

## TABLE OF CONTENTS

Introduction .....	1
Case summaries of reported European nationals sentenced to death in the USA .....	6
Michael and Rudi Apelt - German nationals in Arizona.....	6
Dieter Riechmann - German national in Florida . . . . .	8
Krishna Maharaj - British national in Florida.....	9
Gregory Madej - Polish national in Illinois .....	10
Peter Sakarias and Tauno Waidla - Estonian nationals in California.....	12
Claude Maturana - French national in Arizona.....	13
Avram Vineto Nika - Yugoslav national in Nevada .....	15
Joaquin Martinez - Spanish national in Florida .....	16
Case summaries of reported European natives under sentence of death in the USA .....	17
Antuan Bronshtein - Pennsylvania (born in Soviet Union [Moldova]) . . . . .	17
Kostantinos Fotopoulos - Florida (born in Greece) .....	18
Kenneth Richey - Ohio (born in the Netherlands to a Scottish mother) .....	19
Conclusion .....	20
Recommendations .....	21
Appendix: List of foreign nationals on death row in the USA, June 2000 . . . . .	23



# UNITED STATES OF AMERICA

## Worlds Apart -- Violations of the Rights of Foreign Nationals on Death Row - Cases of Europeans

### Introduction

The accelerating pace of executions in the United States of America (USA) in recent years – two thirds of the more than 600 prisoners put to death since the USA resumed executions in 1977 have been killed since 1993 – stands in stark contrast to much of the rest of the world. One hundred and eight countries – more than half – have abolished the death penalty in law or practice. In Europe, for example, 18 executions were reported in 1997, one in 1998 and none at all in 1999. In 1999, 98 prisoners were put to death in the USA.<sup>1</sup> Some 50 inmates were executed in the first six months of the new century, including several in blatant violation of international law and standards.<sup>2</sup>

The increasing isolation of the USA in its use of the death penalty is furthered by the plight of foreign nationals under sentence of death there. At present, over 80 reported foreign nationals are on death row in the USA. Fourteen non-US citizens have been put to death across the country in the past decade, 11 of whom were executed between 1997 and 1999.

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<sup>1</sup> There have been a number of notable recent developments in an otherwise relentless pursuit of judicial killing in the USA, particularly a rise in concern about the possibility of executing the innocent. In January 2000, the Governor of Illinois suspended executions in his state because of its “shameful” record of wrongful convictions in capital cases. In March and May, respectively, the New Hampshire House of Representatives and Senate voted to abolish the state’s death penalty. The bill was vetoed by the Governor. In Texas on 1 June, Ricky McGinn received a 30-day reprieve minutes before his execution in order that a new DNA test could be carried out. This was the first reprieve authorized by Governor Bush in the more than 130 executions carried out during his term in office. On 7 June Governor Glendening of Maryland commuted the death sentence of Eugene Colvin-El shortly before his execution, on the grounds that he could not be absolutely sure of his guilt. On 12 June a new report detailing further evidence of the error-prone nature of US death sentencing was released (see text box).

<sup>2</sup> For example on 22 June 2000, Gary Graham was executed in Texas for a crime committed when he was 17, in violation of the international prohibition on the use of the death penalty against those who were under 18 at the time of the crime. Gary Graham was the fourth child offender to be executed in the USA in 2000, out of a total of five worldwide. See: *An appeal to President Clinton, Vice-President Gore and Governor Bush of Texas to condemn one illegal execution and to stop another* (AMR 51/96/00, 15 June 2000) and *USA: Shame in the 21<sup>st</sup> Century: Three child offenders scheduled for execution in January 2000* (AMR 51/189/99, December 1999).

Amnesty International, which opposes the death penalty unreservedly, is equally concerned about the plight of all persons on death row in the USA. Among its many campaigning reports on the US death penalty, a number have specifically addressed the situation of condemned foreign nationals.<sup>3</sup> This current report highlights the case of 10 people, sentenced to death in the USA, who are believed to be citizens of European nations. The cases of three other condemned prisoners, who were born in Europe and may thus have dual nationality, are also included.

In 1998, Amnesty International issued its first report specifically addressing violations of the rights of foreign nationals sentenced to death in the USA, in particular, the right to consular notification and assistance.<sup>4</sup> This fundamental right of all detained foreign nationals is widely enshrined under international law, notably in Article 36 of the Vienna Convention on Consular Relations (VCCR)<sup>5</sup>, which establishes that:

“if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. [...] The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.”

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<sup>3</sup> For a list of recent AI documents on the use of the death penalty in the USA, see inside front cover.

<sup>4</sup> *Violation of the Rights of Foreign Nationals under Sentence of Death*, AI Index AMR 51/01/98, January 1998. Other AI reports on foreign nationals include: *Ángel Francisco Breard: Facing Death in a Foreign Land* (AMR 51/14/98, March 1998); *The Execution of Ángel Francisco Breard: Apologies are not Enough* (AMR 51/27/98, May 1998); *Adding Insult to Injury: The Case of Joseph Stanley Faulder* (AMR 51/86/98, November 1998). For current statistics, visit Death Penalty Information Center at: [www.dpic/essential.org/foreignnatl](http://www.dpic/essential.org/foreignnatl)

<sup>5</sup> Drafted under United Nations auspices in 1963, the VCCR has since been ratified by more than 160 nations, including the USA and 40 Council of Europe member states.

*Consular officials provide crucial and indispensable assistance to their nationals detained abroad. That assistance may take many forms, including arranging for adequate legal representation or interpreters, ensuring access to evidence in the home country, facilitating contact with family members, transferring documents and attending court hearings. Consuls are also uniquely qualified to act as the cultural bridge between the detainee, the attorney and the local authorities, by explaining the differences between the respective cultures and legal systems.*

*When a foreign national faces capital charges, prompt consular intervention can literally mean the difference between life and death. In some instances, consular involvement in the proceedings from the outset may persuade prosecutors not to seek the death penalty. At a minimum, timely consular assistance ensures that foreign nationals thoroughly comprehend their legal rights, have the means to mount an effective defence, and are protected from discriminatory or abusive treatment.*

*In an all-too-familiar pattern, none of the European nationals sentenced to death in the United States were informed upon detention of their right to contact their consulate for assistance. In every case, the local arresting authorities violated the United States' obligations under international law by failing to comply with the provisions of VCCR Article*

**The US death penalty lottery, international standards, and foreign nationals**

36.

International standards, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, impose strict restrictions and safeguards on those countries which still retain this most cruel and irreversible of punishments.

The USA regularly breaches these minimum standards, including by using the death penalty against those who were under 18 at the time of the crime; those with learning disabilities; and those with serious mental illness. Many defendants have been sentenced to death after being represented by incompetent, inexperienced or underfunded lawyers, in violation of the safeguard that capital defendants receive “adequate legal assistance at all stages of proceedings”. Scores of prisoners have been released from death row after evidence of their innocence emerged, but others have gone to their deaths despite serious concerns over their guilt in the crime for which they were sentenced to die. Such cases breach the minimum international standard that the death penalty only be imposed “when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”

On 12 June 2000, the findings of a substantial study into the US death penalty were released. The report, *A Broken System: Error Rates in Capital Cases, 1973-1995*, conducted at New York’s Columbia Law School by James S. Liebman, Jeffrey Fagan and Valerie West, concluded that US death sentences are “persistently and systematically fraught with error”. It revealed that appeal courts had found serious errors -- those requiring a judicial remedy -- in 68 per cent of the cases, and expressed “grave doubt” as to whether the courts catch all such errors. The most common errors in US capital cases, the study found, are “1) egregiously incompetent defense lawyers who didn’t even look for - *and demonstrably missed* - important evidence that the defendant was innocent or did not deserve to die; and 2) police or prosecutors who *did* discover that kind of evidence but *suppressed* it, again keeping it from the jury.”

