

January 29, 2003

The Honorable Robert L. Ehrlich, Jr.
Governor
State House
100 State Circle
Annapolis, MD 21401

Re: Open Letter to the Governor, the Lt. Governor, and
Members of the General Assembly

Dear Governor Ehrlich:

I write to you with urgency. We stand at a critical juncture in the troubled history of the death penalty in Maryland.

Since the State's 1978 reinstatement of capital punishment, three men have been executed. Before the 1994 execution of John Thanos, Maryland had not put anyone to death in over 30 years. With the lifting of the recent moratorium, seven men are now poised to die over the coming months.

I cannot let this moment pass without making an appeal for change. I do not take this step lightly. I understand and respect why many people support capital punishment. As Chairman of the Senate Judicial Proceedings Committee when it was reinstated, I heard days of testimony from victims' families; I was humbled by their pain and their courage. I listened to all the experts and know first-hand the good intentions of those who voted for it.

Yet I write today to ask you to abolish the death penalty. In doing so, I need not repeat the moral argument that the State should not be the instrument of any person's death. This is my belief; others sincerely disagree. I respect the difference.

What policy makers must now confront about the death penalty, without evasion or delay, is this: Capital punishment forces us to accept the unacceptable - the inevitability of an irreversible mistake that results in an innocent person's death. It requires us to live with the certainty that now and then, despite all the safeguards, appeals and post-convictions, we will execute the wrong person.

Since the Supreme Court reinstated capital punishment in 1976, 103 people on death row have been exonerated. Here in Maryland, Kirk Bloodworth was sentenced to death initially for a murder which DNA evidence revealed nine years later he did not commit.

These 103 exonerations also represent only those mistakes which were identified and corrected. We will never know how many were not caught in time to prevent, at the hands of the State, the death of an innocent person. How many cases are there like that of Sunny Jacobs, who sat on death row for 5 years for a murder she and her common-law husband did not commit? Lawyers eventually uncovered evidence which proved their innocence, but not in time to save her husband, Jesse Tafero. He had been executed two years before.

Despite everyone's best efforts, as any trial lawyer or judge knows, our criminal justice system sometimes gets it wrong. Safeguards at trial, appellate review and conscientious effort catch many of its mistakes. We hope they uncover most. But we know they cannot expose all. The system is a human institution. It is administered by human beings subject to human fallibility. Unrecognized mistakes are inevitable.

We are blessed in Maryland with dedicated police, prosecutors, judges, lawyers, and all the other public servants who toil day in and day out to make our system work justly. Our worst fear is the execution of an innocent person. Yet we labor in an imperfect system which cannot and will never be able to prevent just that.

How do we come to terms with the inevitability of undiscovered error while still punishing with proportionality those who have committed the most grievous, unspeakable wrongs? Some killers have unquestionably forfeited their right to live among us. They deserve no second chance. Yet we now have a way to punish that we lacked back in 1978. The sentence of life without parole puts people away for the rest of their lives, with no hope or possibility of ever getting out. Life without parole means death in prison.

Yet there is one, pivotal difference between death in prison and the death penalty. That is reversibility, the chance to correct a mistake no matter when the mistake is found. Incarcerating someone who is innocent - taking away a person's freedom, laying waste to years of someone's life - is a terrible injustice. We have had to

confront such injustice recently in the release of Bernard Webster, who was exonerated through DNA evidence from a rape conviction after serving 20 years in prison. Saddened as we are by those lost years of Mr. Webster's life, at least we can now set him free. We can attempt to compensate him in some small way for what we took from him.

The death penalty allows no such opportunity. 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. Capital punishment strains further the strapped resources of our criminal justice system. With inherent and necessary doubt and delay, it fails even the victims' families.

Yet what must prove decisive is that unthinkable, inevitable, irreversible taking of an innocent human life. Where there will always be the certainty of mistake, we must retain the ability to make it right.

The death penalty is often said to be broken. But something broken can perhaps be fixed. The truth is that capital punishment can never work as it promises. It seeks to impose death, without mistake, on those who deserve it most. This cannot be done. As experience, science, and tragedy have taught us, the death penalty can come only at the intolerable cost of killing, every so often, the wrong person. This is unworthy of us. It cannot pass for justice in a civilized society.

Very truly yours,

Attorney General