

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

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REPRESENTATIVE BETTYE DAVIS
DISTRICT 21

MEMORANDUM

TO: REP. BRIAN PORTER, CHAIR
HOUSE JUDICIARY COMMITTEE

FR: REP. BETTYE DAVIS *BD*

DT: JANUARY 31, 1994

RE: HB 162 - DEATH PENALTY LEGISLATION
DETERRENCE INFORMATION

Attached is the information regarding deterrence which I referred to during my testimony before House Judiciary . I hope you will find this information useful during your deliberations on HB 162.



deeply destructive of the common decency of the community; the benefits are illusory.

Two conclusions buttress our entire case: *Capital punishment does not deter crime, and the death penalty is uncivilized in theory and unfair and inequitable in practice.*

Deterrence

The argument most often cited in support of capital punishment is that the threat of executions deters capital crimes more effectively than imprisonment. This claim is plausible, but the facts do not support it. The death penalty fails as a deterrent for several reasons.

(1) Any punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment cannot be administered to meet these conditions.

Only a small proportion of first-degree murderers is sentenced to death, and even fewer are executed. Although death sentences since 1980 have increased in number to about 250 per year,¹ this is still only 1 per cent of all homicides known to the police.² Of all those convicted on a charge of criminal homicide, only 2 percent-- about 1 in 50 -- are eventually sentenced to death.³

The possibility of increasing the number of convicted murderers sentenced to death and executed by enacting *mandatory* death penalty laws was ruled unconstitutional in 1976 (*Woodson v. North Carolina*, 428 U.S. 280).

Considerable delay in carrying out the death sentence is unavoidable, given the procedural safeguards required by the courts in capital cases. Starting with empaneling the trial jury, murder trials take far longer when the death penalty is involved. Post-conviction appeals in death-penalty cases are far more frequent as well. All these factors increase the time and cost of administering criminal justice.

1 See U.S. Dept. Justice, *Capital Punishment*, annually, 1980 et seq.

2 See *Uniform Crime Reports*, annually 1980 et seq.

3 See *Uniform Crime Reports*.

The sobering lesson is that we can reduce such delay and costs only by abandoning the procedural safeguards and constitutional rights of suspects, defendants, and convicts, with the attendant high risk of convicting the wrong person and executing the innocent.

(2) Persons who commit murder and other crimes of personal violence either premeditate them or they do not. If the crime is premeditated, the criminal ordinarily concentrates on escaping detection, arrest, and conviction. The threat of even the severest punishment will not deter those who expect to escape detection and arrest. If the crime is not premeditated, then it is impossible to imagine how the threat of any punishment could deter it. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. Impulsive or expressive violence is inflicted by persons heedless of the consequences to themselves as well as to others.

Gangland killings, air piracy, drive-by shootings, and kidnapping for ransom are among the graver felonies that continue to be committed because some individuals think they are too clever to get caught. Political terrorism is usually committed in the name of an ideology that honors its martyrs; trying to cope with it by threatening death for terrorists is futile. Such threats leave untouched the underlying causes and ignore the many political and diplomatic sanctions (such as treaties against asylum for international terrorists) that could appreciably lower the incidence of terrorism.

The attempt to reduce murders in the illegal drug trade by the threat of severe punishment ignores this fact: Anyone trafficking in illegal drugs is already betting his life in violent competition with other dealers. It is irrational to think that the death penalty--a remote threat at best--will deter murders committed in drug turf wars or by street-level dealers.

(3) If, however, severe punishment can deter crime, then long-term imprisonment is severe enough to cause any rational person not to commit violent crimes. The vast preponderance of the evidence shows that *the death penalty is no more effective than imprisonment in deterring murder* and that it may even be an incitement to criminal violence in certain cases.

(a) Death-penalty states as a group do not have lower rates of criminal homicide than non-death penalty states. During the 1980s, death-penalty states averaged an annual rate of 7.5 criminal homicides per 100,000 of population; abolition states averaged a rate of 7.4.⁴

(b) Use of the death penalty in a given state may increase the subsequent rate of criminal homicide in that state. In New York, for example, between 1907 and 1964, 692 executions were carried out. On the average, over this 57-year period, one or more executions in a given month added a net increase of two homicides to the total committed in the next month.⁵

(c) In neighboring states--one with the death penalty and the others without it--the one with the death penalty does not show a consistently lower rate of criminal homicide. For example, between 1972 and 1990, the homicide rate in Michigan (which has no death penalty) was generally as low as or lower than the neighboring state of Indiana, which restored the death penalty in 1973 and since then has sentenced 70 persons to death and carried out 2 executions.⁶

(d) Police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death-penalty states. Between 1973 and 1984, for example, lethal assaults against police were not significantly more or less frequent in abolition states

4 *Uniform Crime Reports*, annually, 1980-1989.

5 Bowers and Pierce, "Deterrence or Brutalization," in *Crime & Delinquency* (1980).

6 U.S. Dept. Justice, *Capital Punishment, 1972-1990*; *Uniform Crime Reports*, annually, 1972-1990; and NAACP Legal Defense and Educational Fund, "Death Row, USA," Spring 1992.

than in death-penalty states. There is "no support for the view that the death penalty provides a more effective deterrent to police homicides than alternative sanctions. Not for a single year was evidence found that police are safer in jurisdictions that provide for capital punishment."⁷

(e) Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death-penalty states.⁸ Between 1984 and 1989, seventeen prison staff were murdered by prisoners in ten states; of these murders, 88 percent (15 of 17) occurred in death penalty jurisdictions -- just as about 88 percent of all the prisoners in those ten states were in death penalty jurisdictions.⁹ Evidently, the threat of the death penalty "does not even exert an incremental deterrent effect over the threat of a lesser punishment in the abolitionist state."¹⁰

Actual experience establishes these conclusions beyond a reasonable doubt. No comparable body of evidence contradicts them.

Three investigations since *Furman*, using methods pioneered by economists, reported findings in the opposite direction.¹¹ Subsequently, several qualified investigators have independently examined these claims, and all have rejected them.¹² The National Academy of Sciences, in its thorough report on the effects of criminal sanctions on crime rates, con-

⁷ Bailey and Peterson, in *Criminology* (1987), p. 22.

⁸ *Sourcebook of Criminal Justice Statistics*, 1990.

⁹ Bureau of Justice Statistics, *Prisons and Prisoners in the United States* (1992), p. 1.

¹⁰ Wolfson, in Bedau, ed., *The Death Penalty in America*, 3rd ed. (1982), p. 167.

¹¹ Ehrlich, in *American Economic Review* (1974); Phillips, in *American Journal of Sociology* (1980); and Layson, in *Southern Economic Journal* (1985).

¹² Lempert, in *Crime & Delinquency* (1983); Peterson and Bailey, in Chambliss, ed., *Criminal Law in Action*, 2nd ed. (1984); Bowers, in Hasse and Inciardi, eds., *Challenging Capital Punishment* (1988); Peterson and Bailey, in *Social Forces* (1988); and Fox and Radelet, in *Loyola of Los Angeles Law Review* (1989).

cluded: "It seems unthinkable to us to base decisions on the use of the death penalty" on such "fragile" and "uncertain" results. "We see too many plausible explanations for [these] findings ... other than the theory that capital punishment deters murder."¹³

Furthermore, cases have been clinically documented where the death penalty actually incited the capital crimes it was supposed to deter. These include instances of the so-called suicide-by-execution syndrome--persons who wanted but feared to take their own life and committed murder so that society would kill them.¹⁴

It must, of course, be conceded that inflicting the death penalty guarantees that the condemned person will commit no further crimes. This is an incapacitative, not a deterrent, effect of executions. Furthermore, it is too high a price to pay when studies show that very few convicted murderers ever commit another crime of violence.¹⁵ A recent study examined the prison and post-release records of 533 prisoners on death row in 1972 whose sentences were reduced to life by the Supreme Court's ruling in *Furman*. The research showed that 6 had committed another murder. But the same study showed that in 4 other cases, an innocent man had been sentenced to death.¹⁶

Recidivism among murderers does occasionally happen. But it happens less frequently than most people believe; the media rarely distinguish between a paroled murderer who murders again and other murderers who have a previous criminal record but not for homicide.

There is no way to predict which convicted murderers will kill again. Repeat murders could be prevented only by executing *all* those convicted of criminal homicide. Such a policy is too inhumane and brutal to be taken seriously. Society would never tolerate dozens of executions daily, yet nothing less would suffice. Equally effective but far less inhumane is a policy of life imprisonment without the possibility of parole.

13 Blumstein, Cohen, and Nagin, eds., *Deterrence and Incapacitation* (1975), p. 358.

14 West, Solomon, and Diamond, in Bedau and Pierce, eds., *Capital Punishment in the United States* (1976).

15 Bedau, "Recidivism, Parole, and Deterrence," in Bedau, ed., *Death Penalty in America*, 3rd ed.

16 Marquart and Sorensen, in *Loyola of Los Angeles Law Review* (1989).

DEATH PENALTY INFORMATION CENTER

FBI Uniform Crime Reports: Murder Rates per 100,000 population

	1992	1991	
1. South Dakota	0.6	1.7	
2. Iowa*	1.6	2.0	* States without the death penalty
3. New Hampshire	1.6	3.6	
4. Maine*	1.7	1.2	Average murder rate among states without the death penalty 4.9
5. North Dakota*	1.9	1.1	
6. Vermont*	2.1	2.1	
7. Montana	2.9	2.6	Average murder rate among states with the death penalty 7.8
8. Utah	3.0	2.9	
9. Minnesota*	3.3	3.0	
10. Idaho	3.5	1.8	
11. Rhode Island*	3.6	3.7	
12. Hawaii*	3.6	4.0	
13. Massachusetts*	3.6	4.2	
14. Wyoming	3.6	3.3	
15. Nebraska	4.2	3.3	
16. Wisconsin*	4.4	4.8	
17. Delaware	4.6	5.4	
18. Oregon	4.7	4.6	
19. Washington	5.0	4.2	
20. New Jersey	5.1	5.2	
21. Connecticut	5.1	5.7	
22. Kentucky	5.8	6.8	
23. Kansas*	6.0	6.1	
24. Colorado	6.2	5.9	
25. Pennsylvania	6.2	6.3	
26. West Virginia*	6.3	6.2	
27. Oklahoma	6.5	7.2	
28. Ohio	6.6	7.2	
29. Alaska*	7.5	7.4	
30. Arizona	8.1	7.8	
31. Indiana	8.2	7.5	
32. Virginia	8.8	9.3	
33. New Mexico	8.9	10.5	
34. Florida	9.0	9.4	
35. Michigan*	9.9	10.8	
36. Tennessee	10.4	11.0	
37. South Carolina	10.4	11.3	
38. Missouri	10.5	10.5	
39. North Carolina	10.6	11.4	
40. Arkansas	10.8	11.1	
41. Nevada	10.9	11.8	
42. Alabama	11.0	11.5	
43. Georgia	11.0	12.8	
44. Illinois	11.4	11.8	
45. Maryland	12.1	11.7	
46. Mississippi	12.2	12.8	
47. California	12.7	12.7	
48. Texas	12.7	15.3	
49. New York*	13.2	14.2	
50. Louisiana	17.4	16.9	
NATIONAL	9.3	9.8	

Remarks by Edward McNally
District Attorney
(Prepared Text)
Joint Hearings on Capital Punishment of
the Senate Judiciary Committee and the House Judiciary Committee
Legislative Information Office
Anchorage, Alaska
November 16, 1993

Mr. Chairman, Senator Taylor, Senate President Halford, and all the members of the House and Senate Judiciary Committee, as well as the members of the public, my colleagues from the practice of criminal law, and especially those here today who are survivors of murder, or other victims of crime:

We appreciate very much an opportunity to participate in this dialogue today. I know that many of you have been champions in this battle and other efforts for many years.

