banks was the testimony of two hard-core drug addicts. One was a paid informant. The other was a career felon facing a long prison term who was told that a pending arson charge would be dismissed if he performed "well" while testifying against Mr. Banks.

The prosecution deliberately suppressed information about its arrangements with these witnesses—information that it was obliged by law to turn over to the defense.

And prosecutors made sure that all the jurors at Mr. Banks's trial were white. That was routine. Lawyers handling Mr. Banks's appeal have shown that from 1975 through 1980 prosecutors in Bowie County, where Mr. Banks was tried, accepted more than 80 percent of qualified white jurors in felony cases, while peremptorily removing more than 90 percent of qualified black jurors.

The strongest evidence pointing to Mr. Banks's innocence was physical. He was in Dallas, more than three hours away from Texarkana, when Mr. Whitehead was killed, according to the best estimates of the time of death, based on the autopsy results.

Prosecutorial misconduct. Racial bias. Drug-addicted informants. "This is one-stop shopping for what's wrong with the administration of the death penalty," said George Kendall, a lawyer with the NAACP Legal Defense and Educational Fund who is handling Mr. Banks's appeal.

If, despite all that is known about this case, the authorities walk Mr. Banks into the execution chamber on Wednesday, and strap him to a gurney, and inject the lethal poison into his veins, we will be taking another Texas-sized step away from a reasonably fair and just society, and back toward the state-sanctioned barbarism we should be trying to flee.

RELEASE OF VIETNAM NUCLEAR WEAPONS REPORT

Mrs. FEINSTEIN. Mr. President, in the mid-1960s, during the height of the Vietnam War, the Department of Defense commissioned a study to determine the feasibility and advisability of the use of tactical nuclear weapons in that conflict. A copy of that 1967 study, "Tactical Nuclear Weapons in Southeast Asia", has just been declassified, and lays out in terrifying detail what might have happened if the United States had used tactical nuclear weapons during the Vietnam war.

The bottom line of the study is that the use of nuclear weapons in Vietnam—to block the Ho Chi Minh trail, kill large numbers of enemy soldiers, or destroy North Vietnamese air bases and seaports—would have offered no decisive military advantages to the United States but would have had grave repercussions for US soldiers in the field and US interests around the world.

The study was prepared by four physicists associated with the Jason Division of the Institute of Defense Analyses, a group of scientists who met frequently to provide classified advice to defense officials. The study's conclusions were presented to then-Secretary of Defense Robert McNamara.

"The political effects of US first use of TNW (tactical nuclear weapons) in Vietnam would be uniformly bad and could be catastrophic," the scientists wrote.

They warned that US first-use of tactical nuclear weapons could lead China or the Soviet Union to provide similar weapons to the Viet Cong and North Vietnam, raising the possibility that US forces in Vietnam "would be essentially annihilated" in retaliatory raids by nuclear-armed guerrilla forces.

If that happened, they wrote, "insurgent groups everywhere in the world would take note and would try by all available means to acquire TNW for themselves." First-use of nuclear weapons in Southeast Asia, the scientists warned, was "likely to result in greatly increased long-term risk of nuclear guerrilla operations in other parts of the world," including attacks on the Panama Canal, oil pipelines and storage facilities in Venezuela and the Israeli capital of Tel Aviv.

"US security would be gravely endangered if the use of TNW by guerrilla

forces should become widespread," they concluded.

Thirty-six years later some American officials are, according to press reports, once again contemplating the use of nuclear weapons, and seeking to repeal US prohibitions on the developments of smaller nuclear weapons, including so-called "low-yield" bombs and deep-penetration "bunker-busters."

Writing recently in the Los Angeles Times, military analyst William Arkin disclosed the US Strategic Command in Omaha and the Joint Chiefs of Staff are secretly drawing up nuclear target lists for Iraq. "Target lists are being scrutinized, options are being pondered and procedures are being tested to give nuclear armaments a role in the new U.S. doctrine of 'preemption,'" Arkin reported.

