

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.