I am here today on behalf of Governor Hickel, who asked me to convey his support for your efforts. Governor Hickel is prepared to sign legislation to ensure that cop killers, and others who are guilty of vicious and heinous murders in Alaska will face the full range of constitutionally approved penalties.

I also bring with me the personal thanks of the Attorney General, who regrets that he was unable to participate in person. Like so many of you, both Governor Hickel and Attorney General Cole have made the battle against violent crime a top priority.

Like the majority of the Alaskan people, the Administration believes that there are circumstances where justice requires at least the opportunity to impose the death penalty. And today I would like today to pose some questions. Some questions which those of you who support capital punishment may want to pose to colleagues who do not. Questions which, those who are here to articulate their opposition to the death penalty, may want to address in the course of their testimony.

The Death Penalty is Already in Effect in Alaska

From the earliest days of our country, the death penalty has been part of the criminal justice system. Indeed, federal law in effect in Alaska authorizes the imposition of capital punishment for several types of homicide and other offenses. The death penalty is in effect in Alaska today. And as we sit here, there is an Alaskan who is currently facing a capital punishment prosecution. His name is R.D. Cheely.

President Clinton is working to add approximately 47 new categories of capital

punishment to the federal laws that will be in effect in the State of Alaska. And this raises a whole additional question for the Senate and the House to consider. It's a question of federalism. And the question is this: How far do we want to go toward enforcing our own laws?

Throughout the history of constitutional government in America and in Alaska, police powers and the criminal justice system have stood out as among the most important powers reserved for this Nation's sovereign states. And there aren't very many areas where the people of Alaska would say that the federal government has done a better job of doing things in Alaska, than has been done when handled by Alaskans themselves.

I mentioned R.D. Cheely, a prison inmate already convicted of one murder, who is now accused of the intentional murder of a second innocent Alaskan by sending a bomb through the federal mails. And I should note that the woman who lost her husband and who herself was terribly injured by that mail bomb, Mrs. Michelle Kerr, is here today.

And so the question is this: This is an Alaska case. It is alleged to have been committed in Alaska, by an Alaskan, against an Alaskan. But where is this trial going to take place? Most of you probably know -- it is going to be in Portland, Oregon, nearly two thousand miles away. One of the lead prosecutors is on assignment from Washington, D.C.

The question is not: Will there be a death penalty in Alaska? Through federal law, there already is.

Rather, the question is this: Do we want it decided by Alaska laws, by Alaska judges, by Alaska juries -- which is to say -- by the Alaska people? The people that you and I and others here in this room serve? Or do we leave it to the federal government? We rail against federal control of so many other areas of our lives. Do we really want to leave questions of life and death exclusively up to the Feds?

In contrast, look at how two of our sister states handled what is probably the most notorious mail bombing case in recent years. It was the series of mail bombings which resulted in the murders of a Georgia federal judge and an Alabama civil rights worker. And that case has recently regained a little bit of notice because the new director of the FBI, Louis Freeh, tried the case himself. The defendant in that case was first convicted in federal court. But after he was convicted, each of those two sovereign states moved to bring the defendant back. Back to Georgia, where they expected to place him on trial for having killed a Georgia judge. And back to Alabama, where he would face the death penalty -- even though he is already in prison for the rest of his life (on the federal conviction for using the mails to kill that same Alabama civil rights worker).

And so the question is this: Do we in Alaska want to retain the same rights as Georgia, Alabama, and a total of 38 other sovereign U.S. states?

Protecting Alaska's Troopers and Police

In examining this question, I would like to focus especially on the question the Governor has focused on, and that is cop killers.

You know, it used to be unthinkable to shoot a cop in Alaska. If you were surrounded by the troopers or police, you threw down your gun, put up your hands, and you took your chances with the fairest, most decent, most due process-oriented criminal justice system yet invented.

No longer. Today police are sometimes the first ones shot. They are targeted by criminals armed with a staggering array of weapons.

Yesterday, in this same room, some of you were present when Sgt. Mike Grimes, Chief of Homicide at the Anchorage Police Department, showed you some of the explosive firearms that are being used on the streets of this town.

Permit me to tell you about another Alaska cop by the name of Officer Anthony Jones. Tony Jones was one of only two African-American officers on the Dillingham police force. He had a wife and young children.

Late one night two years ago, a man just under the age of 18, broke into a sporting goods store in downtown Dillingham. He took out a variety of long guns and set them up all in a row, "Alamo" style. He loaded the weapons one-by-one. Then he triggered the alarm, knowing it would bring the police. And he waited.

Tony Jones was off duty. But he heard the report, and he was the nearest to the store. No doubt Officer Jones thought he was investigating a false alarm, or, at worst, a simple breaking and entering. He could not have known what was waiting. And as he passed the window and entered the sights of this young man's gun, he was killed with a single shot to the head.

After Tony was shot, and with his body still sprawled in the gravel, an Alaska state trooper was brushed back by another shot, and we almost had two cops dead.

An 18 hour stand off ensued. A CERT team was airlifted in by the Alaska State Troopers. I sent a senior homicide prosecutor out on the plane with them. Ultimately, the defendant fired hundreds of rounds at the troopers and police who were in formation around the building. None of the shots were successful. That is, none of the shots succeeded in actually killing any additional police.

I have since been to the shooting scene. And I encourage you to go to Dillingham to look at the site. It's astonishing. The CERT team set up in a pair of nearby buildings which faced the sporting goods store from across the alley. Each window, where the police were

waiting in surveillance, is surrounded by a target-like pattern of scores and scores of bullet holes. It's still that way to this day.

This case was resolved in a way that was difficult, challenging, and ultimately inadequate. The killer was a juvenile. Most of you are only too familiar with the problems of Alaska's juvenile justice system. He agreed to plead guilty to First Degree Murder, and to waive into Superior Court, saving years of litigation on the part of the State, and he was given a 65 year cap.

I opposed this resolution, but was ultimately overruled. Like me, many police feel that justice was shortchanged in that case. Nevertheless, those in favor of the resolution cited inadequate juvenile and other laws in Alaska. That's why Alaska's police deserve the same protections as those on the books in 38 other states. Maybe the next criminal who gets an Alaska cop in his sights will think twice.

Alaska Deserves the Full Array of Constitutional Penalties

In this state, we rarely ever see a guilty plea to First Degree Murder. That is not true in 38 other states where they have capital punishment. There are killers in this state who should plead guilty to First Degree murder. They confess to the police. It's on video tape. They've waived Miranda. The gun is there. There are eye witnesses to the crime. And yet, under current Alaska law, there is simply no incentive to plead guilty to murder and to accept responsibility for their crime. There is nothing the State can offer, nothing we can do. And so they don't plead. We have a trial. And guess what? That trial is very expensive. The process is very traumatic to victims and survivors. And in many cases, in which the evidence is overwhelming, the trial can become little more than a prolonged sentencing proceeding.

Look at Doug Gustafson, the co-defendant in the mail bombing case. He now stands convicted of his second Alaska murder. He plead guilty to an astonishing charge in federal court. He plead guilty to life in prison without parole. In making that plea, he knew he would die in prison. He will never see freedom again. And he did that in exchange for two things:

One, a deal was made for leniency for his sister, who was also involved. That's something we can all understand. But more importantly, he also got the promise that, unlike R.D. Cheely, he would not face an aggressive federal prosecution for the death penalty.

Give Alaska that tool as well.

Why shouldn't the State of Alaska -- why shouldn't your prosecutor at the courthouse down the street -- have the same constitutionally-approved penalties as the federal prosecutors who negotiate cases a few blocks in the other direction? We need the full array of penalties on the books. And that is one of the areas on which I would invite death penalty opponents to respond, either today, or at other opportunities.

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The Cost to Alaska of Not Having a Death Penalty

When we talk about fiscal notes, which is much of the focus in this debate, I urge you to consider the cost of not having a death penalty. Look at the example I just described. Please look at the cost of all the cases that go to trial that probably shouldn't, and which could be disposed of short of trial.

Look at the cost of not having a death penalty. And again, let's focus on cop killers. 30,000 police men and women have been killed in the line of duty since this country was founded. Twenty-six of those killed were here in Alaska. Add to that list the wounded and the disabled. Add to that list the families of these officers, who are so often forgotten. Tony Jones left a wife and young children in Dillingham. And look at the terrible toll in loneliness and loss.

The expensive and explosive lesson in Alaska in recent years is that, for the bad guys, the rules of the game have changed dramatically. Alaska's troopers and Alaska's cops deserve all the protection the laws you pass can offer. And criminals need to understand a simple fact. They need to know that in the state of Alaska, if you shoot a cop, you will be severely punished, and quite possibly with your life. Criminals need to know that.

Let me again address the fiscal notes. We will address this in more detail a little later, with Assistant Attorney General Dean Guaneli, who is on the line from Juneau. I understand that the fiscal notes and the related budgetary considerations are important, responsible, and fundamental elements of what you do in your work. But I would also offer two observations.

First, the truth is, nobody knows what the fiscal notes on this legislation will ultimately be. Nobody really knows. And given the future variables, there is no way of knowing. Senator Donley asked the previous speaker a question about the Alaska Supreme Court. The variables of which judges in which courts make which decisions, are impossible for any of us to fully foresee.

