

EXTRA 70/01

Death penalty / Legal concern

16 October 2001

USA (Georgia)Terry Mincey, white, aged 40

Terry Mincey is scheduled to be executed in Georgia on 25 October. He has spent more than 19 years - almost half his life - on death row. He was sentenced to death for the murder of Paulette Riggs in 1982.

Paulette Riggs was shot dead on 12 April 1982 during a robbery of the store in Macon where she worked. A second person, Russell Peterman, was also shot during the crime. He survived, blinded in one eye. Terry Mincey was sentenced to death in August 1982.

Two years earlier, Terry Mincey had had a near fatal motorcycle accident. At the trial, although family members testified that he had undergone a drastic personality change after the accident, with severe mood swings and an impaired memory, the defence presented no expert mental health evidence about the head injury and its possible effects. Thus the jury never heard the type of expert opinion that was provided in a 1993 affidavit by a psychologist, who stated that the injury would have impaired Mincey's judgement and impulse control: "Mincey's head injury was a significant factor in the case - a factor which when considered establishes that Mr Mincey's actions on the night of the offense were the irrational impulsive actions of a brain damaged individual and not the actions of a cold, calculated, and premeditated murderer".

Eight years after the trial, Terry Mincey's appeal lawyers discovered notes that the prosecutor had taken during a pretrial meeting with the state's psychiatrist, who was a member of the state forensic team which had evaluated Mincey in May 1982. The prosecutor's notes included the following about Terry Mincey: "Brain damage in auto accident. Reflexes more active on 1 side. This indicates motor muscle power differential. It is possible he might now be more susceptible to irrational behavior". The notes also indicated that Mincey had a history of drug abuse, and had been under the influence of LSD or quaaludes at the time of the crime.

In *Brady v Maryland* (1963), the US Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused... violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". However, the appeal courts have dismissed Mincey's claim that the withheld evidence amounted to an unconstitutional *Brady* violation, saying that the claim should have been raised earlier, and that even if the notes had been disclosed to the defence at the time of the trial, it would not have led to a different outcome.

Arguing for death at the 1982 trial, the prosecutor had argued that Mincey would pose a future risk of violence, in prison or outside, if allowed to live. In almost two decades on death row, Terry Mincey has reportedly had one disciplinary write-up, for a minor non-violent breach of prison rules. He has continued to educate himself over the years, including, for example, by learning Japanese. A journalist who covered the original trial for a local newspaper subsequently developed a friendship with Terry Mincey. He has recently written of Mincey: "his actions as well as his words demonstrate his remorse for his crime and for the destruction he has caused... He has spent nearly twenty years reflecting upon his life and his

actions, and he appears to me to have matured and changed. Terry is not the reckless, chaotic young man of April 1982..."

BACKGROUND INFORMATION

Since the USA resumed executions in 1977, 734 prisoners have been put to death, 51 of them this year. Twenty-three people have been executed in Georgia, most recently on 9 June 1998. The US death penalty is supposedly reserved for the "worst of the worst", but who lives and who dies is influenced by many factors outside of the heinousness of the crime, including the quality of legal representation, and the discretion and conduct of prosecutors. The past two years or so has seen a growing national concern about the fairness and reliability of the capital justice system, as evidence of its arbitrary, discriminatory and error-prone nature has continued to mount.

In recent months, executions in Georgia have been on hold as the state Supreme Court has deliberated on the constitutionality of the electric chair as an execution method. On 5 October, the Court ruled 4-3 that execution by electrocution violates the state's constitutional ban on cruel and unusual punishment. The ruling means that the method of execution in Georgia is now lethal injection. The state's use of lethal injection is now being challenged.

Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence, and irrespective of the method of execution selected to end the prisoner's life. Every death sentence is an affront to human dignity; every execution a symptom of, not a solution to, a culture of violence. The death penalty denies the possibility of human change, and offers no constructive contribution to society's efforts to confront violent crime or to assist its victims. Today some 109 countries are abolitionist in law or practice.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Paulette Riggs, and acknowledging the seriousness of the crime and the suffering it has caused;
- expressing concern that the jury never heard any expert evidence of the extent and effects of Terry Mincey's head injury, and expressing concern that the prosecutor withheld psychiatric evidence that the brain damage made Mincey susceptible to irrational conduct;
- noting Terry Mincey's exemplary record during nearly 20 years on death row, in contrast to the prosecutor's predictions;
- noting increasing national concern about the fairness and reliability of the US capital justice system, and that the USA is far out of step with international aspirations and global trends on this issue;
- calling for Terry Mincey's death sentence to be commuted in the interests of justice, decency, and the reputation of Georgia and the USA.

APPEALS TO:

The State Board of Pardons and Paroles
 Floyd Veterans Memorial Building
 Balcony Level, East Tower
 2 Martin Luther King, Jr. Drive, S.E.
 Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502

E-mail: via the Board's website: www.pap.state.ga.us

Salutation: Dear Board Members

COPIES TO: diplomatic representatives of the USA accredited to your country.

If possible, please also copy appeals to:

Amy Donnella

c/o Georgia Resource Center

303 Elizabeth Street

Atlanta, GA 30307, USA

Fax: +1 404 222 9212

E-mail: georgiaresource@mindspring.com (for attention of Amy Donnella)

You may also write brief letters (not more than 250 words) to:

Letters to the Editor, *The Atlanta Journal-Constitution*, PO Box 4689,

Atlanta, GA 30302, USA. **Fax: +1 404 526 5611. E-mail: via website:**

www.accessatlanta.com/partners/ajc.letters

Letters, *The Macon Telegraph*, P.O. Box 4167, Macon, GA 31208-4167, USA.

E-mail: letters@macontel.com. (No attachments). **Fax: +1 478-744-4663.**

PLEASE SEND APPEALS IMMEDIATELY.