In the case of foreign nationals facing the possibility of trial under a capital justice system riddled with such arbitrariness, unfairness and unreliability, the requirement on the arresting authorities to inform them of their right to consular access becomes all the more important. Among other crucial functions, consular assistance serves to protect the legal rights to a fair trial, enshrined in article 14 of the ICCPR, including the defendant’s right to prepare an adequate defence, to understand the nature of the charges, to have the assistance of an interpreter, and the right not to be compelled to confess or to testify against oneself.

In his 1998 report on the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that: “Not informing the defendant of the right to contact his/her consulate for assistance may curtail the right to an adequate defence, as provided by the ICCPR.”

In October 1999, the Inter-American Court of Human Rights *the court found that the executions of foreign nationals who were not informed of their consular rights are an “arbitrary deprivation of life”, requiring a remedy under international law.*

On 26 April 2000 the UN Commission on Human Rights adopted a resolution urging all States that still maintain the death penalty to “observe the Safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under the Vienna Convention on Consular Relations.”

In the wake of the execution of two Mexican nationals in Texas and Virginia, Mexico sought an advisory opinion from the Inter-American Court of Human Rights in December 1997. The request asked the Inter-American Court to interpret the right to consular notification and assistance in death penalty cases, in the framework of human rights standards and legal due process guarantees.

In October 1999, the court ruled unanimously that Article 36 confers specific legal and human rights on all individual foreign nationals and found that prompt consular notification and assistance are essential elements of the right to due process, as set out in international human rights instruments. Most importantly, the court found that the executions of foreign nationals who were not informed of their consular rights are an “arbitrary deprivation of life”, requiring a remedy under international law.<sup>6</sup>

Earlier in 1999, the execution of two German brothers in quick succession in the state of Arizona caused outrage across Europe. Karl and Walter LaGrand were sentenced to death for the 1982 murder of a bank employee during a robbery. It was later established that the local authorities had been aware of the brothers' nationality from the time of their arrest, but had nevertheless failed to inform them of their right to contact the German consulate. Not until 10 years later did German officials learn of their nationals' predicament.

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<sup>6</sup> Advisory Opinion OC-16/99 of October 1, 1999 Requested by the United States of Mexico. The official English translation of OC-16/99 is available on-line through the link to the Inter-American Court of Human Rights, via the OAS website at: [www.oas.org](http://www.oas.org)

Despite Germany's efforts through diplomatic channels to prevent the death sentences from being carried out, Karl LaGrand was executed on 24 February 1999. A week later, Germany instituted proceedings at the International Court of Justice (ICJ) against the USA for its failure to comply with the Vienna Convention.<sup>7</sup> At the same time, Germany submitted a request with the ICJ for provisional measures to prevent the execution of Walter LaGrand, scheduled for the following day.

The International Court summarily issued an order indicating that the USA should take all measures at its disposal to ensure that Walter LaGrand not be executed, pending a final decision in the proceeding<sup>8</sup>. Germany immediately petitioned the United States Supreme Court for a stay of execution on the basis of the ICJ order. The appeal was dismissed.<sup>9</sup>

Hours later, Arizona Governor Jane Hull permitted the execution to proceed, ignoring not only the International Court's order, but also the recommendation of the Arizona Board of Executive Clemency for a 60-day reprieve. Walter LaGrand was strapped to a chair in the state's gas chamber, where he was pronounced dead 18 minutes after he began inhaling the lethal cyanide fumes.

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<sup>7</sup> The International Court of Justice has compulsory jurisdiction over disputes arising from the interpretation or enforcement of the VCCR, under the terms of an optional protocol to which both Germany and the USA are parties.

<sup>8</sup> Order of 3 March 1999 (*Germany v. United States of America*).

<sup>9</sup> In April 1998, the US Supreme Court ignored a similar ICJ order in the case of Paraguayan national Angel Breard. See *USA: The Execution of Angel Breard: Apologies Are Not Enough*, AI Index AMR 51/27/98, May 1998.



In its original application to the ICJ, Germany had sought reparations for the execution of Karl LaGrand, restoration of the *status quo ante*<sup>10</sup> in the case of Walter LaGrand, and guarantees from the USA regarding future compliance with the provisions of Article 36. Despite the executions of its nationals, the German government has pursued the case by filing written pleadings with the ICJ in September 1999. The United States filed its response brief on 27 March 2000.

Increasingly over the past two years, European institutions have expressed concern over the plight of Europeans nationals condemned to death in third countries.<sup>11</sup> In the *Guidelines to EU policy towards third countries on the death penalty (EU Guidelines)*, approved in June 1998, the European Union lists the right to contact a consular representative among the minimum standards to be met by those states that retain the death penalty.<sup>12</sup>

The EU minimum standards also require that the death penalty not be imposed where there is any doubt about the guilt of the accused and that the standards for a fair trial should be at least equal to those set out in Article 14 of the International Covenant on Civil and Political Rights. Where applicable, condemned prisoners shall be granted the right to submit individual complaints under international human rights procedures and may not be executed while the complaint is pending.

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<sup>10</sup> In international law, the restoration of the state of affairs that existed before a treaty violation occurred.

<sup>11</sup> For a recent example see Resolution B5-0144 passed by the European Parliament on 7 October 1999.

<sup>12</sup> "Capital punishment must only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative."

Furthermore, the guidelines direct that "capital punishment may not be carried out in contravention of a state's international commitments."

In a written question in February 1998, members of the European Parliament asked whether the European Commission was committed to raising the issue of violations of the rights of European nationals on death row in the USA during trade negotiations and other appropriate fora.<sup>13</sup> In its reply, the European Commission reported that it had "been assured that the American Department of State is conducting its own enquiries into all of the cases, including of Union citizens... the results of which will be available soon." The reply refers to measures being taken by the US Department of State, including the distribution of a booklet on consular rights to state and local authorities. However, there is as yet little to indicate that these steps have resulted in any significant progress in safeguarding the consular rights of European nationals arrested in the USA.<sup>14</sup>

### **Case summaries of reported European nationals sentenced to death in the USA**

#### **Michael and Rudi Apelt: German nationals in Arizona**

German brothers Rudi and Michael Apelt left their native country in 1988, arriving in the USA in August of that year.<sup>15</sup> The following

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<sup>13</sup> See written question E-0334/98 by Thomas Megahy to the Commission, 17 February 1998 'Violation by the United States authorities of rights guaranteed by the Vienna Convention on consular relations' and the answer provided by Sir Leon Brittan on behalf of the Commission on 22 June 1998.