The second observation is that we in law enforcement -- officials such as myself, running the largest prosecution office in the state -- make resource determinations every single day. And no matter what laws you add or take off the books, there is no substitute for responsible good judgment and common sense.

The Anchorage DA's office screens over 1,400 felony cases a year. But we can't take 1,400 cases to trial. There aren't enough judges. There aren't enough courtrooms. There aren't enough prosecutors, defense attorneys or jurors to try that many cases. So we have to make resource determinations all the time. And we look at them realistically. There isn't a day, there isn't a week in my office where we don't look at the resource impact of one particular case or another. Sometimes it's a relatively low-level felony, where the essential witnesses would have to be flown (sometimes with accompanying family members) from as far away as

Mobile, Alabama, or Florida or Boston, as we've seen in recent cases. And so we make decisions about that. Because no department has an open checkbook. We know that.

There are no legal obstacles to this legislation. There may be moral or public policy obstacles, which, of course, is exactly what you are here to consider. But don't let the obstacle to this legislation be fiscal notes, real or conjecture. Put the full range of constitutional penalties on the books.

The death penalty is warranted in this state, and in others, for two principal reasons.

First, because it can deter certain -- not all -- certain crimes which involve premeditation and calculation, and thus save the lives of persons who would otherwise become the permanent and irretrievable victims of a crime. One example of this is a crime such as murder for hire.

I realize there is a huge debate on deterrence, and let me just give some simple examples of what we are talking about. If in the next 10 years just one Alaskan has their life spared (and their families are spared the pain we are about to hear about from the victims who testify) because a criminal made a calculated decision not to risk capital punishment in this state, then we have all earned our pay for today, and for many days to come.

The Hit Man and the Judge

We recently saw a conviction in a case where a man, angry over a years-old divorce case, sought to hire a hit man to kill a former Alaska superior court judge. He went to an ex-con, a convicted felon who was then at liberty, and asked him to do the killing. Well, I am happy to say that this particular ex-con did the right thing. He went to a trooper who he knew, and began working with the State to investigate the crime of murder for hire.

I don't know this ex-con. And I don't know what kind of calculations he made. Had someone offered him \$10,000 to write graffiti on the judge's door, would he have done it? Maybe. If someone had offered him \$10,000 to break into the judge's unoccupied house, and create some mischief, or steal something, would he have done it? Maybe. But he made a decision that he wasn't a killer, and he wasn't going to participate in a murder for hire. That's why he came to us.

Alaska's laws should serve to protect innocent life and to discourage potential hired killers from temptation. We need to up the ante. We need a responsible death penalty on the books for premeditated killings such as murder-for-hire.

How the Carrs Armored Car Killer Was Caught

There is another case, which, while not similar, permits an analogy to be drawn.

We are all probably aware of one of the worst crimes Alaska has seen in recent years, which was the murder of a Loomis armored car guard at the Carrs Aurora Village here in Anchorage.

We had no suspects. The killer, Jon Woodard, was a body-builder, a strong, pony-tailed Steven Segal-wannabe who planned the robbery like something out of James Bond. He robbed the store wearing a ski mask and sun glasses, so that witnesses couldn't even see the colors of his eyes. He was wearing a bullet proof vest, which almost no one ever does in committing crimes. He was carrying a very powerful Glock 10. And he was wearing what looked to other people like a Sony Walkman. In fact, it was a one-way radio that was connected to a lookout on the skywalk above Northern Lights and Benson. The lookout had binoculars and a radio to tell the shooter which entrance the police might respond to.

We had no information. No suspects. And I will tell you honestly that, according to the police, if someone hadn't been killed in that case, we probably never would have solved the robbery. Here's why: The killer, Jon Woodard, was actually an accomplished criminal who had masterminded a series of armed robberies at Chilkoot Charlie's, the Fireweed Theatre, and other Alaska businesses. Woodard used a group of low-level criminals to aid him in his crimes. All were loyal. None ever reported him to police.

All that changed on June 8, 1992, when Jon Woodard took a giant step beyond robbery and committed the crime of murder, a crime which, in most other states, would be a capital offense.

One of Woodard's cohorts, David Van Housen, became extremely nervous when he learned that a guard had been killed. Van Housen was a frozen foods manager at Carrs, the "inside man" for the robbery. But although he had signed on for robbery -- he hadn't signed on for murder. He started talking, and eventually entered a deal to cooperate with police. That's what broke the case, and led to the successful prosecution of one of the state's most dangerous killers.

We want other defendants to make the same decision that David Van Housen made. He decided he didn't want to face murder charges. His case, like his decision to cooperate, is somewhat unusual. But it doesn't have to be that way. In crimes that accelerate from robbery to murder, Alaska should have a measured system of penalties on the books that provide a powerful incentive for co-defendants to come forward, to cooperate and to do the right thing.

Justice and the Protection of Innocent Life

The second reason that the death penalty is justified is that society has a right to exact a just and proportionate punishment. Some offenses are so reprehensible that no other penalty presents an adequate response.

Arguments against the death penalty fail to address, among other things, the very

serious problem of protecting prison officers and inmates from dangerous prisoners already serving life sentences for murder, without any possibility of parole. At least half a dozen federal prison officers have been killed over the last two decades. And the inmates charged in at least three of these incidents were already serving life sentences for murder.

The control unit of the Marion, Illinois penitentiary is in the most secure cell block of America's highest security prison -- the prison that was built to replace Alcatraz. And there have been at least 20 prisoners who have murdered prison officials or other inmates while in prison.

Now, to my knowledge, this hasn't happened yet in Alaska. But, number one, let's put that law on the books to protect Alaska's prison guards, inmates, and innocent civilians such as the man killed in the mail bombing. And, second, let's put that law on the books to address justice when and if that horrible day comes, when an Alaska prison official or an Alaska inmate is killed in prison.

In this way, we can see that the real end served by the death penalty is the protection of innocent lives. I will give you two examples:

Eddie Simon Wien was convicted and sentenced to death in Los Angeles superior court many years ago, 1957. But instead of being executed, he was released from prison in 1975 to live in west Los Angeles, without warning to his neighbors. Within months he began to attack and kill women in the area. Fortunately, for other victims, he was apprehended relatively quickly. He was convicted in 1976 of the First Degree Murder of one woman, the attempted murder of another, and numerous sexual offenses.

What do you say to the parents of the woman who was killed by Wien after he got out of jail? And to the women who were scarred by him for life? They would not have been victims. She would be alive today if Eddie Wien had been executed, as originally ordered by the court and the jury. Here, the death penalty would have spared an innocent life.

And, finally, we've been discussing today the most dramatic case that we have for this in Alaska. Doug Gustafson has now plead guilty to murdering an innocent Alaskan through the use of a powerful mailbomb that Gustafson helped build from inside prison. We have shown that the state of Alaska is unable to prevent imprisoned killers from killing again.

The opportunity for the imposition of the death penalty should be added to Alaska's books. A criminal justice system that is limited, like ours, only to lesser sanctions, is lacking in adequate deterrence, and fails to meet our community standards, and the community's need to exact a just and proportionate punishment for the gravest offenses.

I would like to discuss one other area. The bottom line we are talking about is punishing those who do evil. Now, I know that to some in this community, that very word, "evil," is an embarrassment. A reference to old fashioned attitudes. But many of the people

in this room, certainly police, prosecutors and corrections officers, know better. They know that crime, and especially violent crime, is not an academic exercise. That is because they see it close up and first hand. They know that crime and crime fighting is usually a question of right and wrong, good and evil. And they know that a society that cannot understand the difference between right and wrong cannot protect itself.

There are people out there intent on doing wicked things. There are intentional cop killers. And as such barbarous acts reveal, a criminal thinks in a way that is simply different than anybody else who is at this table.

Some would like to believe that society is more to blame than the criminal. Some say crime is caused by parents who were too distant. Others, that it is caused by parents who are too smothering. Some say crime is caused by Alaska's poverty. Others, it is caused by Alaska's prosperity. TV violence, boredom, passionate irresistible impulses. Everything and everyone is blamed, except for the criminal.

Those who work the streets know otherwise. The fact of the matter is, in the vast majority of cases, the criminal chooses his way of life, his companions, the nature of the particular crime he commits. He rejects society and its values. He is not the victim, he is the victimizer.

The law abiding society you represent has a duty, an obligation, to punish these wrong doers. This tradition speaks not of a society that disparages human life, but rather one that treasures innocent human life, as precious and unique.

Just punishment is a civilized response to wrong. It is necessary, not only as a deterrent, but for its own sake. Which is to say, for the sake of justice.

In the classic Western that is airing on television this week -- the original McMurtry classic, Lonesome Dove -- there are two pioneering lawmen who finally put an end to a brutal gang's deadly rampage through the Oklahoma Territory. One of the outlaws turns out to be Jake Spoon, the lawmen's old partner. In the moments before arresting and then hanging his old friend, the Captain says, "It's a bad situation. But there he is. He put himself in it."

There are some simple truths in this saga. There is always the freedom to choose not to do evil. We are talking about individual responsibility.

The Governor's position is this: For the most heinous crimes, such as anyone who kills a law enforcement officer, no penalty is too tough. The Alaska people, as has been well expressed today, are overwhelmingly in favor of this kind of tough, anti-violence legislation. The proposals are now before the legislature, and should be passed without delay. The Alaska people are in no mood to talk tough, while some pursue the failed policies of leniency.

The Death Penalty in China

I've heard the other side. People often ask me how I would feel if someone I cared about faced the death penalty unfairly.

Well, I do have some personal experience with the death penalty. But it was in China, not the United States.

In the mid-1980's, Beijing University made bold and creative use of Americans to address sensitive subjects that its professors were unwilling or unable to teach. When I first stepped off the plane in 1985, a young constitutional lawyer named Chen Xiaoping was the one-man reception committee, a 5-foot tall bundle of brilliant energy and hope.

Each evening he would drop by my room, bright, earnest, burning with intelligence and passion. Each morning he would translate my lectures on Mr. Jefferson's Declaration of Independence, the Bill of Rights, his Chinese voice reading Martin Luther King's "I Have A Dream" to a crowded room that grew from an original 20 to 80 to more than 300, gathering outside the windows and spilling over into the hall.

Three years later, in the days before the tanks rolled, Chen and his bullhorn were familiar features in Tiananmen Square. He called for the rule of law by establishing an independent judiciary not subject to China's political winds. U.P.I. reported that the government believes Chen was the "mastermind" behind the demonstrations.

After the Tiananmen Massacre, he scurried to escape. Unable to link up with the underground railroad that brought others to fame and freedom, Chen returned to Beijing with an indomitable spirit. On the day before he turned himself in, he told his colleagues:

"I'd rather be in jail like a man, than free like a dog."