There have also been reports that tactical nuclear weapons, particularly "bunker busters," have been considered by Pentagon planners in the context of the escalating nuclear crisis with North Korea. Moreover, many US analysts believe there is a great danger that North Korea, if its survival was at stake, would be willing to sell its nuclear arsenal to the highest bidder.

North Korea itself apparently believes the United States may be planning nuclear strikes of its own, and on March 1 warned that a war on the Korean peninsula would quickly "escalate into a nuclear war."

I sincerely believe that any first use of nuclear weapons by the United States cannot and should not be sanctioned. As the Jason scientists argued in the 1960s, U.S. nuclear planning could serve as a pretext for other countries and, worse, terrorist groups such as al-Qaida, to build or acquire their own bombs. If we are not careful, our own nuclear posture could provoke the very nuclear-proliferation activities we are seeking to prevent.

This study, "Tactical Nuclear Weapons in Southeast Asia", was released this past weekend by the Nautilus Institute of Berkeley, CA, and I would urge those with an interest in reading it in full to contact them directly.

The conclusions of the Jason report are as valid, realistic and frightening today as they were in 1967. As we contemplate the future course of our nation's national security policy, I believe that it is important to look at past events, to learn from them, and to benefit from the counsel of history.

TIBETAN DAY OF COMMEMORATION

Mrs. FEINSTEIN. Mr. President, today commemorates the forty-fourth anniversary of the 1959 "Lhasa Uprising."

I offer my comments today in the sincere hope that it will promote a constructive dialogue between Chinese and Tibetan leaders, and with the goal of ending the bitter divisiveness now plaguing relations between China and Tibet.

When, following the Chinese invasion in 1949–1950, Tibet was established as an autonomous region in the People's Republic of China, the Tibetan people were granted the right of autonomy in determining the shape of their religious, cultural and social institutions. China's leadership is on record as agreeing to this principle.

Unfortunately, between 1951 and 1959 the government of the People's Republic of China did not uphold these guarantees of autonomy, leading to the 1959 Lhasa Uprising and the flight of the Dalai Lama from Tibet. During the past 44 years, tens of thousands of Tibetans have been forced to flee their homeland in the face of continued Chinese repression and violation of their right to religious and cultural autonomy. I find this a tragedy.

Nonetheless, the Dalai Lama, in seeking to engage with China's leadership to discuss the future of the Tibetan people, has specifically cited that he is not seeking independence for Tibet, that he is willing to confine his discussions to achieving cultural and religious autonomy for his people, and that he is willing to negotiate within the framework enunciated by Deng Xiaoping in 1979.

Indeed, in his statement today on the "44th Anniversary of the Tibetan National Uprising," the Dalai Lama stated that "As far back as the early seventies in consultation with senior Tibetan officials I made a decision to seek a solution to the Tibetan problem through a "Middle Way Approach." This framework does not call for independence and separation of Tibet. At the same time it provides genuine autonomy for the six million men and women who consider themselves Tibetans to preserve their distinctive identity, to promote their religious and cultural heritage that is based on a centuries-old philosophy which is on benefit even in the 21st century, and to protect the delicate environment of the Tibetan plateau. This approach will contribute to the overall stability and unity of the People's Republic of China."

Over the past 12 years I have made every effort to encourage rapprochement between China and Tibet, including helping to pass messages from His Holiness, the Dalai Lama to China. I believe the Dalai Lama is absolutely sincere in his desire to negotiate a peaceful solution to what has been a great tragedy for the Tibetan people.

This past September the Chinese government made it possible for two envoys of the Dalai Lama to visit Beijing to re-establish direct contact with the Chinese leadership, and to visit Tibet to meet with local Tibetan officials. This trip was, in my view, very significant, very encouraging, and very meaningful.

Nonetheless, much remains to be done if the people of Tibet are to achieve freedom and autonomy in determining the shape of their society. It is my sincere hope that China's new

leadership will extend the hand of cooperation in resolving differences with Tibet.