<sup>14</sup> For example, a 61-year old German national was arrested in Florida in December 1999, charged with first-degree murder and at no time informed of his right to contact the German consulate.

<sup>15</sup> Michael and Rudi Apelt were born in Düsseldorf, in 1963 and 1960 respectively.

October, Michael Apelt married Cindy Monkman. One month into the marriage, the pair took out mutually beneficial life insurance policies valued at \$400,000.

On 24 December 1988, Cindy Monkman Apelt's body was found in the desert outside Phoenix, Arizona. She had been stabbed five times in the back and chest and her throat had been cut. The brothers were arrested two weeks later and charged with the murder, the state basing its case on the theory that she had been killed in order to claim the benefits of her life-insurance policy. In 1990, both brothers were convicted in separate trials of first-degree murder with the aggravating circumstances of pecuniary gain and the especially heinous, cruel or depraved nature of the murder. Michael was sentenced to death on 10 August 1990, Rudi on 8 January 1991.

The Apelts allege that they were not informed of their right to request consular assistance when they were arrested and before being interrogated by police. The presence at their interrogation of a German-speaking police officer may have created a false sense of security, leading the Apelts to disclose information damaging to their defence. Law enforcement officers and trial counsel for one of the brothers are believed to have contacted the German Consulate at a later date.

Of crucial importance in the case against the Apelts was the testimony of a friend, herself a German national. After four hours of custodial interrogation during which she was reportedly threatened with life imprisonment if she did not cooperate, the witness agreed to provide information against the Apelts in return for immunity from prosecution.

Reportedly, at no time during her interrogation was she informed of her right to contact the German consul for assistance and advice.

Although German officials have reportedly described the Apelts' legal representation at trial as "very able",<sup>16</sup> several issues raised on appeal indicate that both brothers received inadequate legal assistance. Michael Apelt was under state-prescribed psychiatric medication prior to and throughout much of the trial. He was transferred more than once during his detention to a state psychiatric unit for treatment. Despite this, neither the trial court nor defence counsel saw the need for a hearing to determine his mental competency.

Important mitigating factors have recently come to light that were not presented during the penalty phase<sup>17</sup> of the proceedings. Defence attorneys for both brothers had requested funding for travel to Germany for the purpose of gathering mitigating evidence. The court denied both funding requests, which were opposed by the prosecution. Meanwhile, the State of Arizona financed a trip to Germany by a police officer and county prosecutor, enabling them to gain access to information in support of their case against the Apelts.

Recent investigations into the personal history of the Apelt brothers have revealed a background of severe family poverty and childhood mistreatment. During the day the brothers and their five siblings were left in the care of their father, who was unemployable due

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<sup>16</sup> Jean Pierre Rollin, Deputy Consul at the German Consulate in Los Angeles, quoted in the Champaign Urbana News-Gazette, (Illinois), 15 March 1999

<sup>17</sup> Capital murder trials in the USA are divided into two parts: a first phase in which a decision on guilt or innocence is reached is followed by a penalty phase in which the sentence is decided.

to his alcoholism and temperament, while their mother worked as a house cleaner to sustain the family. An older brother and a social worker who worked with the family have described the incessant and severe beatings which the Apelt children and their mother suffered at the hand of the father, who reportedly sexually abused his wife and his eldest daughter.

The situation was aggravated by what has been described as a family history “strained by imbecility”.<sup>18</sup> Of the seven children, only the eldest, who had a different biological father, was able to function in regular classes at school. Rudi and Michael, the two youngest children, showed signs of serious developmental problems from a very early age and performed poorly in school.<sup>19</sup> Both have a history of hospitalisation for the treatment of mental disturbances, dating from at least their early teens. Very little of this significant mitigating evidence was presented to the jury.

In July 1997, Rudi Apelt came within a week of death before receiving a stay of execution. A year later, in June 1998, a date of execution was set for Michael Apelt and later stayed. Like the LaGrand brothers before them, the Apelts may choose between execution by lethal injection or by cyanide gas. Petitions for *habeas corpus* relief<sup>20</sup> have been filed in US district court on behalf of both brothers.

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<sup>18</sup> First amended petition for writ of *habeas corpus*, Rudi Apelt, 1-10.

<sup>19</sup> Rudi Apelt is known to have attended three different special schools for educationally impaired children. Michael spent most of his school years at a municipal institution for the learning disabled.

<sup>20</sup> A form of legal appeal in which the prisoner appears before a judge to challenge the legality of their confinement.

### **Dieter Riechmann - German national in Florida**

German nationals Dieter Riechmann and Kersten Kischnick, life companions for 13 years, arrived in Florida in early October 1987 for a vacation. On the evening of 25 October 1987, Kischnick was shot in the right side of the head in the passenger seat of their rental car.

Dieter Riechmann, who had contacted police immediately after the murder, was arrested a few days later and jailed on a minor federal gun charge which was dismissed two months later. He was released from custody in December 1987, only to be immediately re-arrested by the Miami police and charged with the murder. At trial, the prosecution argued that Riechmann lived off Kischnick's earnings as a prostitute and killed her for insurance money when she became too ill to work.

While Riechmann was being held in detention on the gun charge, the couple's apartment in south-west Germany was searched by local police officers. Further searches were carried out in the following months in the presence of the trial prosecutor from Florida, who also conducted numerous interviews among colleagues and acquaintances of the couple. In contrast, the defence attorney billed the courts for less than 20 hours of time spent on pre-trial investigations. Riechmann was convicted of first degree murder with the aggravating circumstances of pecuniary gain and premeditation. He was sentenced to death on 4 November 1988.

Riechmann has asserted his innocence from the outset, maintaining that Kischnick was shot at close range by a stranger outside the car. He alleges that after dining out, he and Kischnick had lost their bearings in one of Miami's poorer neighbourhoods. When Riechmann pulled over to

the kerb, Kischnick rolled down the window to ask a man for directions. According to Riechmann, the man shot his companion in one of the first in a series of random tourist killings carried out in Miami over the following years.

Police records indicate that Riechmann was not informed upon detention of his right to notify the German Consulate in Miami for assistance, nor was the consulate automatically notified of his arrest as required under Florida law.<sup>21</sup> However, since the victim was also a German national, her death had been reported to the German consular authorities in Miami.

Evidence in support of Riechmann's version of events was presented at a hearing in May 1996, including findings from experts on firearms and blood spatter patterns and testimony from two eyewitnesses to the shooting. Based on its findings of ineffective assistance of counsel, the state's misconduct in withholding exculpatory evidence and errors in the penalty phase of his trial, the court upheld Riechmann's conviction but ordered that he be re-sentenced. The order for a new sentencing hearing was upheld by the Florida Supreme Court on 24 February 2000. In a recent development, another person is alleged to have confessed to shooting Kersten Kischnick.

### **Krishna Maharaj - British national in Florida**

Krishna Maharaj was born in Trinidad in 1939, at a time when that country was subject to British rule and its citizens entitled to British

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<sup>21</sup> Police in Florida must automatically notify the embassy or consulate whenever they arrest a foreign national, under Florida Statute Chapter 901.26, *The Recognition of International Treaties Act (1965)*.

nationality. He moved to the United Kingdom in 1960, where he remained until 1985 when business interests took him to Florida. Maharaj was dissatisfied with the handling of his business affairs in Florida by his associate Derrick Moo Young and his son Duane, to the extent that he filed a civil lawsuit against them.