But Chen faced much more than jail. The New York Times headline cut straight to the bone: "China Legal Scholar Faces Death Penalty." Because when his closed-door trial began in 1990, he became the first of the four so-called "Black Hands" to face the death penalty for his leadership in Tiananmen Square.

Chen was convicted but later spared. And I spent a lot of bad nights during his trial and sentencing in 1990.

And the point is this: Yes, I know, up close and personal, that governments can be arbitrary and cruel.

But here in Alaska, where we don't give a damn how they do it Outside, there are limits to the lessons that can be gleaned from what has gone wrong in other jurisdictions. This is not China, and it is not even Texas or Florida, to name three jurisdictions where the

death penalty has become commonplace.

And so as you consider this bill today, perhaps the bottom line question is this: Do you have faith in Alaska's courts? Do you have faith in Alaska's constitution? Do you have faith in Alaska's juries?

Well, I've practiced Outside. Grew up in Chicago. Taught law in China. I prosecuted, most recently, in New York City. And yes -- my answer is yes -- Alaska is different. And I do have faith in the wisdom and the justice of Alaska's courts, Alaska's laws, Alaska's people.

Alaska's Police Memorial

If I may also conclude on a personal note:

We just finished Veteran's Day and Veteran's Week's observations. And most of you are already familiar with the Vietnam Memorial in Washington, D.C. But in our nation's capitol, not far from the courthouse, there is another memorial that is not as well known. It is a memorial to the 30,000 law enforcement officers who have been killed in the line of duty in the United States. Their names are engraved in stone.

The President spoke at the ground-breaking ceremony there three years ago. Many grieving family members -- husbands and wives and children -- came to mourn, came to cry, came to honor their fallen heroes. It was very dramatic. The candlelit night sky was pierced by a single blue laser, to represent the thin blue line that separates violent criminals from the society it is our duty to protect.

I am proud to say that the words I wrote for the President that day are now carved in stone in that memorial in Washington. And among those 30,000 names, the names of the 26 Alaska peace officers are sort of hard to find. They can get lost out there. But that is not the case at the headquarters of the Alaska State Troopers here in Anchorage. I am sure many or most of you have been there, and seen where the names of those 26 officers are engraved on the statue of an Alaska cop protecting an Alaska child.

And, in closing here today, I urge you: Before any more names are added to Alaska's memorial, this law should be added to Alaska's books.

I am now available to answer any questions you may have. Dean Guaneli is available from Juneau to assist in any analysis concerning the fiscal notes that have been attached to these two proposed bills.

#

House District 36

Alatna
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Canyon Village
Central
Chalkyitsik
Chicken
Chistochina
Chitina
Chuathbaluk
Circle
Copper Center
Crooked Creek
Dot Lake
Eagle
Evansville
Fort Yukon
Gakona
Galena
Grayling
Gulkana
Healy Lake
Holy Cross
Hughes
Huslia
Igiugig
Iliamna
Kakhonak
Kalskag
Kaltag
Kenny Lake
Koyukuk
Lake Minchumina
Lime Village
Livengood
Lower Kalskag
Lower Tonsina
Manley
McCarthy
McGrath
Medfra
Mentasta
Minto
Nabesna
Newhalen
Nikolai
Nondalton
Northway
Nulato
Port Alsworth
Rampart
Red Devil
Ruby
Shageluk
Slana
Sleetmute
Stevens Village
Stony River
Takotna
Tanacross
Tanana
Tazlina
Telida
Tetlin
Tok
Tonsina
Tulukak
Tyonek
Venetic
Wiseman

Representative Irene K. Nicholia

State Capitol • Juneau, Alaska 99801
Phone: 465-4527 FAX: 465-2294



Health, Education and
Social Services Committee
Special Committee on Fisheries

March 10, 1994

Representative Jerry Sanders
State Capitol
Juneau, AK 99802

Dear Representative Sanders:

I am writing regarding House Bill 162, Authorizing Capital Punishment. I read with interest your recent letter in which you assert that capital punishment can be applied fairly and evenly without regard to race.

The chart you prepared to back up your assertion is not convincing. Rather it does not recognize extensive research and evidence showing continued systematic racial bias in the use of the death penalty in the United States. In fact, research indicates racial disparity in every stage of the legal process from charging to sentencing.

You have offered no evidence that anything is different in Alaska. It appears to me that your own statistics demonstrate that minorities are disproportionately represented in the state's prison population and are disproportionately convicted of Murder the 1st degree. For example, it appears that Blacks are represented in the prison system at about three times their representation in the general population.

I disagree with your statement, "the ratio of Natives convicted of first degree murder is relatively close to their percentage of Alaska's total population." According to your own statistics, if the statewide Native population rate of 15.09% was applied to the first degree murder cases cited, the number of offenders drops from 37 to 27 prisoners. **The additional loss of 10 lives is significant.**

One last point. In your statistics you cite a racial category as "Indian." Does this include other Alaska Native groups such as Yup'ik, Inupiaq, Siberian Yup'ik, Aleut, and Alutiiq?

As you know, many of the the people I represent are Alaska Native. I cannot in good conscience support any legislation which would disproportionately affect the people I represent. This is especially true, when the outcome of that discrepancy results in death.

Sincerely,

Representative Irene K. Nicholia



Representative Jerry Sanders

District 19

- Vice Chair, Rules Committee
- Vice Chair, Community & Regional Affairs Committee
- House State Affairs Committee
- Special Committee on Oil & Gas
- Legislative Council
- International Trade & Tourism

Recently, concerns have been raised during the discussion of the merits of House Bill 162, the capital punishment bill, about whether the measure can be applied fairly and evenly without regard to race. I believe it can.

As the attached statistics show, while natives make up 15 percent of the state's population, they make up 33 percent of the prison population. However, less than 21 percent of the prisoners serving time for first degree murder are native.

The following chart, based on 1990 figures, makes it readily apparent that the ratio of natives convicted of first degree murder is relatively close to their percentage of Alaska's total population.

BREAKDOWN OF STATE AND PRISON POPULATIONS BY RACE

Race	State Population 567,846	Prison Population 2,793	1st Degree Murder 182
	percentage	percentage	percentage
Asian	3.47	1.0	2.19
Black	3.95	12.0	9.34
Hispanic	3.13	2.4	2.19
Indian	15.09	33.0	20.32
White	73.16	51.0	65.93
Other	1.17		

When the bill's nine aggravating factors are considered, it is quite certain that the native percentage will drop below that of their percentage of the general population.

NINE AGGRAVATING FACTORS IN HB162

- 1) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person in that it involved torture or an aggravated battery;
- 2) the defendant's conduct caused the death of two or more persons, other than accomplices;
- 3) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;
- 4) the defendant has a prior conviction for a felony that involved the use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law of another jurisdiction with substantially similar elements;
- 5) the defendant knowingly directed the conduct constituting the offense at the President of the United States or the governor of this state;
- 6) the defendant knowingly directed the conduct constituting the offense at an active or former law enforcement officer, prosecuting attorney, fire fighter, judicial officer, or correctional officer during or because of the exercise of official duties;
- 7) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, or for other pecuniary gain;
- 8) the defendant was on release under AS 12.30.020 - 12.30.040 for another felony charge or conviction having assault as a necessary element;
- 9) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group.

When the mitigating factors are considered, the percentage of natives to which the bill would apply would drop far below the percentage of the general population.

THE FOUR MITIGATING FACTORS IN HB162

- 1) The defendant committed the offense under a degree of duress, coercion, threat, or compulsion that was insufficient to constitute a defense but that significantly affected the defendant's conduct;
- 2) the conduct of a youthful defendant was substantially influenced by a person more mature than the defendant;
- 3) the defendant acted with serious provocation from the victim;
- 4) the defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant.

8-LS0414J
Luckhaupt
3/11/94

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 162(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SANDERS, Olberg, Bunde, Kott, Vezey, James

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing capital punishment, classifying murder in the first degree as
2 a capital felony, and establishing sentencing procedures for capital felonies; and
3 providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 11.41.100(b) is amended to read:

6 (b) Murder in the first degree is a capital [AN UNCLASSIFIED] felony and
7 is punishable as provided in AS 12.55.125(a) [AS 12.55].

8 * Sec. 2. AS 12.30.020(a) is amended to read:

9 (a) A person charged with an offense shall, at that person's first appearance
10 before a judicial officer, be ordered released pending trial on the person's personal
11 recognizance or upon the execution of an unsecured appearance bond in an amount
12 specified by the judicial officer unless the offense is a capital felony, an unclassified
13 felony, or a class A felony or unless the officer determines that the release of the
14 person will not reasonably assure the appearance of the person as required, or will

1 pose a danger to other persons and the community. If the offense with which a person
2 is charged is a felony, on motion of the prosecuting attorney, the judicial officer may
3 allow the prosecuting attorney up to 48 hours to demonstrate that release of the person
4 on the person's personal recognizance or upon the execution of an unsecured
5 appearance bond will not reasonably assure the appearance of the person, or will pose
6 a danger to other persons and the community.

7 * Sec. 3. AS 12.30.040(b) is amended to read:

8 (b) Notwithstanding the provisions of (a) of this section, if a person has been
9 convicted of an offense that [WHICH] is a capital felony, an unclassified felony, or
10 a class A felony, the person may not be released on bail either before sentencing or
11 pending appeal.

12 * Sec. 4. AS 12.47.110(b) is amended to read:

13 (b) On or before the expiration of the initial 90-day period of commitment, the
14 court shall conduct a hearing to determine whether or not the defendant remains
15 incompetent. If the court finds by a preponderance of the evidence that the defendant
16 remains incompetent, the court may recommit the defendant for a second period of 90
17 days. The court shall determine at the expiration of the second 90-day period whether
18 the defendant has become competent. If at the expiration of the second 90-day period
19 the court determines that the defendant continues to be incompetent to stand trial, the
20 charges against the defendant shall be dismissed without prejudice and continued
21 commitment of the defendant shall be governed by the provisions relating to civil
22 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
23 crime involving force against a person and the court finds that the defendant presents
24 a substantial danger of physical injury to other persons and that there is a substantial
25 probability that the defendant will regain competency within a reasonable period of
26 time, in which case the court may extend the period of commitment for an additional
27 six months. If the defendant remains incompetent at the expiration of the additional
28 six-month period, the charges shall be dismissed without prejudice and either civil
29 commitment proceedings shall be instituted or the court shall order the release of the
30 defendant. If the defendant remains incompetent for five years after the charges have
31 been dismissed under this subsection, the defendant may not be charged again for

1 offense arising out of the facts alleged in the original charges, except if the original
2 charge is a class A felony, [OR] unclassified felony, or capital felony.

