

HJR

18

<TARGET><BILL>HJR 18</BILL><SUBJECT>HJR
18</SUBJECT><COMM>HMLV27</COMM></TARGET>

LEGAL SERVICES

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MEMORANDUM

March 21, 2011

SUBJECT: Resolution concerning U. S. v. Hasan
(HJR 18, Work Order No. 27-LS0560\M)

TO: Representative Steve Thompson
Co-chair of the House Special Committee on Military and
Veterans' Affairs
Attn: Jane Pietsen

FROM: Doug Gardner
Director



You have supplied me with a letter from Jeffrey Mittman, Executive Director of the ACLU of Alaska, dated March 17, 2011, and asked whether HJR 18 is appropriate and whether this resolution would give an appealable argument to Major Hasan.

Mr. Mittman asserts that "given the legal posture of the Hasan matter, it would be improper for the Alaska Legislature to inject the political process into a legal proceeding." This principle finds support for reasons not identified by the ACLU. Mason's Manual, sec. 111(3) (2000 ed) states:

Any matter awaiting adjudication in a court should not be debated or discussed in a legislative body.

HJR 18 specifically involves a matter that is under consideration by a military court. Therefore, the legislature or a legislative committee cannot discuss, debate or vote on the resolution, and comply with sec. 111(3). I will note, however, that HJR 30, introduced on April 1, 2009 in the 26th Legislature is very similar to HJR 18. HJR 30 did not pass the House, although it does appear to have been heard by the House Judiciary Committee. I would note, that at the time HJR 30 was heard in committee, it appears Mr. Wade was awaiting adjudication for his offense. According to very brief on-line research, Mr. Wade appears to have changed his plea in 2010. Thus, Mason's sec. 111(3) was not followed when HJR 30 was pending before the 26th Legislature.

Mr. Mittman also suggests that adopting and transmitting HJR 18 to the military might "actually give Maj. Hasan an avenue for appeal, should a capital sentence be imposed: that the decision to pursue the death penalty was the product of political influence." It may be possible that HJR 18 could be used as a basis to file an appeal, even though any role it might play in the success of such an appeal is highly speculative and attenuated.

DDG med
11-027.med

Alaska State Legislature

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Representative Carl Gatto District 13

Sponsor Statement HJR 18

“Relating to the case of U.S. v. Hasan and to the decision of the Judge Advocate General of the United States Army with respect to that case.”

HJR 18 urges the Judge Advocate General of the United States Army to carefully consider the death penalty as a sentencing option for Major Nidal Malik Hasan, if he is found guilty.

On November 5th, 2009, Nidal Malik Hasan, a psychiatrist and a major in the United States Army, entered the Soldier Readiness Center of Fort Hood in Texas and began shooting unarmed military personnel. By the end of the attack, he had killed 13 people and wounded 29 others.

Mr. Hasan is a citizen of the United States and a member of its armed forces. However, Mr. Hasan has been linked to an Al Qaeda terrorist, Anwar al-Awlaki, and has been known to make remarks sympathetic to an extremist ideology. He is also reported to have yelled “Allahu Akbar” prior to the attack. This behavior suggests that Mr. Hassan was acting as an agent of a terrorist organization bent upon harming American military assets, which would constitute an act of treason against his country.

Mr. Hasan was wounded by military police during the attack and cared for in a military hospital. He now faces a court martial and possibly the death penalty. HJR 18 would add the support of the Alaska Legislature to encouraging the death penalty option.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HJR 18
 () Publish Date _____

HJR 18 - MLV-03-16-11
 Title CONSIDER DEATH PENALTY FOR NIDAL HASAN
 Sponsor Representative Carl Gatto
 Requester House Military & Veterans Affairs
 Dept. Affected None
 Appropriation _____
 Allocation _____
 OMB Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Not applicable; initial version

Prepared by Jane Pierson
 Division MLV Committee Aide
 Approved by Representative Steve Thompson, Co-Chair MLV
Representative Dan Saddler, Co-Chair MLV

Phone 907-465-6841
 Date/Time 3/16/11 at 11:50 a.m.
 Date 3/16/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HJR 18

Analysis

This resolution should not have a fiscal impact on the State of Alaska or any department.



Fort Hood Shooting Victims Had Different Reasons for Enlisting in Army

Published November 07, 2009 | AP

The 13 people killed when an Army psychiatrist allegedly opened fire on fellow soldiers at Fort Hood, Texas, included a pregnant woman who was preparing to return home, a man who quit a furniture company job to join the military about a year ago, a newlywed who had served in Iraq and a woman who had vowed to take on Usama bin Laden after the Sept. 11 terrorist attacks. Here is a look at some of the victims.

