

**EXTERNAL (for general distribution)**

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**UA 442/91      Death Penalty**

**16 December 1991**

**USA (Arizona)**

**Donald Eugene HARDING, white, aged 42**

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Donald Harding is scheduled to be executed in Arizona on 3 January 1992. He is under three death sentences. He was convicted of the murder of a man in a motel in Phoenix during a 1980 burglary, and was convicted separately of the murders of two men at a motel in Tucson the following day. His execution date relates to the Tucson murders.

The public defender assigned to defend Donald Harding withdrew from the case before the trial. He advised Harding to represent himself, apparently in the expectation that this would result in errors that would provide grounds for overturning the death sentence on appeal. Although counsel was present in an "advisory" capacity during the trial, he did nothing to assist Harding and no defense of any kind was presented. Although substantial mitigating evidence existed, which supported a life sentence, counsel investigated nothing and presented nothing.

Donald Harding had an extremely disturbed upbringing. When he was six months old his father abandoned the family. He lived with his grandparents for three years until his mother remarried and took him back. His home environment was unstable. He was abused, neglected and witnessed serious violence between his mother and stepfather. He exhibited symptoms of mental illness from an early age and was later diagnosed as having a "chronic brain syndrome" which made him hyperactive, aggressive and depressed. He was beaten by teachers to "control" his hyperactivity. Medical experts acknowledged that he was greatly in need of psychiatric help but they had no place to hospitalize him. He threatened suicide at the age of nine by slashing his wrists. Since the age of 11, Donald Harding has been institutionalized for all but a few months of his life, first in a juvenile reform school from which he ran away, then, at 16, in an adult prison where he was put to work in the fields and subjected to violent abuse and sexual assaults at the hands of other inmates. Despite the abundant evidence of how this upbringing shaped the behaviour of an already brain-damaged boy, the trial court found "no mitigating circumstances" sufficiently substantial to support a life sentence.

On appeal Donald Harding presented evidence that, at the time of the crimes, he suffered from an organic brain dysfunction which substantially impaired his ability to control his behaviour. He was not competent to make the decision to waive his right to counsel and to represent himself at trial, being incapable of acting rationally in his best interests. Several neurological experts who have examined Donald Harding agree that he suffers from organic brain dysfunction that renders him unable to control aggressive and violent impulses, or behave appropriately, especially when under the influence of alcohol or other sedating drugs. According to another medical expert, Donald Harding also

suffers from untreated Post Traumatic Stress Disorder as a result of the brutal treatment and sexual assaults he received in an adult prison from the age of 16 to 24.

Two federal courts of appeal in 1987 ruled, however, that the public defender had provided adequate representation and that Mr. Harding had knowingly taken the risk of representing himself.

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**BACKGROUND INFORMATION**

If carried out, Donald Harding's execution will be the first in the state of Arizona for nearly 29 years. The last prisoner executed in Arizona was Manuel E Silvas in March 1963. The method of execution is the gas chamber. As of 23 August 1991 there were 99 prisoners under sentence of death in Arizona.

In Arizona the power to commute death sentences rests with the Governor who may act only on the recommendation of the Board of Pardons and Paroles.

**RECOMMENDED ACTION: Telegrams/faxes/express and airmail letters:**

- Opposing the execution of Donald Harding, urging that he be granted clemency and his death sentence commuted;
- Citing his disturbed upbringing and history of brain damage - evidence which was not heard by the trial court; urging that these mitigating circumstances now be taken into account in a full clemency hearing;
- Expressing concern at the deficiencies of Donald Harding's legal representation at trial: the fact that counsel withdrew and permitted Harding to represent himself; the fact that no defence and no mitigating evidence whatsoever was presented;
- Urging that the state of Arizona not take the retrograde step of resuming executions after almost 29 years of not carrying out the death penalty.

**APPEALS TO:**

Arizona Board of Pardons and Paroles  
1645 West Jefferson, Suite 326  
Phoenix, AZ 85007  
USA

**Telegrams: same address**

**Fax: (602) 542 5680**

**[Salutation: Dear Board Member]**

The Honorable Fife Symington  
Governor of Arizona  
1700 West Washington  
Phoenix, AZ 85007  
USA

**Telegrams: Governor Symington, Phoenix, AZ 85007, USA**

**Fax: (602) 542 7601**

[Salutation: Dear Governor]

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and to diplomatic representatives of the USA in your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat,  
or your section office, if sending appeals after 27 January 1992.