INTERNATIONAL WOMEN'S DAY

Mrs. FEINSTEIN. Mr. President, no one can deny the contributions women and children have made to this country and the world. In government, business, education, medicine, the arts, and athletics, women have met and exceeded the great challenges placed before them. It is altogether fitting, then, that we set aside one day every year to pay tribute and acknowledge these accomplishments: March 8, 2003 is International Women's Day.

On this day, we celebrate the progress women and girls have made over the years, but we also renew our commitment to create a better world and bestow a better future to women and girls in every country. We must not rest on our laurels until all women and girls enjoy basic human rights and have the opportunity to fulfill their life dreams.

Rarely does a day go by when we do not hear the news of a woman fighting for those rights and those dreams, whether it be a girl struggling to get an education in Afghanistan, a mother desperately seeking to provide for her children in sub-Saharan Africa, or a woman expressing her views in the streets of Venezuela. We who enjoy the blessings of liberty and democracy have an obligation to raise our voice on behalf of these women and girls to let them know that they are not alone and we are fighting for them.

All over the world, women and girls are looking to the United States for leadership and I would like to take this time to address several critical issues that I believe are vital to their lives: international family planning assistance, the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, rape as an instrument of war, and the plight of women in Afghanistan.

Honest differences of opinion exist on this issue, but I believe that those of us in Congress who support a robust package of U.S. assistance to international family planning organizations must not back down. I was dismayed when on July 22, 2002 Secretary of State Colin Powell decided to withhold the \$34 million U.S. contribution to the United Nations Population Fund, UNFPA—an amount allocated to it by law and after months of negotiation and with bipartisan support—because he determined that UNFPA participated in coercive family planning programs in China. The administration's decision to withhold the funds and withhold \$25 million for Fiscal Year 2003 runs counter to common sense and counter to the findings of its own investigative team.

Just over a month earlier a three member State Department team investigated UNFPA programs in China and concluded quite clearly that there was

no evidence that UNFPA supported or participated in coercive family planning programs and recommended that it receive the full U.S. \$34 million contribution. Nevertheless, the Administration chose to ignore these findings and, in doing so, struck a terrible blow to U.S. leadership in combating overpopulation.

One can not underestimate the importance of family planning assistance, especially for the poor. The United Nations estimates that the world's population will double to 12 billion by the year 2050. Most of this growth will occur in countries least able to sustain it and educational and medical services will suffer greatly as a result. In the age of global terrorism where groups such as al-Qaida find new recruits among the poor, the sick, and the uneducated, this is especially troubling.

No woman should be prevented from receiving the assistance she deserves to plan and care for healthy families. When we help them, we reduce poverty, improve health, and raise living standards.

Each and every dollar the United States spend on international family planning assistance—none of which, I might add, is spent on international abortion—is one less dollar we will have to spend on costlier interventions in the future.

So many of my colleagues share my view and together we must work harder to ensure that the United States reclaims its leadership role on international family planning and reproductive issues. On International Women's Day, I urge my colleagues to support full funding for the UNFPA and other international family planning programs.

Sadly, another year has gone by and the United States still has not yet ratified the Convention to Eliminate All Forms of Discrimination Against Women. As Americans, we can no longer afford to ignore this important document and put in jeopardy our status as a leader in advancing human rights for women and girls.

Given that it has been over 20 years since President Carter signed the Convention, one might think that the delay in ratification is due to the fact we are dealing with a treaty that requires years of study and consideration. Yet the Convention simply requires that participating states take all appropriate steps to eliminate discrimination against women in political and public life, law, education, employment, health care, commercial transactions, and domestic relations.

We are alone among the leading democracies in our failure to ratify. In fact, our partners outside the Convention include Iran, North Korea, and Sudan. Are these the countries with whom we share our values of democracy, freedom, and respect for human rights? Are these the countries we can count on in the international arena?

Women and girls around the world who turn to the United States for leadership in advancing their rights are