Francheska Velez

Velez, 21, of Chicago, was pregnant and preparing to return home. A friend of Velez's, Sasha Ramos, described her as a fun-loving person who wrote poetry and loved dancing.

"She was like my sister," Ramos, 21, said. "She was the most fun and happy person you could know. She never did anything wrong to anybody."

Family members said Velez had recently returned from deployment in Iraq and had sought a lifelong career in the Army.

"She was a very happy girl and sweet," said her father, Juan Guillermo Velez, his eyes red from crying. "She had the spirit of a child."

Ramos, who also served briefly in the military, couldn't reconcile that her friend was killed in this country just after leaving a war zone.

"It makes it a lot harder," she said. "This is not something a soldier expects — to have someone in our uniform go start shooting at us."

Capt. John Gaffaney

Gaffaney, 56, was a psychiatric nurse who worked for San Diego County, Calif., for more than 20 years and had arrived at Fort Hood the day before the shooting to prepare for a deployment to Iraq.

Gaffaney, who was born in Williston, N.D., had served in the Navy and later the California National Guard as a younger man, his family said. After the Sept. 11 terrorist attacks, he tried to sign up again for military service. Although the Army Reserves at first declined, he got the call about two years ago asking him to rejoin, said his close friend and co-worker Stephanie Powell.

"He wanted to help the boys in Iraq and Afghanistan deal with the trauma of what they were seeing," Powell said. "He was an honorable man. He just wanted to serve in any way he can."

His family described him as an avid baseball card collector and fan of the San Diego Padres who liked to read military novels and ride his Harley-Davidson motorcycle.

Gaffaney supervised a team of six social workers, including Powell, at the county's Adult Protective Services department. Ellen Schmeding, assistant deputy director for the county's Health and Human Services Agency, said Gaffaney was a strong leader.

He is survived by a wife and a son.

Pfc. Aaron Thomas Nemelka

Nemelka, 19, of the Salt Lake City suburb of West Jordan, Utah, chose to join the Army instead of going on a mission for The Church of Jesus Christ of Latter-day Saints, his uncle Christopher Nemelka said.

"As a person, Aaron was as soft and kind and as gentle as they come, a sweetheart," his uncle said. "What I loved about the kid was his independence of thought."

Aaron Nemelka, the youngest of four children, was scheduled to be deployed to Afghanistan in January, his family said in a statement. Nemelka had enlisted in the Army in October 2008, Utah National Guard Lt. Col. Lisa Olsen said.

Pfc. Michael Pearson

Pearson, 21, of the Chicago suburb of Bolingbrook, Ill., quit what he figured was a dead-end furniture company job to join the military about a year ago.

Pearson's mother, Sheryll Pearson, said the 2006 Bolingbrook High School graduate joined the military because he was eager to serve his country and broaden his horizons.

"He was the best son in the whole world," she said. "He was my best friend and I miss him."

His cousin, Mike Dostalek, showed reporters a poem Pearson wrote. "I look only to the future for wisdom. To rock back and forth in my wooden chair," the poem says.

At Pearson's family home Friday, a yellow ribbon was tied to a porch light and a sticker stamped with American flags on the front door read, "United we stand."

Neighbor Jessica Koerber, who was with Pearson's parents when they received word Thursday their son had died, described him as a man who clearly loved his family — someone who enjoyed horsing around with his nieces and nephews, and other times playing his guitar.

"That family lost their gem," she told the AP. "He was a great kid, a great guy. ... Mikey was one of a kind."

Sheryll Pearson said she hadn't seen her son for a year because he had been training. She told the Tribune that when she last talked to him on the phone two days ago, they had discussed how he would come home for Christmas.

Spc. Jason Dean Hunt

Hunt, 22, of Frederick, Okla., went into the military after graduating from Tipton High School in 2005 and had gotten married just two months ago, his mother, Gale Hunt, said. He had served 3 1/2 years in the Army, including a stint in Iraq.

Gale Hunt said two uniformed soldiers came to her door late Thursday night to notify her of her son's death.

Hunt, known as J.D., was "just kind of a quiet boy and a good kid, very kind," said Kathy Gray, an administrative assistant at Tipton Schools.

His mother said he was family oriented.

"He didn't go in for hunting or sports," Gale Hunt said. "He was a very quiet boy who enjoyed video games."

He had re-enlisted for six years after serving his initial two-year assignment, she said. Jason Hunt was previously stationed at Fort Stewart in Georgia.

