

USA (Maryland) Eugene Sherman Colvin-El, black, aged 55

Eugene Colvin-El is scheduled to be executed in Maryland within a five-day period beginning on 12 June 2000 (the exact time will be set by prison officials).

He was sentenced to death in 1981 for the murder of 82-year-old Lena Buchman on 9 September 1980.

International safeguards require that capital defendants receive "adequate legal representation at all stages of proceedings" and state that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." In the case of Colvin-El, who has consistently maintained that he did not kill Lena Buchman, these minimum standards have not been met.

Eugene Colvin-El was convicted of capital murder on the basis of limited circumstantial evidence. Lena Buchman was killed in her daughter's house, repeatedly stabbed with a kitchen knife. Some 17 items of jewellery were missing from the home. Four months later, Colvin-El was arrested for the murder after his fingerprints were found to match those on a pile of broken glass from, and found outside, the back door of the house. He was also found to have pawned, eight days after the crime, two watches, at least one of which had been among the stolen items. However, there was no eyewitness testimony, incriminating statements, fingerprints or other forensic evidence placing him *inside* the house and showing beyond reasonable doubt that he was the actual perpetrator of the murder.

Eugene Colvin-El's trial lawyer, who had no experience in capital cases, failed to present evidence supporting his client's claim of innocence. His failure left the jury unaware that the back door, through which Colvin-El supposedly entered the house, could only be opened about four inches (10cm); that witnesses had seen "suspicious" persons, not Colvin-El, near the house at the time of the crime; that the police had been investigating a spate of burglaries in the area, and had identified suspects other than Colvin-El; and that the police had found jewellery outside the house two days after the crime, undermining the state's theory that the pawned watches meant Colvin-El must have been inside the house. Furthermore, the prosecution apparently withheld from the defence the fact that a fingerprint had been lifted from paper in the victim's ransacked handbag and found to be not that of Colvin-El, but of an unidentified person.

The state Court of Appeals granted Colvin-El a resentencing, not because of his ineffective counsel, but on the basis that the prosecution had made improper use of Colvin-El's juvenile convictions to obtain a death sentence. Two judges dissented, saying that the question of whether he was the actual killer could only be resolved at a full retrial. At a hearing in 1992, Colvin-El was again condemned to death.

In 1998, a federal district judge overturned Colvin-El's death sentence, finding that his representation at the 1981 trial had been ineffective "for failing to bring to the attention of the jury evidence that might have suggested additional perpetrators". The judge, who described the evidence against Colvin-El as "sparse", found that the failure of Colvin-El's lawyer to defend his client at the guilt phase of the original trial "reflects a breakdown of [the adversarial] process" and that the 1992 resentencing had failed to remedy

this constitutional violation. However, the Fourth Circuit Court of Appeals, widely viewed as the most conservative federal court in the country with a reputation for severe interpretations of Supreme Court precedents and the Anti-Terrorism and Effective Death Penalty Act (the 1996 law which limits federal judicial power over state court rulings), reversed the district judge's decision in 1999.

Aside from the fact that, as two other dissenting state Court of Appeals judges said, "the evidence was wholly insufficient", and "the State failed utterly", to establish that Eugene Colvin-El was the actual perpetrator of the murder, the case also raises serious questions about the impact of race in the US capital justice system. Colvin-El, who is black, was tried in front of an all-white jury, for the murder of a white woman. At his resentencing, the jury was made up of one black and 11 whites.

In December 1996 a Task Force on the Fair Imposition of Capital Punishment, set up by Governor Glendening, concluded that "the high percentage of African-American prisoners under sentence of death and the low percentage of prisoners under sentence of death whose victims were African-American remains a cause for concern." Of the 17 prisoners currently on death row in Maryland, 12 (71 per cent) are black and five (29 per cent) are white (the state's population is about 70 per cent white and 25 per cent black). In 14 of the cases the victims of the crimes were white, although most murder victims in Maryland are black (about 80 per cent of the state's murder victims in 1995 and 1996 were black). Since the USA resumed executions in 1977, Maryland has executed three prisoners, two black and one white. All three were convicted of killing whites. Governor Glendening recently set aside US\$225,000 to fund another study on the issue of race in his state's use of the death penalty.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language, in your own words, using the following guide:

- expressing sympathy for the friends and relatives of Lena Buchman, the victim of a brutal murder;
- expressing concern that Eugene Colvin-El was convicted on the basis of inconclusive circumstantial evidence and after receiving inadequate legal representation, both factors which violate international standards;
- noting that several judges have questioned the conviction and sentence;
- expressing concern that Eugene Colvin-El, a black man accused of killing a white woman, was convicted and sentenced by an all-white jury, and resentenced by a jury with only one black member;
- expressing concern that Colvin-El, whose case clearly falls within the remit of the race study budgeted for by the Governor, is facing execution before the study is completed;
- noting increasing concern about the fairness and reliability of the US death penalty;
- urging the Governor to grant clemency.

APPEALS TO:

The Honourable Parris Glendening
 Governor of Maryland
 State House, Annapolis, MD 21401, USA
Fax: + 1 410 974 3275
Telegrams: Governor Glendening, Annapolis, MD, USA
Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

You may also send letters of concern (not more than 250 words) to:

Letters to the Editor, *Baltimore Sun*, 501 North Calvert Street
P.O. Box 1377, Baltimore, Maryland 21278, USA

E-mail: feedback@sunspot.net

Fax: + 1 410 332 6455

PLEASE SEND APPEALS IMMEDIATELY.