3 * Sec. 5. AS 12.55.025(i) is amended to read:

4 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),
5 12.55.155(f), and 12.55.165, or in determining if a sentence of death should be
6 imposed under AS 12.58, the preponderance of the evidence standard of proof applies
7 to sentencing proceedings.

8 * Sec. 6. AS 12.55.125(a) is amended to read:

9 (a) A defendant convicted of murder in the first degree shall be sentenced to
10 a definite term of imprisonment of at least 20 years but not more than 99 years, or
11 shall be sentenced to death. A defendant convicted of murder in the first degree, but
12 not sentenced to death, shall be sentenced to a mandatory term of imprisonment of
13 99 years when

14 (1) the defendant is convicted of the murder of a uniformed or
15 otherwise clearly identified peace officer, fire fighter, or correctional officer who was
16 engaged in the performance of official duties at the time of the murder;

17 (2) the defendant has been previously convicted of

18 (A) murder in the first degree under AS 11.41.100 or former
19 AS 11.15.010 or 11.15.020;

20 (B) murder in the second degree under AS 11.41.110 or former
21 AS 11.15.030; or

22 (C) homicide under the laws of another jurisdiction when the
23 offense of which the defendant was convicted contains elements similar to first
24 degree murder under AS 11.41.100 or second degree murder under
25 AS 11.41.110; or

26 (3) the court finds by clear and convincing evidence that the defendant
27 subjected the murder victim to substantial physical torture.

28 * Sec. 7. AS 12.55.125(f) is amended to read:

29 (f) If a defendant is sentenced under (a) or (b) of this section,

30 (1) imprisonment for the prescribed minimum term may not be
31 suspended under AS 12.55.080;

- 1 (2) imposition of sentence may not be suspended under AS 12.55.085;
2 (3) imprisonment for the prescribed minimum term may not be
3 otherwise reduced;
4 (4) a sentence of death may not be suspended under AS 12.55.080.

5 * Sec. 8. AS 12.55.145(a) is amended to read:

6 (a) For purposes of considering prior convictions in imposing sentence under
7 AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)

8 (1) a prior conviction may not be considered if a period of 10 or more
9 years has elapsed between the date of the defendant's unconditional discharge on the
10 immediately preceding offense and commission of the present offense unless the prior
11 conviction was for a capital, [AN] unclassified, or class A felony;

12 (2) a conviction in this or another jurisdiction of an offense having
13 elements similar to those of a felony defined as such under Alaska law at the time the
14 offense was committed is considered a prior felony conviction;

15 (3) two or more convictions arising out of a single, continuous criminal
16 episode during which there was no substantial change in the nature of the criminal
17 objective are considered a single conviction unless the defendant was sentenced to
18 consecutive sentences for the crimes; offenses committed while attempting to escape
19 or avoid detection or apprehension after the commission of another offense are not part
20 of the same criminal episode or objective.

21 * Sec. 9. AS 12.55.155(f) is amended to read:

22 (f) Under this section, if [IF] the state seeks to establish a factor in
23 aggravation at sentencing or if the defendant seeks to establish a factor in mitigation
24 at sentencing, written notice must be served on the opposing party and filed with the
25 court not later than 10 days before the date set for imposition of sentence. Under this
26 section, factors [FACTORS] in aggravation and factors in mitigation must be
27 established by clear and convincing evidence before the court sitting without a jury.
28 All findings must be set out with specificity.

29 * Sec. 10. AS 12 is amended by adding a new chapter to read:

30 CHAPTER 58. CAPITAL PUNISHMENT.

31 ARTICLE 1. IMPOSITION OF SENTENCE.

1 Sec. 12.58.010. SENTENCING PROCEDURE FOR A CAPITAL FELONY.

2 (a) If, after a trial by jury, a defendant is convicted of a capital felony, the court shall
3 conduct a separate sentencing proceeding before the trial jury as soon as practicable.
4 If a jury trial has been waived or if the defendant has pled guilty, the sentencing
5 proceeding shall be held before a jury impaneled for the purpose.

6 (b) During the sentencing proceeding, evidence may be presented as to any
7 aggravating or mitigating factor that the court considers to have probative value,
8 regardless of the admissibility of the evidence under the rules of evidence. The
9 defendant shall have an opportunity to rebut hearsay evidence that is admitted. The
10 state and the defendant or the defendant's counsel shall be permitted to present oral
11 statements. This subsection does not authorize the introduction of evidence in
12 violation of the Constitution of the State of Alaska or the Constitution of the United
13 States.

14 (c) After hearing the evidence, the jury shall deliberate and recommend a
15 sentence to the court. The recommended sentence must include written findings of
16 whether the jury unanimously finds

17 (1) beyond a reasonable doubt that an aggravating factor or factors exist
18 to justify the death sentence;

19 (2) by a preponderance of the evidence that the aggravating factor or
20 factors outweigh any mitigating factors found to exist by a preponderance of the
21 evidence; and

22 (3) that the defendant should be sentenced to death.

23 Sec. 12.58.020. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
24 After considering the evidence and the recommended sentence, the court shall enter
25 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).
26 The court may not impose the death sentence unless the jury (1) finds beyond a
27 reasonable doubt at least one aggravating factor, (2) finds by a preponderance of the
28 evidence that that factor or those factors are not outweighed by any mitigating factors
29 found to exist by a preponderance of the evidence, and (3) recommends that the
30 defendant be sentenced to death. If the jury findings include an aggravating factor or
31 factors that are not outweighed by one or more of the mitigating factors and if the jury

1 recommends a sentence of death, the court shall sentence the defendant to death. If
2 a sentence of death is not recommended by the jury, the court shall sentence the
3 defendant to a term of imprisonment under AS 12.55.125(a).

4 (b) When the court enters a sentence of death, it shall state in writing the
5 jury's findings of

6 (1) aggravating factors that exist to justify the sentence; and

7 (2) mitigating factors considered but found insufficient to outweigh the
8 aggravating factors.

9 (c) A judgment of conviction for which a sentence of death is imposed is
10 subject to automatic review under AS 12.58.100.

11 Sec. 12.58.030. AGGRAVATING FACTORS. In determining whether to
12 impose a sentence of death, the following aggravating factors may be considered:

13 (1) the defendant's conduct during the commission of the offense
14 manifested deliberate cruelty to another person in that it involved torture or an
15 aggravated battery;

16 (2) the defendant's conduct caused the death of two or more persons,
17 other than accomplices;

18 (3) the defendant's conduct created a risk of imminent physical injury
19 to three or more persons, other than accomplices;

20 (4) the defendant has a prior conviction for a felony that involved the
21 use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former
22 AS 11.15.010 or 11.15.030, or the law of another jurisdiction with substantially similar
23 elements;

24 (5) the defendant knowingly directed the conduct constituting the
25 offense at the President of the United States or the governor of this state;

26 (6) the defendant knowingly directed the conduct constituting the
27 offense at an active or former law enforcement officer, prosecuting attorney, fire
28 fighter, judicial officer, or correctional officer during or because of the exercise of
29 official duties;

30 (7) the defendant committed the offense under an agreement that the
31 defendant either pay or be paid for the commission of the offense, or for other

1 pecuniary gain;

2 (8) the defendant was on release under AS 12.30.020 - 12.30.040 for
3 another felony charge or conviction having assault as a necessary element;

4 (9) the defendant was a member of an organized group of five or more
5 persons, and the offense was committed to further the criminal objectives of the group.

6 Sec. 12.58.040. MITIGATING FACTORS. In determining whether to impose
7 the death sentence, all mitigating factors shall be considered, including, but not limited
8 to, the following:

9 (1) the defendant committed the offense under a degree of duress,
10 coercion, threat, or compulsion that was insufficient to constitute a defense but that
11 significantly affected the defendant's conduct;

12 (2) the conduct of a youthful defendant was substantially influenced by
13 a person more mature than the defendant;

14 (3) the defendant acted with serious provocation from the victim;

15 (4) the defendant assisted authorities to detect or apprehend other
16 persons who committed the offense with the defendant.

17 ARTICLE 2. SENTENCE REVIEW.

18 Sec. 12.58.100. REVIEW OF JUDGMENT OF CONVICTION OF A
19 CAPITAL FELONY. (a) A judgment of conviction of a capital felony for which a
20 sentence of death is imposed shall automatically be reviewed by the supreme court
21 within 60 days after imposition of the sentence. This time limit may be extended by
22 the supreme court for good cause.

23 (b) A review under this section has priority over all other cases and the case
24 shall be heard in accordance with rules adopted by the supreme court. On review, the
25 court shall determine whether

26 (1) the sentence was imposed under the influence of passion, prejudice,
27 or other arbitrary factor;

28 (2) the evidence supports the finding of an aggravating factor under
29 AS 12.58.030 and whether the jury has properly considered mitigating factors under
30 AS 12.58.040;

31 (3) the sentence is excessive or disproportionate to the penalty imposed

1 in similar cases, considering both the crime and the defendant; and

2 (4) any other issue that the defendant may raise as a point on appeal.

3 (c) In its consideration of an automatic appeal under (a) and (b) of this section,
4 the supreme court

5 (1) may not require the defendant to file a notice of appeal unless the
6 defendant raises an issue as a point on appeal under (b)(4) of this section;

7 (2) may not require the defendant to pay a fee;

8 (3) shall designate the entire record of the proceedings before the
9 sentencing court as the record on appeal;

10 (4) shall prepare the transcript of the proceedings for the record on
11 appeal at public expense; and

12 (5) may not require the defendant to submit and file a brief unless the
13 defendant raises an issue as a point on appeal under (b)(4) of this section.

14 Sec. 12.58.110. ISSUANCE OF DEATH WARRANT. If the supreme court
15 upholds a judgment of conviction and sentence of death, the court shall issue a death
16 warrant that specifies a date of execution. The specified date of execution must be not
17 less than 30 days nor more than 60 days after the date of the warrant. The death
18 warrant shall be delivered to the commissioner of corrections.

19 ARTICLE 3. ADMINISTRATION OF THE DEATH PENALTY.

20 Sec. 12.58.200. ADMINISTRATION OF THE DEATH PENALTY. The
21 commissioner shall establish a procedure for the execution of a sentence of death
22 ordered by the state supreme court at the time and place legally appointed.

