

EXTERNAL (for general distribution)

AI Index: AMR 51/10/95
Distr: UA/SC

UA 13/95

Death Penalty

17 January 1995

USA (Texas)

Calvin BURDINE

Calvin Burdine, convicted of murder and sentenced to death in 1983, is scheduled to be executed in Texas on 28 February 1995.

During his trial, Burdine was represented by Joe Frank Cannon. The quality of Cannon's representation of capital defendants has been widely criticized. In September 1994, *The Wall Street Journal* published an article discussing many of the allegations of Cannon's ineffectiveness. These include a total lack of preparation for trial, an open willingness to try cases "as fast as greased lighting". The leading allegation of Cannon's ineffectiveness in Burdine's case concerns repeated pattern of falling asleep during the trial. In an affidavit the foreman for the trial, Daniel Strickland, stated that: "During the guilt-innocence phase of Mr Burdine's trial, I observed that Mr Joe Cannon appeared to doze off into a state of sleep on a least a few different occasions, perhaps as many as five different times." At least one other death row inmate, Carl Johnson, has accused Joe Cannon of falling asleep while representing him during his trial. According to Cannon's own admission, he did not interview a single prospective witness in his preparation for trial. Burdine's execution was originally set for 17 January 1995. However, this was stayed by the state district judge, who ordered an evidentiary hearing on whether Cannon slept during Burdine's original trial.

Allegations have also been made that Cannon's attitude to homosexuals made him unfit to represent Burdine, who is openly homosexual. During a 1988 court hearing and in an affidavit on file with the trial court, Cannon referred to homosexuals as "queers" and "fairies". Cannon failed to object to the statement that "Sending a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual", made by the prosecutor during the sentencing phase of the trial. Cannon is also alleged to have accepted three persons onto the jury who admitted that they possessed prejudice against homosexuals. One of the three stated, "I really can't say that [my view of homosexuals] would not bias me against homosexuals". These jurors could have been removed via "peremptory" strikes.

Prosecutors did not seek the death penalty for Burdine's co-defendant, Douglas McCrieght, who reportedly helped stab and strangle the victim. Douglas McCrieght has since been paroled.

This is the second time a date has been set for Burdine's execution. The previous date, 4 August 1987, was stayed by Houston District Judge Jay Burnett in July 1987. Immediately after entering the stay, Judge Burnett faxed and mailed a certified a copy of the stay order to death row officials. He also phoned prison officials to inform them of the stay.

However, in the early morning of 3 August 1987, death row guards came to Burdine's cell and instructed him to prepare for execution. Burdine attempted to stop preparations by showing prison officials a certified copy of the judge's stay. However, Burdine was forced to go through the preparations for his execution: this included being required to write his will, take a "final" shower and order

his "last" meal. Guards would not allow Burdine to telephone his attorney during this process.

During the evening of 3 August - a few hours before Burdine's scheduled execution - prison officials "found" the judge's stay of execution and Burdine was removed to his regular death row cell.

BACKGROUND INFORMATION

Amnesty International is deeply concerned at the number of executions being carried out in the USA in general, and in Texas in particular. Of the 258 executions carried out in the USA since the death penalty was resumed in the mid 1970s, 86 have been carried out in Texas. The method of execution is lethal injection.

In Texas the governor may commute a sentence of death only if he receives a favourable recommendation from the Board of Pardons and Paroles. The Board consistently refuses to hold full clemency hearings in death penalty cases, and apart from a number of commutations granted in the 1980s as the result of two key court rulings, the Board has never recommended clemency in any death penalty case in recent years.

As of October 1994 there were 390 prisoners under sentence of death in Texas. The most recent person to be executed in Texas was Jesse Jacobs, on 4 January 1995.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

RECOMMENDED ACTION: Please send telegrams/faxes/express and airmail letters in English if possible, or telephone:

- expressing deep concern that Calvin Burdine is scheduled to be executed in Texas on 28 February 1995; urging the Board of Pardons and Paroles to recommend that Governor Bush grant clemency to Calvin Burdine;
- expressing concern that the jury which sentenced Calvin Burdine to death may have been influenced by homophobia;
- expressing concern that the poor quality of Burdine's defence counsel may have contributed to the sentence;
- explaining Amnesty International's opposition to the death penalty in all cases.

APPEALS TO:

Texas Board of Pardons and Paroles
Executive Clemency Unit
Texas Department of Criminal Justice
Pardons and Paroles Division
PO Box 13401
Austin, TX 78711
USA

Faxes: + 1 512 467 0945

Telephone: +1 512 406 5852

Telegrams: Pardons/Paroles Board, Austin, Texas

Salutation: Dear Board Members

COPIES TO:

The Honourable George W. Bush
Governor of Texas
Office of the Governor
PO Box 12428, Capitol Station
Austin, TX 78711
USA

Faxes: +1 512 463 1849

The Letters Editor
Austin-American Statesman
Box 670
Austin, TX 78767
USA

Faxes: +1 512 445 3679

and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.