In October 1986, the Moo Youngs were shot to death in a Miami hotel suite. Krishna Maharaj was charged with the murders and brought to trial in October 1987. On the third day of the trial, the presiding judge was arrested on charges of bribery in an unrelated case. A substitute judge was called in, and the trial proceeded. Maharaj was convicted of the murders, and by a narrow vote of 7-5, the jury recommended a sentence of death for the murder of Duane Moo Young.<sup>22</sup>

In 1996, the Supreme Court of Florida granted an evidentiary hearing to resolve claims of prosecutorial misconduct and ineffective assistance of counsel. The court also expressed concern that the presiding judge at an earlier appeals proceeding had been the supervisor of the assistant state attorneys who had prosecuted Maharaj at trial.

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<sup>22</sup> Florida law does not require a unanimous jury verdict at the penalty phase for the imposition of a death sentence.



Although his conviction was confirmed at an evidentiary hearing in September 1997, Maharaj's death sentence was overturned. The appellate court found that the trial judge had erred by asking the prosecution to prepare an order sentencing Maharaj to death before the sentencing hearing had even begun.<sup>23</sup>

New evidence has come to light which undermines the reliability of the prosecution's case and casts considerable doubt on the conviction itself. Defence attorneys maintain that evidence was withheld which would have shown that, contrary to the state's theory, a number of other individuals had motives for murdering the Moo Youngs. Evidence was not presented at trial which would have established an alibi for Maharaj, who claims to have been 40 miles away at the time of the murders.

Maharaj reportedly was not told when arrested of his right to notify the British consulate, nor was the consulate informed of the arrest.<sup>24</sup> This dual violation of international law has also been raised on appeal. Separate *amicus curiae*<sup>25</sup> briefs have been filed by members of the House of Commons, the House of Lords and the European Parliament as well as by the Bar of England and Wales Human Rights Committee, outlining their concerns that Maharaj's trial fell below internationally accepted standards and calling for a new trial. Three of these 'friend of the court' briefs also submit that the length of time Maharaj has spent on

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<sup>23</sup> In capital trials in Florida, the judge decides on the sentence after hearing the jury's non-binding sentencing recommendation.

<sup>24</sup> Mandatory notification is required under the *Consular Convention Between the United States of America and the United Kingdom of Great Britain and Northern Ireland* (signed 1951; entered into force 1952), 3 UST 3426.

<sup>25</sup> A 'friend of the court' brief, which may be submitted by parties with an interest in the case on appeal.

death row constitutes cruel and unusual punishment or inhuman and degrading treatment.

Krishna Maharaj is reported to suffer from diabetes and heart disease. The case is currently pending following oral arguments in the Florida Supreme Court in December 1999.

### **Gregory Madej – Polish national in Illinois**

Born in Kielce, Poland in 1959, Gregory Madej was sentenced to death in Illinois in 1982 for sexually assaulting 38 year-old Barbara Doyle and then stabbing her to death.

Although Madej's family had emigrated from Poland to the United States when Gregory was still a small child, neither he nor his parents became US citizens. The Madej family joined the large Polish community in Chicago, maintaining strong ties with their native country. At home, Gregory and his mother were subjected to abuse from his father, an alcoholic, with the son intervening on more than one occasion to save his mother from beatings.

On 23 August 1981, Madej, aged 21 at the time, and Barbara Doyle spent the evening together drinking alcohol and smoking marijuana. A violent argument broke out during which Doyle was repeatedly stabbed. Madej was later apprehended by police while driving the victim's car. His clothes were stained with Barbara Doyle's blood and a bloody knife was found in the car together with the victim's bloodstained clothes. In recordings of their exchange with police headquarters, the officers in the patrol car in pursuit of Madej are heard

referring to both a passenger and a driver in the car ahead. This second occupant was never identified, and tapes of the exchange have reportedly been mislaid. At trial, police testimony denied any reference to a second suspect.

Before his trial in August 1992, prosecutors offered Madej a sentence of life imprisonment in exchange for a guilty plea. He turned down the offer, maintaining that Barbara Doyle had been killed in self defence and that the aggravating circumstances which supported a death sentence against him were unfounded.

Waiving his right to sentencing by jury, Madej was condemned to death by a judge after only minutes of deliberation. Madej had not been informed of the One Juror rule, under which a death sentence cannot be handed down in Illinois if even one juror votes against it. The trial attorney later admitted to a series of grave shortcomings in the preparation of the defence, including incorrectly advising his client to testify and failing to present any significant mitigating circumstances. In June 1997 the Illinois Supreme Court acknowledged that Madej had received inadequate representation at trial, but that this violation of constitutional safeguards amounted to "harmless error".<sup>26</sup>

In addition to the Vienna Convention, consular relations between Poland and the USA are regulated by a bilateral treaty requiring notification of the consulate whenever one of their respective nationals is detained or arrested. Nevertheless, the Polish Consulate in Chicago

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<sup>26</sup> *People v. Madej*, 177 Ill. 2d. 116, 685, N.E. 2d 908 (1997)

remained unaware of their national's predicament for 17 years, until they were contacted by defence attorneys in May of 1998.

In a motion filed with the state courts, the Polish Consul-General in Chicago noted his government's concerns over the dual violation of consular rights, declaring that international law "dictates that the failure to obey either the Vienna Convention or the Consular Convention is itself a sufficient injury to require the annulment of legal proceedings carried out with disregard for these treaties". In 1999, *amicus curiae* briefs were also filed in the Supreme Court of Illinois by the governments of Mexico and Germany, as well as by the Bar of England and Wales Human Rights Committee, supporting Poland's claim and calling for Madej's sentence to be overturned in accordance with the international treaty principle of *restitutio in integrum*.<sup>27</sup>

Following a meeting in February 1999 with the Polish Consul-General and attorneys from the Center for International Human Rights, the District Attorney for Cook County, Illinois, announced new procedures to ensure that foreign nationals facing charges have been informed of their consular rights by the time of their first court hearing.

Barbara Doyle's husband has stated in an affidavit that, had he been called to testify for the defence, he would have urged the sentencing court not to impose a death sentence.

### **Peter Sakarias and Tauno Waidla - Estonian nationals in California**

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<sup>27</sup> In international law, complete restoration of the *status quo ante*, or the state of affairs that prevailed before the treaty violation occurred.

Estonian national Tauno Waidla was sentenced to death on 8 March 1991 for the murder of Viivi Piirisild. A popular figure in the Estonian émigré community in California, Piirisild was well known for her activism in the struggle for Estonian independence. On 5 December 1991 a second Estonian, Peter Sakarias, received a death sentence for the same murder.

Both born in Tartu, Estonia in 1967, Waidla and Sakarias are said to have met after they were drafted into the Soviet army at the age of 18. The two teenagers fled to the West in December 1986, later giving as their reasons the harsh treatment and discrimination to which recruits from the Baltic states were regularly subjected and their fear of a likely transfer to front-line duty in Afghanistan. They are reported to have undergone a period of de-briefing in Germany before proceeding to the United States. On their arrival in New York in January 1987 they were granted asylum, and were welcomed as heroes into the Estonian community in Los Angeles later that year.