23 Sec. 12.58.210. EXECUTION UNDER SUPREME COURT DEATH
24 WARRANT. After receiving a supreme court warrant issued under AS 12.58.110, the
25 commissioner shall specify the time and place of execution.

26 Sec. 12.58.220. MANNER OF EXECUTION. (a) The punishment of death
27 shall be inflicted by continuous, intravenous administration of a lethal dose of sodium
28 thiopental until death is pronounced by a licensed physician.

29 (b) A death sentence shall be carried out within a state correctional facility.

30 Sec. 12.58.230. RETURN OF DEATH WARRANT. After the execution the
31 commissioner shall make a return upon the death warrant showing the time and place

1 in which the defendant was executed.

2 ARTICLE 4. STAY OF EXECUTION.

3 Sec. 12.58.300. INCOMPETENCY OR PREGNANCY OF PERSON
4 SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner
5 has reason to believe that the defendant has become incompetent to proceed with the
6 execution or that the defendant is pregnant, the commissioner shall immediately give
7 written notice to the court in which the sentence of death was imposed, the prosecuting
8 attorney, and counsel for the defendant. The execution of sentence shall be stayed
9 pending further order of the court.

10 Sec. 12.58.310. EXAMINATION INTO COMPETENCY. (a) On receipt of
11 notice under AS 12.58.300 that the defendant is believed to be incompetent, the
12 sentencing court shall examine the mental condition of the defendant in the same
13 manner as provided for examining persons for competency to stand trial under
14 AS 12.47.070.

15 (b) If the sentencing court finds that the defendant is incompetent, the court
16 shall immediately certify that finding to the supreme court and the commissioner and
17 shall enter an order for commitment in the same manner as provided for commitment
18 under AS 12.47.110.

19 (c) If the sentencing court finds that the defendant is competent, the court shall
20 immediately certify the finding to the supreme court and the commissioner. The
21 supreme court shall issue and deliver another warrant to the commissioner under
22 AS 12.58.110, together with a copy of the certified finding. Unless the sentencing
23 court's finding is appealed in accordance with applicable court rule, the warrant shall
24 specify a date of execution that is not less than 30 days nor more than 60 days after
25 the date of the warrant.

26 Sec. 12.58.320. DISPOSITION PENDING PREGNANCY. (a) If the
27 defendant is pregnant, the sentencing court shall immediately certify that finding to the
28 supreme court and the commissioner. The supreme court shall issue an order staying
29 the execution of the sentence of death during the pregnancy.

30 (b) When the defendant is no longer pregnant, the sentencing court shall
31 immediately certify the finding to the supreme court and the commissioner. The

1 supreme court shall issue and deliver another warrant under AS 12.58.110, together
2 with a copy of the certified finding. Unless the sentencing court's finding is appealed
3 under applicable court rule, the warrant shall specify a date of execution not less than
4 30 days nor more than 60 days after the date of the warrant.

5 ARTICLE 5. GENERAL PROVISIONS.

6 Sec. 12.58.900. DEFINITIONS. In this chapter,

7 (1) "commissioner" means the commissioner of corrections;

8 (2) "department" means the Department of Corrections.

9 * Sec. 11. AS 22.07.020(a) is amended to read:

10 (a) The court of appeals has appellate jurisdiction in actions and proceedings
11 commenced in the superior court involving:

12 (1) criminal prosecution, except prosecution for a capital felony for
13 which a death sentence is imposed;

14 (2) post-conviction relief;

15 (3) children's court matters under AS 47.10.010(a)(1), including waiver
16 of children's court jurisdiction over a minor under AS 47.10;

17 (4) extradition;

18 (5) habeas corpus;

19 (6) probation and parole; and

20 (7) bail.

21 * Sec. 12. AS 22.07.020(b) is amended to read:

22 (b) Except for appeals of a death sentence, the [THE] court of appeals has
23 jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court
24 on the grounds that the sentence is excessive or too lenient and, in the exercise of this
25 jurisdiction, may modify the sentence as provided by law and the state constitution.

26 * Sec. 13. This Act takes effect June 1, 1995.

To Jerry Sanders for Information

FEB 04 1994

Feb. 1, 1994

Gar Phillips
Joe Green
Cliff Davidson
Jim Norlund

A great injustice was done this day to the Citizens of Alaska. A House Committee voted down reconsideration of the death penalty. If you were one of those who voted against it, how could you? YOU, who were elected to legislate in the best interest of the citizens, put the general public in jeopardy. Have you no spine???

Last month, my son was murdered. While attempting to earn an honest living and unarmed, he was shot in the back of the head by a yellow coward. I have not talked to the police but I understand from the Media, an adult gave a Juvenile a gun with the instructions "to pop him" (my unarmed son), because as a juvenial, he would not be held responsible.

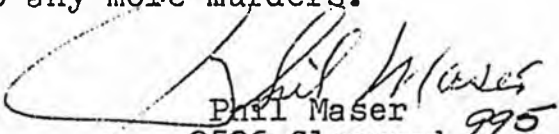
Oddly, I don't blame the kid. I blame YOU. You should be put on the stand as an accomplice to MURDER.

WHEN ANYONE ABOVE THE AGE OF REASON COMMITS A DELIBERATE MURDER THEY SHOULD KNOW THEY FACE THE DEATH PENALTY.

You must think Alaska youths are stupid. What do you teach all the current grammar and high school students in the State by your criminal action??? Look at the number of potential killers you are encouraging. Think of all the unsuspecting citizens you are putting at risk.

The next time a similar murder occurs (and it will, you are guaranteeing it) remember your complicity in the action. Better if you insist on the Death Penalty, NOW, but only in obvious cases. All cases must be reviewed by a judge.

Please show concern for the citizens of this great state. Don't YOU be an accomplice to any more murders.


Phil Maser
2526 Glenwood
Anchorage

995
08

Death Penalty Testimony before the Judiciary Committee of the Alaska Legislature.
Nov 16, 1993

My name is John Havelock. I am a former Attorney General of the State. After that I served as the Director of the Criminal Code Revision project that successfully revised Alaska's criminal code. I also served as the Director of the Alaska Justice Center and as a Professor of Justice at the University of Alaska, Anchorage for ten years. For fifteen years I also served as a consultant to the Governor's Commission on the Administration of Justice. I have taught, written and litigated questions of Alaska constitutional law.

I would like first to disassociate myself from those who oppose executions based on weakness of stomach or a misguided sense of mercy. I do not believe the State is required to show mercy to those who have shown themselves to be incapable of it. Current law allows the summary execution of persons at large who are believed to pose an immediate and substantial danger to the public. I am not offended by this law. Neither am I persuaded to oppose the death penalty by the fact that some day, a person may be executed who is innocent of the crime charged. Every year we sentence innocent people to death by failing to adopt or enforce stiff safety codes in the fishing and timber industries, to take some obvious examples. Innocents have often paid the penalty for political or economic institutions said to confer a benefit. Nor would I be bothered if death was offered as an annual option to a convicted felon who has no reasonable expectancy of ever being released alive from imprisonment, though I have no reason to suppose such a proposal has any public support.

However, I do not believe that the mandatory execution of a person, for whom life imprisonment is always an alternative, is desirable under the particular circumstance of administration of justice in Alaska. Nor do I think that it is possible to impose executions under Article I, Section 12 of the Alaska Constitution, so I believe your death penalty proposal, as framed, is dead on arrival. Those who want an electric chair as the pinnacle to our temples of justice, instead of the female figure of blind justice with scales, need a constitutional amendment.

Let me address the Alaska -specific issue of desirability of the death-penalty. First, it is a fact that the racial characteristics of those executed is a point of high interest among the general public, particularly among minority peoples.

Historically, for all but the last decade or so of this century, the death penalty was used primarily in the southern states and primarily to execute black people that committed crimes against whites. This discriminatory impact has been eliminated by executing more whites. However, it is still the case that the race of the victim is a prime determinant of execution of the offender. Also, black people are still executed disproportionately to their percentage of the total population, but not disproportionately to their percentage of persons charged with murder. Black people, in general are disproportionately a higher part of the criminally charged population because of their lower economic status.

Alaska has never been a part of the southern tradition in the race relations. On the contrary, we who have lived for some time in Alaska, take some pride in long having been a multi-racial society. No other state of the United States has such a large Native American population. Only Hawaii has a similar tradition of multi-racialism.

It is also a fact that since Alaska's Native Americans are disproportionately in the economic underclass, they show up in disproportionate numbers in our prison population. Thus it is safe to predict that there is a considerable chance that the first or second person you set out to execute, if you pass such a law, is going to be an Inupiat or a Upik or an Athapaskan or a Thlinget or Haida or an Aleut.

Regardless of whether a particular execution is seen as fair, the racial characteristics of the person executed will be a featured aspect. If we do execute a minority, it will exacerbate racism in both the white and minority population. It will become a focal point of the charging decision by the District Attorney. And incidentally, do not miss the fact that life and death discretion shifts, under such a proposal, from the judicial branch to the politicians. This has been a problem with all the recent so called reforms in sentencing by restricting judicial discretion - the power is shifted to the executive branch from the judicial. But my question with regard to the death penalty, based on principles of administration of justice, is this: does the social good in meeting popular demand for executions, outweigh the problems caused by raising the level of racial animosity in this state? I think not.

The issue of justification is also raised in Article I, Section 12 of the Alaska Constitution. I am frankly surprised that your lawyers have not identified the magnitude of the problem. Section 12 states, "Penal Administration shall be based

on the principle of reformation and upon the need for protecting the public." You don't reform a person by killing him. As for protecting the public, so long as you have life imprisonment as an option, execution is an excessive means of protecting the public.

This constitutional provision was adopted at a time when death penalties were out of favor and out of practice. There is nothing in subsequent Alaska Supreme Court decisions interpreting this section that would lead one to believe that a penalty which exceeded the need to protect the public would stand muster under this constitutional provision. Legislation which raises false expectation merely stirs up and frustrate the public. This legislation offers only injury to the administration of justice and I recommend you bury it.

Rep. J. Sanders
District 19

Dear Mr. Sanders,

I just wanted to write and let you know how much I support HB 162.

I am unable to get off from work on the 16th much to my regret.

Sir I am wondering if I can do anything else - maybe stand around with a sign or walk around and hand out papers, maybe go door to door getting signatures.

If there is anything or anywhere you could use my services to assist you getting this bill passed please let me know.

I am living in the valley however work at Spring Creek - I'm getting transferred to Palmer Correctional Center the 25th of Nov so will ^{be} there full time. I'm the one who had the arm broke by the prisoner in Seward. Thank for your letter of concern - I'm sorry I won't be able to be there the 16th. I've been passing the word.

