

9 August 2002

Further information on EXTRA 45/02 (AMR 51/095/2002, 10 June 2002) and follow-up (AMR 51/107/2002, 3 July 2002) - Death penalty / Legal concern

USA (Texas) Gary Wayne Etheridge (m), white, aged 38

Gary Etheridge is scheduled to be executed in Texas on 20 August. He was sentenced to death in November 1990 for a murder committed in February of that year.

Fifteen-year-old Christi Chauvierre was sexually assaulted and stabbed to death during a robbery of her home in Brazoria County. Her mother, Gail Chauvierre, was also stabbed during the crime. She survived, but died several years later from a Hepatitis C infection contracted from the blood transfusions required after the attack. Gary Etheridge was convicted and sentenced to death for the murder of Christi Chauvierre.

According to information raised on appeal, Gary Etheridge had a severely abusive upbringing. He was physically abused by his father, particularly when his father was drunk; his mother suffered mental illness and made repeated suicide attempts, one of which Gary Etheridge had witnessed as a child. He was repeatedly raped and physically abused by an older brother starting from when he was six years old. Gary Etheridge began using drugs and getting into trouble with law from the age of 12. His four brothers, also brought up in this abusive environment, have all been to prison. Gary Etheridge has attempted suicide on at least two occasions, once after being raped while serving a prison term for a prior, non-violent offence. His severe depression, when left untreated outside prison, contributed to his self-medicating with illegal drugs and to serious drug addiction. He was intoxicated on a combination of heroin and cocaine when the murder of Christi Chauvierre occurred.

Despite being aware of such compelling mitigating evidence, Etheridge's trial lawyers chose not to present any of it. Not only did they fear that such evidence could be used by the prosecutor to argue that Gary Etheridge would be a future danger if allowed to live (a prerequisite for a death sentence in Texas), they also recognized that under the Texas jury instruction system of the time, the jury had no vehicle to give mitigating effect to such evidence. They were aware of the 1989 US Supreme Court decision, *Penry v Lynaugh*, which found that the absence of such a vehicle in Texas rendered a death sentence unconstitutional. However, they did not know how this decision was to be applied, and so they failed either to object to the jury instructions or to present the mitigating evidence.

After the *Penry* decision, the defendant in that case, John Penry, was resentenced to death in 1990. This death sentence was overturned by the US Supreme Court in 2001, because the sentencing instructions given at his resentencing were also inadequate. He and three other Texas death row prisoners, Robert Smith, Mark Robertson and Michael Blue, sentenced under the same instruction, were granted new sentencing hearings in which the jury would be able to give mitigating effect to evidence presented about the defendant's background. This has not happened in Gary Etheridge's case.

In December 1996, Gary Etheridge was appointed a lawyer for his state appeals. This lawyer had only graduated from law school two years earlier and had been licensed by the Texas Bar in May 1995. He had never represented a capital defendant at trial, and had never filed a state or federal appeal in any case;

capital or non-capital. The appeal lawyer failed to raise a sustainable claim that Gary Etheridge's trial representation had been inadequate at the sentencing phase of the 1990 trial. His failure apparently stemmed from his incorrect understanding of this area of the law as it related to Texas capital cases.

After the Texas Court of Criminal Appeals denied Gary Etheridge's appeal in April 1998, the case moved into the federal courts. A new lawyer raised a claim that the trial lawyer had been ineffective at the sentencing phase of the trial. The federal courts have dismissed the claim on the grounds that it had been "procedurally defaulted", that is, unavailable for federal review because it was not properly raised in the state courts.

Since resuming executions in 1977, 789 men and women have been put to death across the USA, 276 of them in Texas. Texas has regularly violated international law or safeguards in its pursuit of judicial killing. One such safeguard requires that capital defendants receive adequate legal representation "at all stages of proceedings", above and beyond that provided in non-capital cases. In 1996, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions emphasized that in capital cases "all mitigating factors must be taken into account".

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 of Christi Chauvierre, and explaining that you are not seeking to condone the manner of her death;
- expressing concern that no jury has ever heard the compelling mitigating evidence of Gary Etheridge's appalling background;
- expressing concern that his state appeal lawyer failed to properly raise a claim of ineffective trial representation, thereby causing the issue to be procedurally barred from federal judicial review;
- arguing that the State of Texas must take responsibility for the competency of the lawyers it provides for indigent defendants, adding that the failings of Gary Etheridge's state-appointed counsel have meant that his case has not been fully heard in the courts;
- noting that other Texas defendants have been granted new sentencing hearings on the same "Penry" issue, and that this has not happened in Etheridge's case because of the failure of his inexperienced appeal lawyer;
- calling for Gary Etheridge's death sentence to be commuted.

APPEALS TO:

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA

Fax: + 1 512 463 8120

Salutation: Dear Mr Chairperson

COPIES TO:

The Honourable Rick Perry, Governor of Texas
State Capitol, PO Box 12428, Austin, TX 78711, USA

Fax: +1 512 463 1849 / 0039 / 1932

and to diplomatic representatives of the USA accredited to your country. You may copy appeals to the following newspaper, and/or send brief letters to its editor (not more than 250 words):

Viewpoints, c/o *Houston Chronicle*, PO Box 4260, Houston, Texas 77210, USA **Fax:**
+ 1 713 220 3575. E-mail: viewpoints@chron.com

PLEASE SEND APPEALS IMMEDIATELY.