Soon after their arrival in California, Peter Sakarias moved to Atlanta for a brief period before rejoining Tauno Waidla who, with no financial means and speaking very little English, had been offered board and lodging by Viivi Piirisild and her husband at their North Hollywood home in exchange for work. However, the relationship soon soured and the Piirisilds reportedly withdrew their support. On 12 July 1988, Waidla and Sakarias broke into the Piirisild's empty home, allegedly with the intention of recovering property previously promised to Waidla in lieu of payment. Viivi Piirisild was bludgeoned and stabbed to death when she returned home unexpectedly.

Tauno Waidla and Peter Sakarias fled to Canada and were arrested six weeks later by the United States Border Patrol while trying to re-enter the USA. Neither man was informed of his right to notify consular representatives of his native country. After 48 hours of police questioning, the two Estonians made separate confessions. Sakarias provided a 30 minute taped confession "in halting English".<sup>28</sup> Waidla was reportedly denied his request for legal counsel after his arrest, whereas Sakarias waived both his right to remain silent and his right to an attorney. These confessions formed the basis of both convictions. Trial attorneys presented no mitigating evidence on behalf of either defendant during the sentencing phases of their respective trials.

In May 1990, based on the findings of three court-appointed doctors, the trial court found Peter Sakarias mentally incompetent to stand trial and committed him to a state hospital for treatment and further assessment. Six months later, staff at the Atascadero state hospital concluded that Sakarias was competent to stand trial, attributing his psychotic behaviour to a reported history of substance abuse rather than mental illness. At a subsequent hearing to establish Sakarias' competency his trial attorney presented no evidence, thus failing to demonstrate mental incompetence a second time, as required by state law. Based only on the state's reports, Sakarias was found competent to stand trial. He was under medication throughout the trial and laughed inappropriately on several occasions – a factor that weighed against him during the sentencing phase.

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<sup>28</sup> Los Angeles Times, October 9/1991, '2 Men Blamed Slaying Victim for Problems, Taped Confession Shows; Crime: Admission comes in the trial of a man charged in the death of an activist in the Estonian community' by Julio Moran (Valley Edition, Section: Metro, Page: B-4)

On appeal, both men are challenging the poor quality of trial representation they received, and have raised claims of prosecutorial misconduct and violations of consular rights. Sakarias and Waidla were prosecuted by the same Deputy District Attorney, and serious inconsistencies are alleged in the arguments presented by the state in the two cases.

### *Claude Maturana - French national in Arizona*

The case of French national Claude Maturana has provoked controversy in the legal and ethical debate over the medication of prisoners considered mentally incompetent to be executed.

Claude Maturana was convicted of murdering Glenn Estes in July 1990 over a series of minor disputes. Estes, who was in his late teens, was allegedly tricked into accompanying Maturana and co-defendant Stephen Ballard to a remote spot in the desert where he was shot repeatedly and then partially decapitated. Ballard received a sentence of life imprisonment. Maturana was sentenced to death in April 1992, the aggravating circumstances being a prior crime of violence<sup>29</sup> and the especially heinous nature of the murder.

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<sup>29</sup> Maturana had moved to Arizona upon his release from prison in Texas earlier that year after serving a sentence for aggravated burglary and assault.

In 1994, Maturana's mental health began to deteriorate noticeably and by 1997 communication with him became all but impossible. He became delusional, reciting strings of numbers in what he considers to be codes. In January 1999, a Superior Court judge concurred with the findings of two court-appointed doctors and declared Maturana mentally incompetent.<sup>30</sup> As prescribed by state law, Maturana was transferred from death row to a special unit on the grounds of the Arizona State Hospital for "competency restoration treatment ...until the prisoner becomes competent to be executed".<sup>31</sup>

The chief medical officer of the state hospital entrusted with supervising Claude Maturana's treatment has refused on the grounds of medical ethics to administer therapy, other than medication required to keep Maturana in a comfortable condition. Diagnosing Maturana as suffering from chronic paranoid schizophrenia, the same doctor has suggested in a report to the court that the death sentence be commuted to life imprisonment in this case.<sup>32</sup> To date, the hospital administration has been unable to find an Arizona Department of Health professional willing to administer treatment directed at rendering Maturana competent for execution.

The Attorney General's office has contested the claim of mental incompetence and has argued that, under state law, the hospital is required to provide a doctor willing to restore Maturana to a degree of

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<sup>30</sup> In *Ford v. Wainwright*, 477 U.S. 399, 410 (1986), the US Supreme Court ruled that states are prohibited from carrying out the execution of prisoners who have become legally insane. The two-prong test for determining competency is whether the prisoner is aware of the impending execution and the reason for it.

<sup>31</sup> Arizona Statute 13-4022A.

<sup>32</sup> Under state law, courts in Arizona do not have the authority to commute death sentences on the grounds of mental incompetence.



mental competence sufficient to allow his execution. Arizona health officials recently engaged a doctor from the state of Georgia who after evaluation has concluded that Maturana is seriously ill but competent to be executed. He is also said to have expressed his willingness to administer any further competency restoration treatment. The doctor is reported to be the medical director of the company that provides mental health care to inmates in Georgia's prisons.<sup>33</sup>

Due to Maturana's state of mental health and privacy laws regarding immigration records, little is known about his background. He is believed to have been born in France in July 1957, but details of his arrival in the United States are scant. Records suggest that his mother may have lived in Florida but is now deceased and no family members have come forward. Although French authorities are reported to have recognised Maturana as a French national,<sup>34</sup> the possibility exists that he later obtained US citizenship through naturalisation.

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<sup>33</sup> 'New doc deems man fit to be killed - Judge weighs fate of Ariz. killer previously found incompetent' - The National Law Journal, (p. A04) 24 January 2000).

<sup>34</sup> On 21 March 1999, French newspaper *Le Journal du Dimanche* reported that Maturana's nationality had recently been confirmed by the French consulate.

Amnesty International has been informed of an alleged episode of the activation of a remote control electro-shock stun belt Maturana was made to wear during his transportation to a court hearing in June 1999. Maturana is reported to have suffered a seizure, during which he badly bit his tongue<sup>35</sup>.

The state's case against Maturana for the murder of Glen Estes is currently stayed pending resolution of the issue of mental competence.

#### **Avram Vineto Nika – Yugoslav national in Nevada**

Avram Nika is a Yugoslav national born in Pancevo near Belgrade in 1970, although his family is believed to be Romanian. At the age of 19, Nika left Europe for Canada and the USA, settling with the Serbo-Croat émigré community in Chicago. He later moved, first to California and then to Reno, Nevada.

In August 1994, Nika's car broke down on a highway outside Reno as he was driving to Chicago. Nika maintains that only after repeated and unsuccessful attempts to flag down passing vehicles for assistance did a motorist, Edward Smith, finally stop. Smith's body was later found near Nika's car, killed by a shot to the head fired from his own gun.