Good luck

J.D. Karsten

FEB 26 1993

February 23, 1993

The Honorable Jerry Sanders
State Capitol
Room 13
Juneau, Alaska
99801-1182

Dear Representative Sanders,

We urge you to co-sign HB 162 supporting the death penalty in Alaska. Our twenty-one-year-old daughter was murdered by her ex-boyfriend on August 5, 1990. Her murderer, ANDREW NELSON, bought 500 rounds of ammo to practice with and checked out his weapon. He then drove around Anchorage until he located her vehicle.

After flattening the tire on her vehicle he then hid himself in the bushes awaiting our daughter and her friend. He then proceeded to empty the pistol into her head along with wounding her friend.

The court documents indicate that her murderer, Andrew Nelson, stated that he would get twenty-three (20-30) years for committing the crime; he felt it was worth it. The court psycharist said that Andrew Nelson has a narcissistic personality.

If the State of Alaska would have had a death penalty for this type of murder, our daughter, SANDRA LYNN POGANY, would be alive today. It continues to devastate the family. We know the enactment of this bill would prevent other families from going through the tragedy we have experienced.

Please let me know your position on HB 162, we are willing to get petitions signed and do whatever is necessary to get this bill passed.

Sincerely,

Gary Louise & Steve Pogany

Gary, Louise & Steve Pogany
Parents and brother of deceased
phone: 696-2390
fax #: 694-4557

*P. O. Box 770323
Eagle River, Alaska 99577*

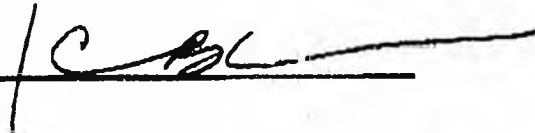


Alaska State Legislature

Please enter into the record my testimony to the JOINT JUDICIARY COMMITTEES
committee name
 committee on HB162/SB 127, dated 11/16/93
bill/subject

I unequivocally support CAPITAL punishment for murder. While it is ARGUABLE, at least in light of EXISTING STATISTICS, WHETHER CAPITAL punishment is a deterrent to ~~the~~ ^{THE} COMMISSION OF murder, I submit that ~~the~~ ^{THE} LACK in deterrent effect heretofore indicated results ~~from~~ ^{not} from the punishment itself, but from a failure by ~~the~~ ^{THE} JUDICIARY to impose and carry out CAPITAL punishment in a consistent and unwavering manner.

PLEASE ensure that ALASKA punishes murder in a just and appropriately retributive manner - with CAPITAL punishment.

Signed: CHARLES B. DEAN / 
 Testifier
 Pro SE

Representing (Optional)
P.O. Box 2282, SITKA, AK 99835
 Address
907-747-1072
 Phone No.

DEATH PENALTY

INTRODUCTION

My name is Ted Lemaire. I have lived in Alaska for twenty-six years. My wife and I have reared two sons and a daughter here. We have found Alaska to be a great place to live. In a quiet way, we have tried to be well informed and active in our community. When we left the flat-lands of Ohio, our ideas were that we were abandoning the over crowded cities and their ever increasing crime rates. Thus, we are not happy to see the increase in crime that is around about us. For this reason, we are urging this legislature to take a very hard, serious look at all of the anti-crime bills that have been introduced. One of which concerns the introduction of the death penalty, which is our purpose for being here today.

Many folks would think that because of an event that occurred on August 22, 1991 that I would be in favor of the death penalty. There is nothing further from the truth. On that date, my eleven year old granddaughter was kidnapped, sexually assaulted, and murdered. One week ago, her murderer was sentenced to 114 years in jail. Thus ended the hardest twenty-eight months of my life.

Today, as much as is humanly possible, I am at peace with this situation. Death is an ugly visitor that visits every home, sooner or later. I am not disturbed that death paid us a visit. Death is something over which none of us have any control, or at least very limited amount of control. I could have lost a granddaughter just as easily by accident or disease. That part, I have no trouble in reconciling. In some ways, that must be worse. To see a child suffer two to five years from leukemia must be a very devastating experience. The real problem for my family was the aspect of crime. As crime becomes more senseless, the harder it is to bear.

To say that I am in favor of the death penalty because of Mandy's death is a huge falsehood. For I have been of that persuasion at least all of my adult life, and possibly longer.

Crime is a very real problem. My insurance investigator friends say there are only two types of people. Those that have had an accident. And those that will have an accident. As crime becomes more prevalent and violent, the sooner it will reach you, not as a legislator, but as a person or as a family. Perhaps not directly. Someone close to you will become the primary victim of crime. You will be only the secondary victim of crime. I can tell you from personal experience, it is not a great position to have! It contains nothing but great unbearable agony.

1. THE DEATH PENALTY AS A DETERRENT

The first argument that the opponents of the death penalty use is that there is no proof that it is a deterrent to the criminal. That statement shows that they fail to understand crime and the criminal. One of the basic differences between the criminal and the rest of us is that it is impossible to deter the criminal. They can be slowed-up or be forced to reschedule the event. Even modern technology does not deter the criminal. He just finds a new technique. But they will accomplish the planned act.

My granddaughter's killer is an example of this fact. He stalked at least two other girls before he achieved his goal. These two girls are alive today only by strange twists of fate. The two girls were spared only because a car suddenly appeared on the same road. The first girl lived a short distance from the killer and knew him by face and name. The second girl lived over 20 miles away from the killer. She did not know him. This attempt was prevented by a passing motorist. He recognized the girl as a daughter of a friend. He read panic on her face. When the killer left the scene, the motorist questioned what he had seen. Since the girl was safe, whatever the problem was, it was then a moot question. The motorist, further, was a neighbor of the killer and recognized his vehicle. That would have been adequate reason for a normal person to abandon such activities. But it did NOT deter the killer. He kept searching for the right opportunity.

Have you considered the difference between you and a bank robber? The difference is very slight. Both go into a bank and give the teller a small piece of paper. Your's may be a check or a deposit slip. Standard commerical paper. The bank robber uses a note saying something to the effect of placing all your money in the bag. It is not that we never have bad thoughts. The fact is we do. The difference between us and the criminal is that we can be deterred by a host of things. The criminal cannot. He has real tenacity. And he will repeat the same act over and over again.

A few months ago, we witnessed on TV a confrontation between a police officer and a gunman. You will recall this episode that occurred near Tudor and Muldoon. The gunman could not be deterred by a sizeable contingent of police officers nor their weapons. Death means nothing to a criminal. And he was a repeat offender.

The death penalty is a very real deterrent to crime to thinking people. The criminal may display cunning, craftiness, mechanical wizardry, shrewdness, and the ability to manipulate people. But lack the ability to see how the principles of right and wrong applies to them. The real test of deterrent is on the law abider and not on the criminal.

One of the reasons that the death penalty deterrent factor cannot be tested on the criminal is that it has never been consistently practiced. The law must be applied to all that commit the specific crimes listed.

If you want to see the criminal mind at work, and the impossibility of deterring it, consider two fellows by the names of Gustafson and Cheley. Being locked up in prison would not, and could not, keep them from continuing their murderous career.

2. CRUEL AND UNUSUAL PUNISHMENT

This is the other favorite argument of the opponent. These words are taken from the most important document that man has ever written. The death penalty is recognized within this document as being proper.

In addition, I think that the opponent has things reversed. It is cruel and unusual punishment on the law-abider to let the criminal live. This is true for at least three reasons:

- A. The effect upon the criminal.
- B. The ever present threat of crime.
- C. The family of the criminal can have finality over their loved-one.

A. The effect upon the criminal.

If there was a mad dog loose on Fourth Avenue at this hour, we all would know the solution to the problem. It is so fast and simple. I use that illustration in spite of being known as the biggest animal lover anywhere. It is because I have even stronger feelings for my fellow human. That is why I am speaking here today.

Dogs and people can both become psychic because of the mistreatment that they have received from humans. They both can reach a level of psychosis that is totally unacceptable. The practitioners of the mental health industry are unable to provide any cures for the criminal. Fancy diagnoses are offered, but no cures. These diagnoses appear to be a big hinderance to the solution of our crime problem.

Since there is no cure, is our only option to warehouse them like merchandise on a shelf? That idea is very offensive to me. That is definitely cruel beyond words! To lock a person away for such long periods and to remove almost all of the usual and basic human drives and abilities, for something that will not work, is beyond comprehension. Either indefinitely or permanently to lose the right to take a walk, drive a car, select ones friends, or go out to dinner is not life. It is only logical that if we are going to take away the right to life, or the right to live, take it away fully.

B. The ever present threat of crime.

Please watch our law enforcement people at work. It is astounding the number of times that they come in contact with someone that they call by name. When you come in contact with an officer, are you immediately recognized? I would doubt it, in spite of the regularity that your face appears in a public meeting, or is on TV, or in the newspaper.

A name is broadcast on the police radio. Another officer will call in giving a more current address, aliases used, names of associates, modus operandi, types of weapons carried, contraband material frequently transported, where they hang out, or their disposition toward violence. This information becomes available long before the computer will locate it. This is possible only because of the huge number of repeat offenders.

Our beloved country has tried the technique of being nice to our criminals. AND IT HAS BLOWN UP IN OUR FACE. I have a retired friend. He now enjoys basking in the sunshine year-round. He tells how, as a kid, he was always in trouble. Then one day, he met a judge who gave the choice of joining the Army or prison. He chose the Army. After basic training, he was sent to Germany as a prison guard. How is that for irony? This prison was

jointly operated by the US and German governments, along European concepts. The nicest thing to be said was that it was not operated in the Hilton style like ours. At that point, he made the decision that he had seen all of prison life that he desired. He became a good and productive law abiding citizen.

Yes, reformation is possible. But I don't see it as a product of our Hilton prisons. Do I want to return to the times of Devil's Island? No, that is cruel and unusual punishment. There is a big gap between the two ideas that can be profitably used.

Recycling is a present day topic. However, the recycling of our prisoners must stop. We are running criminals in, and out, and back in again to prison time after time. Repeat offenders, even of so called minor offenses, must be dealt with firmly. I am tempted to say harshly. I would not object to seeing the death penalty applied to those that refuse to be reformable. Crime has become a way of life to them, and the death penalty is the only way to break the habit of crime.

C. The effect upon the criminal's family.

I know that as a parent I cannot live my children's life. They must make many decisions for themselves. The consequences of these decisions will be theirs. I am proud that in the main, the decisions of my children have been good ones.

