

PUBLIC

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Further information on EXTRA 09/03 (AMR 51/017/2003, 10 February 2003) - Death penalty

USA (Maryland)

Steven Howard Oken (m), white, aged 41

Steven Oken has received an indefinite stay of execution from the Maryland Court of Appeals. The Court has scheduled a hearing in May 2003 to consider a challenge to the state's death penalty law under a US Supreme Court decision issued in 2002 (*Ring v Arizona*). Meanwhile, urgent efforts to pass a bill to impose a moratorium on executions in Maryland continue in the state legislature.

Steven Oken was due to be executed in the week beginning 17 March 2003. His execution would have brought to an end a moratorium on executions announced by the previous Governor of Maryland, Parris Glendening, on 9 May 2002. Governor Glendening imposed the moratorium pending the outcome of a University of Maryland study which he had commissioned in 2000. The study was to look into the fairness of the state's death penalty, particularly geographic and racial disparities in capital sentencing. The final report of the study was released on 7 January 2003.

The study was the most comprehensive conducted in Maryland, analysing the 1,311 murders between 1978 and 1999 which were determined to be "death-eligible", that is, punishable by the death penalty. The study concludes that, even when other factors are accounted for, people who kill white victims are "significantly" more likely to face the death penalty than killers of non-whites. It also finds that prosecutors in different counties "exhibit considerable variation" in their pursuit of the death penalty. In terms of whether a particular "death-eligible" murder will be pursued as a capital crime, therefore, "clearly the jurisdiction where the homicide occurs matters and matters a great deal".

Campaigning for the governorship in 2002, Robert Ehrlich stated that he would lift the moratorium if he was elected to office, and deal with clemency petitions on a case-by-case basis as and when they came before him. He won the election and took office in January 2003. On 28 January Governor Ehrlich issued a statement in which he stated that he had asked Lieutenant Governor Michael Steele, in light of the University of Maryland study, to consult "a wide variety of interest groups" about how the death penalty is implemented in Maryland and "to forward any and all recommendations to me for my final decision". The lead researcher on the study has stated that a case-by-case review by the Governor could not address the systemic disparities in the capital justice system revealed by the study.

Emergency bills (Senate Bill 12 and House Bill 16) were introduced into the Maryland General Assembly in January 2003, aimed at imposing a moratorium on executions in light of the issues raised by the University of Maryland study. Although the texts of the bills are likely to be amended to become more specific, they currently provide for an open-ended moratorium pending further remedial action by the legislature on the death penalty system.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. Capital punishment is a government policy that is a symptom of a culture of violence, rather than a solution to it. Today, 111 countries are abolitionist in law or practice. In contrast, the USA has already executed 12 people this year, bringing to 832 the number of people it has put to death since it resumed executions in 1977. Maryland accounts for three of these executions. There are 12 people on death row there, eight blacks and four whites. All were convicted of killing white people. Nine were prosecuted in Baltimore County.

National disquiet about the fairness and reliability of the US capital justice system has grown, not least as the number of innocent people found on the country's death rows has risen. In January 2000, Illinois Governor George Ryan halted executions in his state because of its record of wrongful convictions in capital cases. Three years later, Governor Ryan commuted the death sentences of all the prisoners on death row in Illinois. He had recognized that the capital justice system was "haunted by the demon of error, error in determining guilt, and error in determining who among the guilty deserves to die". He pointed to race and geography as unacceptable factors in capital sentencing in his state.

On 29 January 2003, in an open letter to the Maryland Governor, Lt. Governor and members of the state legislature, the Attorney General of Maryland, Joseph Curran, called for the abolition of the death penalty in his state: "Despite everyone's best efforts, as any trial lawyer or judge knows, our criminal justice system sometimes gets it wrong...The system is a human institution. It is administered by human beings subject to human fallibility. Unrecognized mistakes are inevitable... Executing an innocent person is a mistake for which there is no correction. Other troubling issues afflict the death penalty. Many people are raising serious questions about geographic and racial disparities in its application."

In 1994, a US Supreme Court Justice said: "Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die." Following his visit to the USA in 1997, the United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions wrote: "Race, ethnic origin and economic status appear to be key determinants in who will, and who will not, receive a sentence of death". In its report on the USA in 2001, the UN Committee on the Elimination of Racial Discrimination noted the "disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty..." The Committee urged the authorities "to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons."

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- noting the stay of execution granted to Steven Oken which allows the state authorities the space to further consider the death penalty system without the immediate threat of an execution looming;
- welcoming the moratorium imposed by former Governor Glendening, and Attorney General Joseph Curran's recent call for abolition;
- noting that the University of Maryland study has concluded that there is racial and geographic bias in the state's capital sentencing;
- suggesting that the systemic problems revealed by the study cannot be remedied on a case-by-case basis at the time of clemency proceedings;
- noting the widespread national and international concern about the fairness and reliability of the US capital justice system;
- urging the Governor not to veto any death penalty moratorium bill passed by the Maryland General Assembly.

APPEALS TO:

Robert L. Ehrlich, Jr., Governor of Maryland
The Statehouse, 100 State Circle, Annapolis, Maryland 21401, USA
Fax: +1 410 974 3275
Email: governor@gov.state.md.us
Salutation: Dear Governor

COPIES TO:

Michael S. Steele, Lieutenant Governor of Maryland
The Statehouse, 100 State Circle, Annapolis, Maryland 21402, USA
Fax: +1 410 974 5882
Email: ltgovernor@gov.state.md.us

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.