Michael Grant Cahill

Cahill, a 62-year-old physician assistant, suffered a heart attack two weeks ago and returned to work at the base as a civilian employee after taking just one week off for recovery, said his daughter Keely Vanacker.

"He survived that. He was getting back on track, and he gets killed by a gunman," Vanacker said, her words bare with shock and disbelief.

Cahill, of Cameron, Texas, helped treat soldiers returning from tours of duty or preparing for deployment.

Often, Vanacker said, Cahill would walk young soldiers where they needed to go, just to make sure they got the right treatment.

"He loved his patients, and his patients loved him," said Vanacker, 33, the oldest of Cahill's three adult children.

"He just felt his job was important."

Cahill, who was born in Spokane, Wash., had worked as a civilian contractor at Fort Hood for about four years, after jobs in rural health clinics and at Veterans Affairs hospitals. He and his wife, Joleen, had been married 37 years.

Vanacker described her father as a gregarious man and a voracious reader who could talk for hours about any subject.

The family's typical Thanksgiving dinners ended with board games and long conversations over the table, said Vanacker, whose voice often cracked with emotion as she remembered her father. "Now, who I am going to talk to?"

Spc. Frederick Greene

Greene, 29, of Mountain City, Tenn., was assigned to the 16th Signal Company, Fort Hood, Texas.

Staff Sgt. Justin M. DeCrow

DeCrow, 32, was helping train soldiers on how to help new veterans with paperwork and had felt safe on the Army post.

"He was on a base," his wife, Marikay DeCrow, said in a telephone interview from the couple's home at Fort Gordon, Ga., where she hoped to be reunited with her husband once he finished his work at Fort Hood. "They should be safe there. They should be safe."

His wife said she wanted everyone to know what a loving man he was. The couple have a 13-year-old daughter, Kyla.

"He was well loved by everyone," she said through sobs. "He was a loving father and husband and he will be missed by all."

DeCrow's father, Daniel DeCrow, of Fulton, Ind., said his son graduated high school in Plymouth, Ind., and married his high school sweetheart that summer before joining the Army. The couple moved near Fort Gordon about five years ago, he said.

About a year ago, his son was stationed in Korea for a year. When he returned to the U.S., the Army moved him to Fort Hood while he waited for a position to open up in Fort Gordon so he could move back with his wife and daughter, Daniel DeCrow said.

DeCrow said he talked to his son last week to ask him how things were going at Fort Hood.

"As usual, the last words out of my mouth to him were that I was proud of him," he said. "That's what I said to him every time — that I loved him and I was proud of what he was doing. I can carry that around in my heart."

Sgt. Amy Krueger

Krueger, 29, of Kiel, Wis., joined the Army after the 2001 terrorist attacks and had vowed to take on Usama bin Laden, her mother, Jeri Krueger said.

Amy Krueger arrived at Fort Hood on Tuesday and was scheduled to be sent to Afghanistan in December, her mother told the Herald Times Reporter of Manitowoc.

Jeri Krueger recalled telling her daughter that she could not take on bin Laden by herself.

"Watch me," her daughter replied.

Kiel High School Principal Dario Talerico told The Associated Press that Krueger graduated from the school in 1998 and had spoken at least once to local elementary school students about her career.

"I just remember that Amy was a very good kid, who like most kids in a small town are just looking for what their next step in life was going to be and she chose the military," Talerico said. "Once she got into the military, she really connected with that kind of lifestyle and was really proud to serve her country."

Pfc. Kham Xiong

Xiong, 23, of St. Paul, Minn., was a father of three whose family had a history of military service.

Xiong's father, Chor Xiong, is a native of Laos who fought the Viet Cong alongside the CIA in 1972; Chor's father, Kham's grandfather, also fought with the CIA; and Kham's brother, Nelson, is a Marine serving in Afghanistan.

"I very mad," Xiong's father said Friday. Through sniffles and tears, he said his son died for "no reason" and he has a hard time believing Kham is gone.

Kham Xiong was preparing to deploy to Afghanistan, and his sister Mee Xiong said the family would be able to understand if he would have died in battle.

"He didn't get to go overseas and do what he's supposed to do, and he's dead ... killed by our own people," Mee Xiong said.

Xiong was one of 11 siblings and came to the U.S. when he was just a toddler. He grew up in California, then moved to Minnesota with the family about 10 years ago, Chor Xiong said.

He was married and had three children ages 4, 2 and 10 months. He and his wife had moved to Texas in July, Chor Xiong said.

Xiong attended Community of Peace Academy, graduating in 2004, said high school principal Tim McGowan.