Avram Nika, who has no reported prior criminal record, was arrested soon after in Chicago, driving Smith's car and with traces of

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<sup>35</sup> For more information on the use of stun belts in the United States, see *USA: Cruelty in Control? The Stun Belt and other Electro-Shock Equipment in Law Enforcement*, AI Index AMR 51/54/99, June 1999. In May 2000 in Geneva, the UN Committee Against Torture called on the US Government to abolish the stun belt. Amnesty International had raised the case of Claude Maturana with the Committee: see page 10 of *United States of America: A Briefing for the UN Committee Against Torture* (AMR 51/56/00, May 2000).

Smith's blood on his clothing. He was informed of his *Miranda* rights<sup>36</sup> but was reportedly denied an attorney and an interpreter during questioning by both local police and officers from Reno. Nika also alleges that he was beaten during interrogation. He does not deny shooting Smith, but maintains he acted in self-defence after Smith held a gun to his head and then attempted to rob and molest him. Nika maintains that he wrested the gun from Smith during the struggle that ensued and shot him once in the head.

Nika stood trial in Washoe County, Nevada, in June 1995 and was convicted of first degree murder, the main evidence against him being the circumstances of his arrest and his "confession". Although transcripts of Nika's questioning while detained in Chicago were later misplaced, Chicago police officers testified at the trial that Nika spoke sufficient English to understand his *Miranda* rights and the charges against him, and that he had confessed to the murder.

The jury was not allowed to hear a statement that Nika had given to Washoe County deputies the morning after his interrogation by Chicago police officers. It is evident in this statement that he has little understanding of the situation and that, rather than a confession, his prior statement had been a declaration of self-defence. Although the jury found only one of the aggravating circumstances submitted by the prosecution, this far outweighed the meagre showing of mitigating

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<sup>36</sup> In *Miranda v Arizona*, 384 U.S. 436 (1966), the US Supreme Court ruled that suspects must be advised of their constitutional rights at the time of their arrest, including the right to legal representation and the right to remain silent during interrogation.

evidence presented by the defence. Nika was sentenced to death the following month.

At no point was Nika informed of his right to contact his consulate for assistance. To this day, his poor command of English reportedly hampers communication between himself and his attorneys. Nika faced execution in April 1998, but the date was stayed pending the outcome of his appeals. A petition for writ of *habeas corpus* appealing Nika's conviction and sentence has been filed in state court.

#### **Joaquin Martinez - Spanish national in Florida**

The most recent reported case of a death sentence handed down on a European national in the United States is that of Spanish citizen Joaquin Martinez in Florida.

Born in Guayaquil, Ecuador, in 1971 to a Spanish father and Ecuadorean mother, Martinez spent much of his childhood in Spain before moving to the United States with his family at the age of 10.

On 31 October 1995, the bodies of Douglas Lawson and his companion Sherrie McCoy-Ward were found in their home in Tampa by a concerned relative. Lawson had been shot several times, whereas McCoy had been shot once and repeatedly stabbed. Police investigators called to the scene found no sign of forced entry and no weapon, nor did any personal items appear to be missing. The time of death was not established with precision, but was initially estimated at approximately 24 to 72 hours prior to discovery.

There was no physical evidence linking Martinez to the crime, and the case against him was based on the testimony of his fiancée and his ex-wife, and his videotaped conversation with the latter. On the eve of the trial in April 1997, two defence witnesses approached the prosecution and recanted their testimony, disclosing new and highly incriminating observations of Martinez' behaviour on the day of the homicide. In the days before the trial, a key witness<sup>37</sup> for the prosecution changed her testimony, which was crucial in narrowing down the time of death. The prosecution failed to inform the defence fully of these developments. During the trial the prosecution twice unexpectedly changed its estimate of the time of death, undermining Martinez' defence which was centred on his alibi for the original time period. He was convicted as charged, and was sentenced in accordance with the jury recommendation of life imprisonment for the murder of Lawson and (by a 9-3 vote) to death for the murder of McCoy.

At no point was Martinez notified of his right to contact Spanish consular officials, although the Spanish Consul in Florida is reported to have monitored the case and reported to the government since criminal proceedings were first initiated against Martinez.

In an appeal to the Florida Supreme Court, Martinez alleged a number of fundamental flaws in his trial, including misconduct and omission on the part of the prosecution and ineffective assistance of counsel. On 15 June 2000, the Court unanimously reversed Martinez' conviction, vacated his sentences, and remanded him for a new trial,

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<sup>37</sup> McCoy's sister testified that she had been mistaken in her recollection of the last time she had seen her sister alive, which she now believed to have been a day earlier than previously reported.

based on the finding that the prosecution had improperly elicited opinion of guilt testimony from the lead investigator in the case.<sup>38</sup>

The case has caused public outrage in Spain and has brought official Spanish delegations to Florida.<sup>39</sup> In 1998, the European Parliament had passed a resolution<sup>40</sup> urging that Martinez be granted a new trial. The Madrid Bar Association (*Ilustre Colegio de Abogados de Madrid*) filed a 'friend of the court' brief in the Florida Supreme Court, in which it outlined its concerns over the legitimacy of Martinez' conviction and sentence in light of the numerous alleged violations of his rights to a fair trial and to due process of law.

Martinez is to await his new trial at a county jail in Tampa, Florida.

### **Case summaries of reported European natives currently under sentence of death in the USA**

#### **Antuan Bronshtein - Pennsylvania (born in Soviet Union [Moldova])**

In August 1994, Antuan Bronshtein was sentenced to death in Pennsylvania for the January 1991 murder of Alexander Gutman, a jewellery store owner, in the course of a robbery. In 1992 he had been

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<sup>38</sup> *Joaquin J. Martinez vs. State of Florida*

<sup>39</sup> A four-member delegation from the Spanish Parliament travelled to Florida in January 1998.

<sup>40</sup> B4-1092 of 17 December 1998.

sentenced to life imprisonment for the murder of a second jeweller, Jerome Slobotkin, who was shot one month after Gutman.

Born in Kishnev in the Soviet Union in 1970, Bronshtein's family left their native country when Antuan was 7. He and six other members of his family lived for four months in a single room in Italy while waiting for permission to enter the United States. After their arrival in the USA in 1978, Bronshtein was taunted in school over his nationality and his poor English. The family broke up when he was nine years old and his father allegedly beat him repeatedly.

Bronshtein's chronic emotional and mental problems led him to turn to drugs at a very early age, reportedly using heroin, cocaine and marijuana by age 11. By age 16, he was diagnosed as suffering from a range of disturbances including paranoid personality disorder and depression. Jail records describe his behaviour after his arrest as acutely psychotic.

In February 1991, Bronshtein telephoned Philadelphia police investigators from South Carolina about the murder of Slobotkin. On his return to Philadelphia, he gave police a detailed confession to the murder which he later tried to recant, maintaining that he confessed only after detectives assured him that they would do what they could on his behalf.

On further questioning he attributed both murders to a high-level member of the local Russian Mafia. Significantly, one of the three mitigating circumstances acknowledged by the jury at his trial was the possibility that Bronshtein had not actually pulled the trigger.

Twice in 1997, Bronshtein had a date of execution scheduled and later postponed. In January 1998 he informed the court that he no longer wished to appeal his death sentence. At a court hearing in July 1998 to determine his mental competence, he was told that further evaluation was necessary before his waiver could be accepted. A few days later, Bronshtein attempted suicide. He later refused any further psychiatric assessment and, at a hearing in January 1999, demanded that he be executed by the state. A third execution date was set, but on 8 April Bronshtein unexpectedly informed his attorneys that he had decided to resume his appeals.

