

EXTERNAL

AI Index: AMR 51/36/97

27 June 1997

Further information on EXTRA 182/96 (AMR 51/95/96, 22 November 1996) and follow-up (AMR 51/103/96, 19 December) - Death Penalty

USA (VIRGINIA) Joseph O' DELL

Joseph O'Dell is scheduled to be executed in Virginia on 23 July 1997.

O'Dell's new execution date follows the US Supreme Court's denial of his appeal on 19 June 1997. The appeal was based on the grounds that O'Dell was entitled to a new sentencing hearing because of instructions to the jury during the sentencing phase of O'Dell's original trial in 1988. The prosecution had argued that O'Dell was a "future threat to society" and should therefore be put to death.

In 1994, the US Supreme Court ruled in *Simmons v. South Carolina* that a defendant facing a death sentence who had been described as a future threat to society, had a due process (of law) right to have the jury know that he will never get out of prison if the jury spares his life. The jury that sentenced O'Dell to death was unaware that he would be sentenced to life imprisonment without the possibility of parole if they spared his life.

The US Supreme Court denied O'Dell's appeal on a 5-to-4 vote. The Court's majority said that the 1994 decision did not apply retroactively to O'Dell's case. In its opinion, the Court invoked its principle that a "new rule" of constitutional law should not be available to state prison inmates who are seeking Federal court review through petitions for a writ of *habeas corpus*. The Court adopted that position in a 1989 case, *Teague v. Lane*, as part of its effort to make *habeas corpus* relief less available to state inmates.

In an opinion dissenting from the Court's ruling, Justice John Paul Stevens said the "right to respond to an inaccurate or misleading argument [that O'Dell would present a continuing threat to society] is surely a bedrock procedural element of a full and fair hearing."

Joseph O'Dell was sentenced to death in November 1986 for the murder of Helen Schartner, who was raped and murdered after leaving a nightclub on 4 February 1985. O'Dell was convicted on the testimony of a prosecution witness who subsequently signed an affidavit saying he lied when he testified at trial that O'Dell had confessed the murder to him in jail. The prosecution witness reportedly made his statement about O'Dell's confession because he thought he himself was facing a possible sentence of life imprisonment for breaking and entering and arson and thought he might be able to make a deal for a lighter sentence. The witness was reported in the press as saying "I don't want an innocent man's death on my shoulders...I feel better now, I feel relieved. I knew I didn't have to lie anymore". He could be prosecuted on a perjury charge, which carries a maximum 10-year sentence.

Results of DNA tests, carried out for the defence after sentencing, on blood found on O'Dell's clothes contradict serology tests carried out by the prosecution at trial which linked O'Dell to the crime.

O'Dell's death sentence was overturned in Federal District Court in 1994, reportedly "on a technicality". At the same time the Court failed to grant an evidentiary hearing on the DNA evidence on the grounds that the testimony

of the prosecution witness would still have influenced the jury in imposing a sentence of death.

In November 1996 O'Dell's death sentence was reinstated by the 4th US Circuit Court of Appeals which unanimously agreed that O'Dell's claims of innocence have no merit.

According to reports O'Dell represented himself at trial after realizing that his court-appointed attorney lacked experience in criminal cases.

FURTHER RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or in your own language:

- urging commutation of the death sentence against Joseph O'Dell who faces execution on 23 July despite serious doubts about his guilt of the crime for which he was sentenced, namely that he was convicted on the testimony of a prosecution witness who has since recanted;
- expressing concern that O'Dell has not been able to benefit from a new legal standard set by the US Supreme Court in 1994 because of the Court's refusal to make the standard retroactive;
- pointing out that DNA tests of blood found on O'Dell's clothes contradict the results of earlier serology tests, carried out on behalf of the prosecution;
- expressing concern that O'Dell received such poor legal representation at trial that he decided to represent himself;
- expressing opposition to the death penalty in all cases.

APPEALS TO:

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and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.