

EXTERNAL (for general distribution)

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EXTRA 104/93 Death Penalty

30 November 1993

USA (Georgia): Christopher BURGER, white

Christopher Burger is scheduled to be executed in Georgia on 7 December 1993. He was aged 17 and a soldier in the US army at the time of the crime for which he was convicted.

Christopher Burger was first sentenced to death on 25 January 1978 for the 1977 murder of fellow soldier and part-time taxi-driver, Roger Honeycutt, white. His first death sentence was vacated, but he was again sentenced to death in July 1979. A co-defendant, Thomas Stevens, was also convicted of the murder and sentenced to death; he was executed on 29 June 1993.

Christopher Burger suffered a deprived, unstable, and abused childhood; he was often beaten by his mother who herself suffered chronic mental illness. According to her own testimony at an appeal hearing, she sometimes had to lock her son in a room to keep herself from harming him. Christopher Burger's parents divorced when he was nine and he was placed in the custody of his father who used to hit and punch him. He was unwanted by his father's new family and sometimes shut out of the home. At one stage he was left in the care of his mother's boyfriend for several months, during which he was severely ill-treated. He was also beaten by one of his two step-fathers. At the age of 11 or 12 Christopher Burger began to inhale organic solvents and smoke marijuana. When he was in his mid-teens he presented clear signs and symptoms of serious psychiatric disorders. He attempted suicide at the age of 15.

Christopher Burger was represented at trial and at both sentencing hearings by a court-appointed attorney, who failed to provide the jury with evidence of any mitigating circumstances, apparently for tactical reasons. A psychologist hired by the defence conducted a brief examination of Christopher Burger before the trial and found that he had an IQ of 82 with a mental age of 12. However, he was also of the opinion that he was a sociopath with a psychopathic personality. Christopher Burger's lawyer chose not to put the psychologist on the witness stand and the jury was not told that Burger had a very low IQ for his age. The US Supreme Court denied Burger's appeal by a 5-4 vote in June 1987. The Court concluded that presentation of the mitigating evidence would have disclosed Burger's "exceptionally unhappy and unstable childhood", and that "the record at the *habeas corpus* hearing does suggest that [the trial lawyer] could well have made a more thorough investigation than he did". In two strong dissenting opinions, four of the Supreme Court justices found that the trial lawyer had erred in failing to present any evidence at the sentencing hearing, and that the actual circumstances of Burger's childhood would have been highly relevant at the sentencing hearing.

In August 1989 Christopher Burger was examined by a professor of psychiatry

who found him to be mentally ill and suffering from organic brain impairment, probably from a series of head injuries and physical abuse he had suffered as a child. She considered the pre-trial evaluation by the psychologist was highly inadequate and that his diagnosis of Christopher Burger as a psychopath or sociopath was contrary to accepted psychiatric practice, given his young age and history.

BACKGROUND INFORMATION

Twenty-four of the 36 US states with the death penalty permit the executions of juvenile offenders. As of October 1993 there were at least 31 juvenile offenders under sentence of death in 11 US states. Eight juvenile offenders have been executed in the USA under its present death penalty laws. Christopher Burger would be the first juvenile offender to be executed in Georgia under its current laws.

The USA is one of only six countries known to have executed juvenile offenders in the past five years (the other countries are Nigeria, Pakistan, Iran, Iraq and Saudi Arabia). The last juvenile offender to be executed in the US was Ruben Cantu, of Latin American origin, in Texas on 24 August 1993.

The execution of people aged under 18 at the time of the crime is expressly forbidden under international human rights law, in recognition of the fact that the death penalty is wholly inappropriate for individuals who have not yet attained full physical or emotional maturity. Such treaties and standards include the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the United Nations (UN) Convention on the Rights of the Child, and the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council (ECOSOC) in 1984 (Resolution 1984/50). The US signed the ICCPR in 1977 and ratified it in April 1992. However, the US government reserved its right "subject to its Constitutional constraints" to impose capital punishment on persons below 18 years of age. In 1977 the USA signed the ACHR, but has not ratified it.

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

- acknowledging the seriousness of the crime for which Christopher Burger was sentenced to death, but urging that clemency be granted by commuting his death sentence;
- expressing concern that mitigating evidence relating to his deprived background and history of mental illness was not made available to the jury which sentenced him to death; urging the Board to review all evidence in the case;
- referring to the international standards cited above which prohibit the imposition of a sentence of death on people under the age of 18 at the time of the commission of the crime.

APPEALS TO

Georgia Board of Pardons and Paroles
 Floyd Veterans Memorial Building
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and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY TO ARRIVE IN GEORGIA BY 6 December 1993.