"His greatest attribute was his ability to make people smile and make people laugh. Looking back, that's the fondest memory I have — is that smile of his and that smile that he brought to my face," McGowan said.

For his father, the death of the little boy who followed his dad everywhere was hard to take. "I don't think he's dead," Chor Xiong said, then whispered, "I don't think he's dead."

Juanita Warman

Warman, 55, was a military physician assistant with two daughters and six grandchildren.

Her sister, Margaret Yaggie of Roaring Branch in north-central Pennsylvania, told the Pittsburgh Post-Gazette that her sister attended Pittsburgh Langley High School and put herself through school at the University of Pittsburgh. She said her sister spent most of her career in the military.

Major L. Eduardo Caraveo

Caraveo, 52, arrived in the United States in his teens from Ciudad Juarez, Mexico, knowing very little English said his son, also named Eduardo Caraveo.

He earned his doctorate in psychology from the University of Arizona and worked with bilingual special-needs students at Tucson-area schools before entering private practice.

His son told the Arizona Daily Star in Tucson that Caraveo had arrived at Fort Hood on Wednesday and was preparing to deploy to Afghanistan. Eduardo Caraveo spoke to the newspaper from his mother's Tucson home. His father's Web site says he offered marriage seminars with a company based in Woodbridge, Va.

Russell Seager

Russell Seager's uncle said he joined the Army a few years ago because he was a psychiatrist who wanted to help soldiers returning from war adapt to civilian life again. He taught at Bryant & Stratton College in Milwaukee.

Gunman in Fort Hood shooting, Maj. Nidal Malik Hasan, shouted 'Allahu Akbar' before deadly attack

BY MATTHEW LYSIK IN FORT HOOD, TEX., ROBERT F. MOORE AND CORKY SIEMASZKO
DAILY NEWS STAFF WRITERS
Friday, November 06, 2009

The gunman in the Fort Hood massacre hollered "Allahu Akbar!" before embarking on a bloody rampage that left more than a dozen dead, an onlooker told investigators.

"We do have a witness who reported that," Col. John Rossi said Friday morning.

"Allahu Akbar" means "God is great" in Arabic.

At the morning briefing, Rossi also praised Officer Kimberly Munley, a civilian cop who exchanged gunfire with Maj. Nidal Malik Hasan and shot him four times - even after she was hit.

"She did a remarkable job," Rossi said.

Hasan was unconscious but in stable condition, breathing with the aid of a ventilator. Munley was also in stable condition, officials said.

"She walked up and basically engaged him," Lt. Gen. Robert Cone, the base commander at Fort Hood, said on 'Good Morning America' Friday. "I think, certainly, this could've been far worse."

Witnesses described Hasan, who was wearing an Army uniform during the assault, as steely calm. He paused only to reload one of his handguns. After the Thursday shooting, Hasan lay motionless, leading officials to mistakenly assume he was dead.

Battle-hardened Sgt. Howard Appleby of the Bronx said the shooting was over when he arrived, but "it looked like a war zone."

"There was blood everywhere," said Appleby, 31. "It was unbelievable. Guys were screaming and yelling. People were rushing to help. I took my shirt off and began assisting the wounded."

The death toll from the murderous attack rose from 12 to 13 early Friday after a woman died from gunshot wounds. Rossi said 28 people were recovering from their injuries.

While security remained tight on the nation's largest military base, the emergency lockdown was lifted.

President Obama ordered that flags be flown at half staff on all federal buildings until Veteran's Day, which is next Wednesday, as "a modest tribute" to the victims.

"We don't know all the answers yet," Obama said. "What we do know there are families, friends and an entire nation grieving right now."

Hasan, an Army shrink who specialized in combat stress, was about to be deployed to Afghanistan. Sources close to him said he objected to going to battle against other Muslims.

After the shooting, soldiers on the sprawling base scurried to help the wounded. Some tore off pieces of their uniforms to make bandages to treat the injured.

Cone praised the soldiers for their quick reaction.

"God bless these soldiers," Cone said. "As horrible as this was it could have been worse."

San Antonio Express-News

Fort Hood shooting victims

List of the victims in Thursday's Fort Hood shooting rampage that left 13 dead and 30 wounded.

Express-News

Published 01:16 a.m., Saturday, November 7, 2009

The following is a list of the victims in Thursday's Fort Hood shooting rampage that left 13 dead and 38 injured, of which 30 needed to be hospitalized. Authorities released the names of the 13 victims killed Saturday afternoon. The names of those injured are compiled from various news reports across the country.

Killed

Michael Grant Cahill, 62, of Cameron was a physician's assistant and retired CWO who was working on the post as a contracted civilian

Major L. Eduardo Caraveo, 52, of Woodbridge, Va.