Upon finally learning of the case in late 1998, the Moldovan Consulate filed a protest with the State Department and submitted a letter to the Pennsylvania Supreme Court. The consulate outlined Moldova's concerns over the apparent failure of local arresting authorities both to inform Bronshtein of his right to consular assistance and to notify the consulate itself of his arrest, as required under the terms of a consular convention with the USA. Upon the discovery that Bronshtein had become a naturalised US citizen prior to his arrest, Moldova later withdrew its protest.

The intervention of the authorities of his native Moldova, the efforts of his family and public support are believed to have contributed to Bronshtein's decision to appeal his death sentence. Bronshtein is currently fighting to have his appeal reinstated in the state courts, as well as appealing both of his sentences in the federal courts.

**Kostantinos Fotopoulos – Florida (born in Greece)**



Born in Greece in 1959, Fotopoulos left his native country in his late teens to spend his senior year in high school in the USA, staying with a relative in Chicago. After completing college and post-graduate studies he remained in the USA, becoming a naturalised citizen and marrying in October 1995.

Fotopoulos was tried and convicted for the murder of 19-year-old Mark Ramsay in Florida in October 1989 and Brian Chase, also 19, in November 1989. At trial, it emerged that Fotopoulos had videotaped his mistress Deirdre Hunt as she shot Ramsay in the chest and head, before himself shooting the teenager in the head. The 57-second long videotape was shown at the trial, with sound and voice experts identifying Fotopoulos as the video-camera operator. Hunt was also condemned to death, but her sentence was later overturned and she was re-sentenced to life imprisonment.

The trial court also found that Hunt had hired Brian Chase to murder Fotopoulos' wife as part of a plan the pair had devised to collect the benefits from her life insurance policy. On 4 November 1989, Chase broke into Fotopoulos' home, firing a bullet into Lisa Fotopoulos' head as she slept. Seconds later, Kostantinos Fotopoulos shot and killed Chase, immediately alerting police that he had killed an intruder. Lisa Fotopoulos survived and later testified against her husband.

Fotopoulos was sentenced to death on 1 November 1990. He is reported to have challenged the competency of his attorneys throughout, raising issues of ineffective assistance of counsel and prosecutorial misconduct, as well as some new evidence: the Circuit Court

in Volusia County has not yet ruled on an evidentiary hearing held in March 2000.

### **Kenneth Richey – Ohio (born in the Netherlands to a Scottish mother)**

Kenneth Richey was born in 1964 in Zeist, Netherlands, where his father was stationed with the US military. When he was a few months old, the family moved to his mother's native Scotland. His parents divorced in his late teens and his father returned to the United States. Soon after, in December 1982, Richey joined his father in Ohio in the hope of finding employment. In 1984 he joined the US Marine Corps where he served for 14 months before being honourably discharged.

In January 1987, Richey was convicted and sentenced to death in Ohio by a three-judge panel<sup>41</sup> for the murder of 2-year-old Cynthia Collins in June 1986. The child died in a fire in the apartment she and her mother shared. Although it acknowledged in open court that Richey had not intended to harm Collins, the prosecution argued that he had deliberately started the fire in an attempt to kill an ex-girlfriend and her new boyfriend as they slept in the apartment below.

That Richey made repeated attempts to save Cynthia Collins was undisputed at trial. Firemen who arrived at the scene found Richey distraught, hysterically repeating that a child was still in the apartment. Police officers were forced to overpower and restrain him after he entered the blaze in a desperate effort to rescue Cynthia. At sentencing

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<sup>41</sup> Richey waived his right to a trial by jury after his attorneys had advised him that he might not get a fair trial before a jury whose passions could be inflamed by the killing of a child. The case received a great deal of local media coverage.

however, the three-judge panel found this powerful mitigating factor to be outweighed by their unsubstantiated theory (never suggested by the prosecution) that Richey had disabled the smoke detector alarm while starting the fire. Scientific evidence submitted by the defence has since challenged this assumption.

Approximately two weeks before his trial was due to begin, the prosecution offered Richey a plea bargain: in exchange for a guilty plea on four counts including aggravated arson and involuntary manslaughter, the prosecution would have recommended a maximum sentence of 11 years and 4 months. Insisting on his innocence, Richey refused to plead guilty; had he accepted the bargain he would now be free.

In August 1992, Richey's conviction and sentence were upheld in a 4-3 decision by the Supreme Court of Ohio.<sup>42</sup> The dissenting judges held that Richey's death sentence was "clearly inappropriate" on the grounds, above all, that it was excessive and disproportionate to the penalty imposed in similar cases. In June 1998, five days before he was scheduled to die in the electric chair, a US District Court judge issued a stay of execution pending further review.<sup>43</sup>

Although his British nationality is disputed, a number of British MPs have urged the authorities in Ohio to grant a new trial in the Richey case.<sup>44</sup> He has attracted substantial public and media attention in Europe

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<sup>42</sup> *State v. Richey*, 595 N.E.2d 915, 64 Ohio St. 3d 353 (1992)

<sup>43</sup> For additional case details, see *USA: Fatal Flaws: Innocence and the Death Penalty*, AI Index AMR 51/69/98, November 1998.

<sup>44</sup> In a letter dated 13 August 1998, the North American Department of the Foreign and Commonwealth Office states: "Although often described as a Scot, Mr Richey is in fact a US citizen. He was born in the Netherlands in 1964 of an American father and a Scottish mother...At the time of his birth, British women were not able to

as well as appeals on his behalf from Pope John Paul II and the Archbishop of Canterbury. In a resolution passed in June 1992 the European Parliament expressed its doubts concerning the validity of the sentence.<sup>45</sup>

### **Conclusion**

These 13 cases raise a range of issues that illustrate many of the inherent flaws in the application of the death penalty in the USA. The post-conviction evidence of unfair trials, underfunded or inadequate legal representation, official misconduct, mental incompetence and factual innocence all denote judicial procedures which fall unacceptably short of the minimum standards established in the International Covenant on Civil and Political Rights, *EU Guidelines* and other international human rights instruments.

Despite their differing circumstances, many of these cases suggest that timely access to effective consular intervention might well have resulted in a very different outcome. The continuing failure of the US government to comply fully with its treaty obligations or to remedy past violations of consular rights undermines its credibility and its relations with other nations.

Concerns over the mental competency of several defendants suggest that local authorities also violated Article 37 of the VCCR, which

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transmit their nationality to children born overseas, and his mother took no steps to register him as British at a later date...Mr Richey has no valid claim to British nationality.”

<sup>45</sup> Resolution B3-0778, 11 June 1992.

requires that the consulate be informed “without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State” [emphasis added].

Finally, with an average of more than 10 years spent under a sentence of death, all but one European national or native has been exposed to the cruel, inhuman and degrading condition known as the “death row phenomenon”, in violation of European and international case law.<sup>46 47</sup>

To date, the degree of public and official interest in Europe has varied considerably from case to case. While Martinez, Richey and Maharaj, for example, have received a substantial degree of attention, others such as Nika, Sakarias and Waidla have been largely ignored. The recent interventions at the Florida Supreme Court by European bar associations and parliamentarians are a welcome development. Amnesty International believes that grounds for similar action could be readily found in each of the cases of European nationals outlined in this report.