Staff Sgt. Justin M. DeCrow, 32, of Plymouth, Ind.

Capt. John P. Gaffaney, 54, of San Diego, Calif.

Spc. Frederick Greene, 29, of Mountain City, Tenn.

Spc. Jason Dean Hunt, 22, of Tillman, Okla.

Sgt. Amv Krueger, 29, of Kiel, Wis.

Pfc. Aaron Thomas Nemelka, 19, of West Jordan, Utah

Pfc. Michael Pearson, 22, of Bolingbrook, Ill.

Capt. Russell Seager, 41, of Racine, Wis.

Pvt. Francheska Velez, 21, of Chicago. She was pregnant.

Lt. Col. Juanita Warman, 55, of Havre de Grace, Md.

Spc. Kham Xiong, 23, of St. Paul, Minn.

Wounded

Sgt. Patrick Blue III, 23, of Belcourt, N.D., was hit in the side by bullet fragments during the attack

Amber Bahr, 19, of Random Lake, Wis., was shot in the stomach.

Keara Bono Torkelson, 21, of Ostego, Mo., was shot in the back left shoulder.

Alan Carroll, 20, of Bridgewater, N.J., was shot three times.

Reservist Dorothy "Dorrie" Carskadon of Rockford, Ill., was critically injured.

Staff Sgt. Joy Clark, 27, of Des Moines suffered a gunshot wound

Spc. Matthew Cook, 30, of Binghamton, N.Y., was shot in the abdomen

Staff Sgt. Chad Davis of Eufaula, Ala., was wounded.

Pvt. Joey Foster, 21, of Ogden, Utah, was shot in the hip

Cpl. Nathan Hewitt, 26, of West Lafayette, Ind.

Pvt. Najee Hull, 21, of Chicago was shot three times, once in the leg and twice in the back.

Staff Sgt. Eric Williams Jackson, 39, of Beaumont, was shot in the forearm.

Justin Johnson, 21, of Punta Gorda, Fla., was shot in the chest and leg.

Staff. Sgt. Alonzo Lunsford, of Richmond County, N.C., was shot multiple times.

Shawn Manning, 33, formerly of Redman, Ore., was shot six times

Army 2nd Lt. Brandy Mason, of Monessen, was wounded.

Reserve Spc. Grant Moxon, 23, of Lodi, Wis., was shot in the leg.

Sgt. Kimberly Munley, 34, of Killeen is the Fort Hood civilian police officer who was shot multiple times by the suspect.

Sgt. John Page, 28, of North Freedom, Wis., who was shot in the arm and chest.

Chief Warrant Officer Chris Royal, 38, of Eclectic, Ala., was shot three times.

Maj. Randy Rover of Dothan, Ala., was shot.

Pvt. Raymondo "Ray" Saucedo, 26, of Greenville, Mich., had a bullet graze his arm.

George Stratton III, 18, of Post Falls, Idaho, was shot in the shoulder.

Patrick Zeigler, 28, of Orange County, Fla., was critically wounded.

Read more: <http://www.mysanantonio.com/default/article/Fort-Hood-shooting-victims-847227.php#ixzz1GDlk34Fo>

The Washington Post

Fort Hood marks massacre anniversary

By *Ann Gerhart*

Washington Post Staff Writer

Saturday, November 6, 2010; 1:02 AM

Until Friday, there was only one outward symbol at Fort Hood of the chaos and carnage that erupted there on Nov. 5, 2009. The wreaths of ribbons and flowers hung on a fence surrounding Building 42003 at the massive Army post in Texas. They were placed there by a wife who became a widow that day.

Now there is a 6-foot-tall granite memorial, unveiled at a ceremony on the one-year anniversary of the massacre, the worst at a U.S. military installation. Inscribed with the names of the 13 slain when a soldier opened fire as they waited to do paperwork before a deployment, the marker has taken its place near the post's memorials to those killed in war - more than 500 in the past five years.

"Our home was attacked . . . not in a distant battlefield but right here . . . and American heroes sacrificed their lives," Gen. William Grimsley, Fort Hood's commanding general, told about 1,000 people gathered Friday morning for the ceremony, according to the Associated Press.

Grimsley and Army Secretary John M. McHugh presented awards to more than 50 soldiers and civilians - some of whom had been shot themselves - who rushed to aid the wounded. Some recently relived the horror, when they testified at a hearing for Maj. Nidal Malik Hasan, who is charged with multiple counts of murder. Some spent much of the past year in Afghanistan and Iraq, returning a few weeks ago.

"It's a chapter in this Army that no matter how many tears may fall, [they] will never, ever be washed away and will be part of our history forever," McHugh said, the wire service reported.

While military officials kept their remarks focused on sacrifice and resilience, others used the shooting anniversary to renew their criticism of a Defense Department they say still is not adequately alert to extremists developing in its ranks.

Hasan, 40, an Army psychiatrist, alarmed colleagues with talk of whether his patients could be prosecuted for war crimes. He sent more than a dozen e-mails in the months before the shooting to radical Muslim cleric Anwar al-Aulaqi, an American citizen now targeted by the United States for assassination.

The department "still refuses to even use the words 'radical Islam' in their report on the attack or recommendations on how to prevent future attacks," said Rep. John Carter, the Texas Republican whose district includes Fort Hood. "That does not instill confidence in Congress that the DoD is taking the necessary steps to protect our troops."

And Sens. Joseph I. Lieberman (I-Conn.) and Susan Collins (R-Maine), who head the Senate Homeland Security Committee, said Thursday in a statement that "the attack could have been prevented if the government acted on information in its possession." The two headed a lengthy probe that included interviews with FBI and military investigators about what was known, or should have been known, about Hasan. They expect to issue a final report as soon as administration and committee officials agree on what portions must remain classified. "Our report will show that our domestic intelligence system must be strengthened in order to counter the threat of homegrown terrorism, and that our military must have zero tolerance for the expression of violent Islamist extremism in its ranks," the senators said.

The military recently began requiring soldiers to report behavior by comrades that might indicate extremist or terrorist sympathies. The Army's head of counterintelligence will maintain a database of those reports.

At Fort Hood, commanders are now directed to ask soldiers about what private weapons they own and to encourage them to register off-post weapons with officials on post. Soldiers who live on the post already are required to register their firearms with the Army. Soldiers are not allowed to carry their personal weapons in garrison or in combat theaters.

And Building 42003, the always bustling center where soldiers went to fill out their forms and check medical records before deploying, remains closed. The fence, adorned with handmade wreaths, keeps it closed off as a crime scene.

Susan Wallen

From: Jeffrey Mittman [JMittman@akclu.org]
Sent: Thursday, March 17, 2011 10:24 AM
To: Rep. Dan Saddler; Rep. Steve Thompson; Rep. Carl Gatto
Cc: Rep. Alan Austerman; Rep. Bob Lynn; Rep. Sharon Cissna; Rep. Bob Miller
Subject: HJR 18 - ACLU Review of Legal Issues and Statement in Opposition
Attachments: image001.jpg; Saddler & Thompson.HJR 18.ACLU Legal Issues.2011.03.17.pdf

Co-Chairs Saddler & Thompson, and Vice-Chair Gatto:

Thank you for the opportunity to submit the attached Statement in Opposition to House Joint Resolution 18, with accompanying review of legal issues.

We have several concerns with the proposed legislation, and urge that it be tabled.

Please feel free to contact the ACLU if you have any issues opening the attachment, or wish further information.

Thank you,

Jeffrey Mittman

Direct dial: (907) 263-2002
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March 17, 2011

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The Honorable Steve Thompson, Co-Chair
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Re: House Joint Resolution 18
ACLU Review of Legal Issues

Co-Chair Saddler, Co-Chair Thompson, Vice-Chair Gatto:

Thank you for the opportunity to submit written testimony with respect to House Joint Resolution 18.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions.

Fundamentally, as the ultimate denial of civil rights, and as an unfair and arbitrary system, the ACLU opposes capital punishment.

Where capital punishment is at issue, proceedings must be undertaken with seriousness and all appropriate processes. *See, e.g., Furman v. Georgia*, 408 U.S. 238, 286–89 (1972) (Brennan, J., concurring) (“[d]eath is a unique punishment”; “[d]eath . . . is in a class by itself”); *id.* at 306.

We note that the military has instituted proceedings deliberately to protect both the rights of defendants as well as concerns of society. As such, and given the legal posture of the Hasan matter, it would be improper for the Alaska Legislature to inject the political process into a legal proceeding.

Procedural Status of Hasan Military Proceedings

It is our understanding that the matter of Maj. Hasan is *already proceeding* with a recommendation from the officer exercising special court-martial jurisdiction that it be capital, and that the Lieutenant General commanding Third Corps has the discretion to accept or disregard this recommendation. Thus, as a procedural matter, it does not appear that the Resolution's direction to the Judge Advocate General would be procedurally correct.