### **Recommendations**

Amnesty International is opposed to the death penalty in all circumstances, and continues to work towards a global ban on the

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<sup>46</sup> Madej has been on death row for 18 years, Maharaj and Richey for 13 years, Riechmann for 12, Fotopoulos and the Apelt brothers for 10 years.

<sup>47</sup> See *Soering v. the United Kingdom* (1989), European Court of Human Rights (ECHR); *Earl Pratt & Ivan Morgan v. The Attorney-General for Jamaica* (1994), Judicial Committee of the Privy Council. Amnesty International believes that the death penalty violates the prohibition on cruel, inhuman or degrading treatment regardless of the length of time a prisoner spends on death row, the execution method used or whether the inmate is guilty or innocent of the crime for which their government intends to kill them. See pages 19-21 of *Failing the Future: Death Penalty Developments, March 1998-March 2000* (AMR 51/03/00, April 2000).

imposition and execution of death sentences. Until such time, all governments must do everything in their power to ensure that international minimum standards are met in states where this, the ultimate form of cruel, inhuman and degrading punishment, is still permitted by law.

In this specific instance, Amnesty International urges that:

- 1) members of the Council of Europe, as well as other states, request the permission of the ICJ to intervene in *Germany v. United States of America*, making known their concerns regarding the United States' past, present and future compliance with Article 36 of the VCCR;<sup>48</sup>
- 2) public international organizations, including the European Union and the Council of Europe, submit to the ICJ any information relevant to *Germany v. United States of America*;<sup>49</sup>
- 3) the institutions of the European Union as well as the governments of Germany, France, Spain, Estonia, Poland, Federal Republic of Yugoslavia and the United Kingdom initiate or intensify efforts on behalf of their respective nationals under sentence of death in the USA, raising the issue of ICCPR, ECOSOC Safeguards and VCCR violations in the domestic courts, through diplomatic channels and in all appropriate fora as established by the *Guidelines to EU policy towards third countries on the death penalty*;
- 4) national organizations in European countries, including professional associations in the fields of law and mental health, examine and pursue all possible avenues for intervention on behalf of fellow nationals facing execution in the United States;

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<sup>48</sup> See Art. 62.1 of the Statute of the ICJ and Art. 81 of the Rules of Court.

<sup>49</sup> See Art. 34.2 of the Statute of the ICJ and Art. 69 of the Rules of Court.

- 5) European governments and EU institutions undertake to work closely with the US Department of State with a view to improving consular notification procedures in the USA.

### Appendix: List of Foreign Nationals on Death Row in the USA

As of June 2000, Amnesty International has the names of 87 prisoners of 28 nationalities.

#### ARIZONA (6)

Martin Raul Fong Soto	Mexico
Ramon Martinez Villareal	Mexico
Michael Apelt	Germany
Rudy Apelt	Germany
Jose Amaya Ruiz	El Salvador
Claude Maturana	France

#### ARKANSAS (1)

Rafael Camargo Ojeda	Mexico
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#### CALIFORNIA (23)

Carlos Avena Guillen	Mexico
Luis Avilles (aka Omar Fuentes Martinez)	Mexico
Juan Hector Ayala	Mexico
Vicente Benavides Figueroa	Mexico
Constantino Carrera Montenegro	Mexico
Lupercio (Juan) Cazares	Mexico
Abelino Manriquez	Mexico
Sergio Ochoa Tamayo	Mexico
Ramon Salcido Bohorquez	Mexico
Alfredo Valdez Reyes	Mexico
Jaime Armando Hoyos	Mexico
Tomas Verano Cruz	Mexico
Manuel Machado Alvarez	Cuba
Miguel Angel Bacigalupo	Peru
Peter Sakarias	Estonia
Tauro Waidla	Estonia
Hooman Ashkan Panah	Iran
Luis Alberto Maciel-Hernandez	Mexico
Enrique Parras-Duenas	Mexico
Samuel Zamudio-Jimenez	Mexico
Martin Mendoza-Garcia	Mexico
Daniel Covarrubias-Sanchez	Mexico
Sonny Enraca	Philippines

#### FLORIDA (9)

Krishna Maharaj	United Kingdom
Dieter Reichmann	Germany
Joaquin Martinez	Spain
Lancelot Armstrong	Jamaica
Noel Doorbal	Trinidad and Tobago
Rigoberto Sanchez Velasco	Cuba



Robert Gordon	Jamaica
Guillermo Arbelaez	Columbia
Ana Cardona (female)	Cuba
<b>ILLINOIS (3)</b>	
Juan Alonso Caballero	Mexico
Mario Flores Urbano	Mexico
Gregory Madej	Poland
<b>LOUISIANA (1)</b>	
Manuel Ortiz	El Salvador
<b>MONTANA (1)</b>	
Ronald Smith	Canada
<b>NEVADA (2)</b>	
Carlos Gutierrez	Mexico
Avram Vineto Nika	Yugoslavia
<b>NORTH CAROLINA (1)</b>	
Bernardino Zuniga Zuniga	Mexico
<b>OHIO (4)</b>	
Jose Trinidad Loza	Mexico
Abdul Awkal	Lebanon
Kenneth Richey	United Kingdom (nationality disputed)
Ahmad Fawzi Abdelnor Issa	Jordan
<b>OKLAHOMA (3)</b>	
Hungh Thanh Le	Vietnam
Gilberto Martinez	Cuba
Sahib Al-Mosawi	Iraq
<b>OREGON (1)</b>	
Horacio Alberto Reyes Camarena	Mexico
<b>PENNSYLVANIA (1)</b>	
Albert Reid	Jamaica
<b>TEXAS (26)</b>	
Cesar Roberto Fierro	Mexico
Miguel Angel Flores	Mexico
Hector Garcia Torres	Mexico
Humberto Leal	Mexico
Jose Ernesto Medellin Rojas	Mexico
Javier Suarez Medina	Mexico
Daniel Angel Plata Estrada	Mexico

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Roberto Ramos Moreno	Mexico
Oswaldo Regalado Soriano	Mexico
Edgar Tamayo Arias	Mexico
Santiago Margarito Varelas Rangel	Mexico
Carlos Ayestas	Honduras
Lim Kim Ly	Cambodia
Syed Rabani	Bangladesh
Michael Blair	Thailand
Victor Saldano	Argentina
Anibal Garcia Rosseau	Cuba (status uncertain)
Ruben Ramirez Cardenas	Mexico
Carlos Manuel Zelaya	Honduras
Ramiro Ibarra Rubi	Mexico
Oswaldo Torres Aguilera	Mexico
Ignacio Gomez	Mexico
Virgilio Maldonado Rodriguez	Mexico
Felix Rocha-Diaz	Mexico
Ruben Hernandez	Mexico
Angel Maturino Resendiz	Mexico
<b>WASHINGTON (2)</b>	
Michael Roberts	Canada
Kwan Fai Mak	Hong Kong
<b>FEDERAL (3)</b>	
Bountaem Chanthadara	Laos
German Sinisterra	Columbia
Arboleda Ortiz	Columbia