Unethical Interference in Legal Proceedings

It is vital to our American legal system that proceedings – both civilian and military – have the highest confidence of the American people, and are respected for their fairness. *Injection of political sentiment into jurisprudential matters is unwise and runs counter to the ethics required of lawyers and judges.*

Military lawyers must follow the Army Rules of Professional Conduct for Lawyers, http://www.loc.gov/rr/frd/Military_Law/pdf/AR_27-26_5-1-1992.pdf. Rule 3.5, concerning Impartiality and Decorum of the Tribunal, states that:

A lawyer shall not:

- (a) seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law;

The commentary notes:

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. (*emphasis added*)

It is difficult to comprehend how a resolution from a political body could be seen as anything other than an attempt to “improperly influence” a proceeding.

Likewise, the ABA Model Code of Judicial Conduct, which we understand to be binding on military tribunals, sets forth two relevant Canons.

Canon 1 - A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Canon 2 - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

<http://www.ajs.org/ethics/pdfs/ABA2007modelcodeasapproved.pdf>

Should the Alaska Legislature pass and transmit to the military HJR 18, it would damage the proceedings and expose the tribunal to questions regarding its independence and impartiality, and raises the specter of the “appearance of impartiality.” Moreover, the injection of a purely political document into the ongoing proceedings might actually give Maj. Hasan an avenue for appeal, should a capital sentence be imposed: that the decision to pursue the death penalty was the product of political influence.

For the above reasons, we urge the Committee not to pass HJR 18 and table any further consideration.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

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Death Penalty Script

I want to thank Rep. Ramras for conducting a very fair and even-handed hearing on the death penalty bill before us. There was potential for this hearing to turn into a circus and political grandstanding. It did not happen. This hearing has been a credit to the Chair, to the committee, and to everybody who testified. Thank you.

That said, I suspect they're enough votes to move this bill out of committee, regardless how I vote. But I take no comfort in that. I think I owe everybody some explanation as to why I will help- or not help- vote this bill out of committee, and why I'll mark the transmittal "Do Pass," or "Do Not Pass", or simply "No Recommendation". We've all cast tough votes on controversial bills – and this is a tough vote for me. We're talking about a life or death, not only for a murderer, but also for potential future victims. It should be a tough vote.

Let me offer a few thoughts.

I'm well aware we legislate here without reference to anyone's religion, and that's as it should be. That said, I'm unaware of any churches, or other faith organizations, for whom being for, or against, the death penalty is considered a matter of eternal salvation. Churches, and particular believers within those churches, often come to a very different conclusion on the death penalty, and every other issue. In my own Church, for example, dogma-that which must be believed to remain in full communion with my church – is not in the same category as Church teaching, which is spiritual guidance which deserves prayerful consideration. Some may have thought that, due to my personal religious affiliation, I would automatically vote "No" against this bill. Not so.

During the hearing, one of our committee asked a witness something like, "Didn't God inflict the death penalty on people?" Well, yes, that's true. But, on the occasion of the world's first murder, that of Cain killing Abel, God didn't impose the death penalty on Cain. He spared him. So, God apparently opposes the death penalty. But wait. In about the very next sentence, God tells Cain that anyone who harms him will be killed. So now God apparently supports the death penalty – at least for anyone who kills Cain. In the New Testament, some would also claim that nowhere does Jesus, or any of his apostles speak directly against the death penalty – they merely accepted the status quo. There's more, but I'm not a theologian, and this is a Judiciary hearing, not a theology seminar. The point is, there may be church teaching about the death penalty, but no one has made me aware of any absolutes on the subject.

I'm "Pro-Life." I oppose abortion – one set of reasons being that an infant victim has no choice, receives no trial, and is innocence personified. On the other hand, a murderer did have a choice, and choices have consequences. In contrast to the victim of abortion, the felon did receive a trial, and was found guilty – and the odds are, was actually guilty. So, if a fetus can be aborted and killed without any trial, one could logically ask why then should we prohibit capital punishment for murderers – after the murderer received a trial, a conviction, and appeal after appeal for maybe fifteen years? Doesn't seem sensible. But maybe I'm missing something.

Just because I'm a strong Pro-Life Advocate – always have, am now, always will be – doesn't mean an automatic "no" vote on this bill. I think being Pro-Life also means protecting the lives of citizens from murderers, and many believe capital punishment is the best way to do it.

Then there's the question, "Is capital punishment a deterrent?" I don't know. But most statistics say no, it's not a deterrent. Perhaps not, but quite obviously execution "deters" the person executed.

Whatever, we've heard ample evidence, at this hearing, that many innocent people have been wrongfully convicted, and sentenced to death. The odds are, if we return capital punishment to Alaska, innocent people will be put to death by the state – the state meaning us – like us sitting here around this table.

A person serving a life sentence, later found to be innocent, can be released from prison, and compensated to some degree. An innocent person executed can't be resurrected. Some would argue a life sentence, without possibility of parole, is worse punishment than execution. Perhaps. But families of murder victims suffer their own "life sentence" – a lifetime sentence of sorrow.

The practical matter is, if we execute a bunch of murderers, but no deterrence results, we've still eliminated the murderers. Dead murderers don't murder again. But if we fail to execute murderers, when their execution would have deterred potential murderers, we have – in fact – enabled the murder of a bunch of innocent people. Not good.

Some years ago in California, a monster named Larry Singleton raped a 14 year old girl, and cut off both her arms. He was sent to prison, and later released – and then murdered a mother of three in Florida. What does one have to do to qualify for the death penalty anyway? Because Singleton wasn't executed, a mother of three was later killed, and her children left motherless.

The question is, could life imprisonment, without possibility of parole take the place of capital punishment, and provide for public safety? Sure. But, can we depend on the judicial system to protect us with appropriate sentences. I have my doubts. Maybe if the judicial system did a better job in protecting public safety, there'd be less demand for a death penalty.

As a question in passing, if a judge lets a multiple prior offense violent criminal loose on society, and that person commits additional heinous crimes, should that judge be removed from the bench, suffer civil liability, or be put himself in jail as an enabler? Just something to think about.

I'm disappointed that, during testimony, more than one injected racism into the discussion, on both the pro and the con side of this issue. Several who testified said the death penalty is disproportionately applied to minorities. I think it's more accurate to say the death penalty is disproportionately imposed on poor folks – and leave the racism out of it. Poor folks, whatever their race, don't have money like O.J. Simpson did to defend themselves against murder with a legal "dream team." I don't like that, but its reality.

Being a minority, or being poor, or suffering a horrific home or community environment, is problematic – but no excuse for crime. Unfortunately, we do live in imperfect world, where prejudice too often translates to gross unfairness, and bigots still do exist. Again, that's reality. And reality is the world we should live in – while we try to make the world a better place for all of us.

There's also a bean counters question of which is more expensive, paying for a life sentence – including old age health care in prison, or the expense of lengthy death sentence appeals – or capital punishment? Frankly, I don't care.

Whether the cost is ten dollars or ten billion, cost should not be the determining factor for establishing, or not establishing, capital punishment. Life shouldn't have a price tag. Also, what sense does it make to impose a death penalty, but then not carry it out before 10, 15, or even 20 years. To be any kind of deterrent, punishment should come shortly after the sentence.

When I ran for Congress in California in 1992, I supported capital punishment. It was all over my campaign literature. But even then, I demanded that any capital punishment law be applied fairly, and limited to only the most egregious and most heinous of crimes. That's my position today. My sympathy for victims, and sympathy for victim families, is without bounds. Imprisonment, without possibility of parole, sounds good. But in today's tolerant judicial system, where penumbras of what isn't in the constitution constantly appear, how many judges can we trust to put murderers in prison and throw away the key? Probably not enough.

There are so many questions to this issue, at least to me. For example, the bill before us excludes execution of the mentally retarded. Good. I agree with that. The bill defines mental retardation as 70 or below. So, when the time comes for sentencing, if your IQ is 70 you're dead. But if your IQ is 71 you live. I made a big thing during this hearing about who picks which IQ test from the battery of many different IQ tests available? And, if any IQ score of 70 comes on the Stanford-Binet, will it also come out 70 on the Wechsler test, and 70 on all the other different IQ tests? I never got an answer in this hearing to question that made sense to me. But someone better figure it out before we put people to death.

Then there's the question of our "multiple intelligences." Which one of our multiple intelligences do we test to determine if someone is executed? These little parts of the bill, and the complex questions surrounding them, is another illustration of practical difficulties of writing fair capital punishment legislation, even if we – and only if – we conclude the death penalty is moral.

So here's my bottom line, and I'm going to express it without waiting for a vote in this Committee, or on the House floor. I worry about the effectiveness of lifelong imprisonment, as compared to capital punishment. I think, under some circumstances, capital punishment may in fact be legitimate. My own Church teaches that. But I'm not convinced – not convinced – any legislature in the world is capable of the level of fairness that one should demand of capital punishment. I have many, many doubts about the whole capital punishment thing, from every direction I come at it.

When I went Air Force Aviation Cadet flying school, my flying instructors drummed one thing into my head, "If in doubt, bail out!" And that's what I'm doing. I'll be voting "No" on this bill.