As a parent, I do not know how I would react upon my child being accused of committing a crime. Worse, if that child was found guilty and was sentenced. I was taught as a child never to bring embarrassment to the family name. Usually when a police car came to our neighborhood, it was to notify the next of kin of a death. For a police car to be there for some other reason would bring down the scorn of the neighbors. I did not live in Podunk Center. It was in the big city of Detroit, Michigan. For some reason those ideas seem to have been forgotten in 1993.

For the families of those convicted of crime, this must be a horrendous event. A prison must be absolutely the last place that they would want their child. They must worry about the safety, the associates being cultivated, and the things being learned by their kid while in prison. Present day experience shows that is a justifiable cause to worry.

Parents would have to worry about if and when they would be released and what is the possibility of repeat offenses. I once worked with a lady that had a close relative that was serving time. He was a repeat offender. His record was that sixteen years of his thirty-two years was spent behind bars. I was not aware of this situation until one day that I noticed her highly visible nervous condition. This was not her normal conduct. She did not want him loose. In less than thirty days after his release, he committed another major crime that resulted in the loss of a life.

Is it reasonable to think that a parent will forget their own flesh and blood? Involuntarily, they will carry the stigma until their dying day. It would seem to me that the death penalty would help to remove the stigma. This would be a way that the parents could achieve finality with the deed or deeds of their child. They certainly would have to be relieved that he could not cause any additional pain or death. One of the important facets of the grief process is to be able to find finality.

What would the friends or other relatives say to the parents during the incarceration? Would they ask about his well being? Perhaps, it be easier to ignore the subject. Whatever is their position, it will cause the parents pain.

Do I think House Bill 162 will accomplish my desired, and most Alaskan, goals? Yes, I do. I know that this law can do nothing for my Mandy. Statisticans may claimed that I should escape from further personal involvement with serious crime. Fine, but you are still exposed. The next victim can be anybody.

We are guaranteed by the Constitution, and the Bill of Rights, not only the right to life, but also the pursuit of happiness. I am here to tell you that when you become a crime victim, you are deprived of those rights. The primary crime victim loses his

life, or the desire to continue it. The secondary crime victim loses the desire to pursue happiness. This is because there is no basis to believe that happiness is possible. Christmas loses it appeal. The same is true with birthdays and anniversaries. The interest in hobbies are replaced with the desire to sit and brood. It results in the deterioration of all of the relationships that you hold dear.

The biggest problem that I see in the use of the death penalty is the legal hassles generated. I personally get so fed-up with all of the appeals filed. The large bulk of them are not based on law, facts, evidence, or simple right or wrong. The action is based on wild emotion. A very unstable commodity at best. Our legal system is breaking down by weight of the frivolous suits and appeals. Only one way to put an end to this. Penalize the attorney that filed it. Get him in the pocketbook, royally. That will catch his attention.

I urge the passage of this House Bill 162. It will enhance all of our lives. It is a very reasonable and effective process.

Thank you.

THOM HIBPSHMAN
Investigator
P.O. Box 384
Sterling, Ak. 99672
(907) 262-3287 1-800-478-3289

11-18-93

BRIAN PORTER
716 4th Avenue, Suite 640
Anchorage, AK. 99501-2133

Received

NOV 19 1993

B.P. PORTER

Dear Mr. Porter,

I do not know if you remember me. I am the son of Earl Hibpshman and I have known you for many years.

Since I have seen your name in the Anchorage papers lately, concerning the proposed bills advocating the execution of persons that would commit certain types of crimes, I wish to point out to you some things that are of great concern to me.

There are few that think higher of law enforcement officers than I do. My history, as you know, is one of knowing and socially engaging with police officers. Policemen and policewomen are as much a part of my past as anything else. Also, I commonly work to defend police officers and their departments and detachments when they are sued for deadly force, etc. Because of my attitude toward police officers, I hope that you will be able to open-mindedly consider what I am about to say to you.

It is true that anyone that commits the crime of homicide against a police officer should suffer the greatest punishment. I am fully in agreement with capital punishment and I have been for as long as I can recall. Yet you are not correct in deciding that those that commit certain types of homicide are any more deserving of capital punishment than those that commit other types of murder.

If a police officer is working in his or her line of duty and becomes the victim of a homicide, is he or she more special than a taxi driver, a prostitute, a grocery clerk, a fireman, a school teacher, an insurance fraud investigator, etc.? Why would we consider the crime of killing a policeman more serious than the crime of killing anyone else?

Anyone that I have talked to about this, and there are many, agree with me that this is purely a special interest law that you are proposing. The police officers associations (which have wrongfully become political lobby groups working to create laws, instead of working to enforce them as the people command) have more money and man power than the average citizen. I have found no one that does not feel this way, with the exception of some police officers.

Some of the police officers that I have talked to about this say that this is a step in the right direction. That is a naive statement. It is a slap in the face to some of the common men and women in our state.

I have not written this letter to offend you. I stress to you that you are correct in pushing for a capital punishment bill. We need some sort of serious deterrent to thwart the killings of innocent persons in our state. Yet you and the political lobbyists that are pushing these bills are making a serious mistake because you are offending those that are not law enforcement personnel. The public sees this bill as nothing more than a proposal brought by those that have the power and

the money, with no consideration for the common individual. This bill is wrong and should be stopped in its present form.

The days of the public seeing the policeman as a hero and protector of good are gone. It is my personal opinion that the labor unions that invaded the police departments have caused too high of wages. This has resulted in persons wishing to become police officers because of salaries, instead of taking the job because of a desire for intrigue, and a wish to serve the people. The public is outraged at the mistakes that have been made over the years by some of the officers around the state, and at the manner in which those incidents have been handled by the police department administrators. I have been active in defending against some of the litigations that were brought because of some of those mistakes. Because of my background and my career in defending departments and officers, I must say that what you are trying to do will only serve to further alienate the public from the police officers in our state.

While the opinions that I am about to express are not my own, I feel that you should know about them, if you do not already.

Many of the public see that the police are better armed than they (the public), and the public does not trust the common police officer because of this.

The public does not feel that the common police officer is more honest than the average citizen.

The public feels that the average policeman (state troopers and A.P.D. especially) is grossly overpaid.

There are currently many persons that feel that, if they are the victim of a serious crime, they will simply handle the matter themselves, rather than trust their situation to a policeman.

There are many in the public that see a policeman wearing a bullet-proof vest, driving a government automobile, equipped with a shotgun, connected to other officers with a radio, etc. and are in no more danger at work than a commercial fisherman or those in other professions. When the seemingly outrageous salaries of A.P.D. and the troopers are brought into consideration, the result is a common person seeing a policeman as an over protected man or woman that makes too much money for the services they render, and that cannot be trusted because of these things.

These are some of the reasons that people are rude to police officers or simply disregard what an officer says or does. This is a serious problem that is growing each day and the bill that you are proposing is only making the situation worse.

I feel that we are rapidly moving toward social upheaval. Respect is something that is not as common as it used to be. The crime rate is through the roof. The public attitude toward police officers is growing worse. The bill that you are proposing, while obviously well-intended, will cause even more social unrest because it is appearing to the public that police officers feel that they are above those that they are sworn to protect and to serve, and that this bill says that it is a more serious crime to kill an officer in the line of duty than it is to kill anyone else while they are at work.

I feel that you would be more correct to propose a bill that states that anyone that is convicted of 1st degree murder should suffer execution. Period. It should not matter whether the punishment takes the form of lethal injection, hanging, firing squad, or anything else. The only thing that should matter is that the person purposely killed another human being without justification. There should be no more criteria involved.

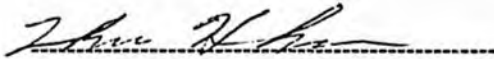
There are those that say that the killing of a police officer is more serious because the policeman is an agent of the government and therefore killing him or her is to attack our government and

society as a whole. True, a policeman, doing his duty, is a representative of the good of the society. Yet that does not mean that he or she is better or more important than the rest of society and that the the killing of that officer is a more serious crime. The police officer is an important part of our social structure. Yet he is no more important than the common lay person.

It is not my intent to attack what you are trying to do because I agree that cop killers are the lowest of our society. Yet is a cop killer lower than a baby killer, one that assassinates for hire, one that dissects prostitutes, one that robs and kills the owner of a liquor store, or anyone else in our state?

Please consider what you are proposing. This bill is causing outrage in the middle class of our state and it should not be made into law until the wording includes captial punishment for the killers of any innocent person, not just police officers and those that have been tortured, etc.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thom Hibpsman", is written over a horizontal dashed line.

THOM HIBPSHMAN

Alaskans **AGAINST** the Death Penalty

Sender Address

Postoffice Box 22296

Denial Code

Harold M. Brown

Ray Michael Brown

Adm. Services & Security, Jr. House

Revenue James Carpenter

Cheryl Child

Richard Clatter

Barbara Daily

Ally Day

Richard Friedman

May E. Galtner

Lois H. Galtner

Lucy Kuehnle

Dulaine P. J. J.

Karen Humphrey-Sawicki

Vicki Larson

Shirley M. Lutz

James H. McCann

Mark McCoy

Pat Parker

Lisa Rapp

Lisa Rapp

Julie Shivers

David Skovell

Cynthia L. Stutz

John Stutz

Paula Jane Tisdell

Personal Planning Services

RLA Walker

Sharon H. White

Dr. Ann Wolf

Assembly Executive

Cheryl Rapp M.: City Council of Fairbanks

Denial Code/Service Unit

ALASKANS AGAINST THE DEATH PENALTY - STATEMENT OF PURPOSE

Alaskans Against the Death Penalty (AADP) is a coalition of organizations and individuals who have joined together to oppose House Bill 162 and Senate Bill 127. If adopted, these bills will permit the death penalty in Alaska.

We oppose the death penalty for numerous and diverse reasons; the organizations and individuals which make up this group represent a broad range of viewpoints about why the death penalty legislation should be defeated. These reasons include:

CONCERN ABOUT COST. Executions have proven far more expensive than putting murderers in jail for life. Establishing a death penalty in Alaska will cost more than \$21 million dollars in the first four years. Maintaining a death penalty system will continue to require tens of millions of dollars each year. These vast expenditures will do very little to increase public safety and are unwarranted in times of declining oil revenues.

CONCERN ABOUT CRIME. The death penalty does not deter murderers. Instead, it will divert resources from effective crime prevention programs and law enforcement efforts that could actually reduce the crime rate in our state. Our criminal justice system should focus on preventing the tragedy of violent crime; the death penalty accomplishes nothing towards this end.

CONCERN ABOUT FAIRNESS. Studies repeatedly show that racial prejudice and poverty often influence sentencing. Our nation's death rows have always held a disproportionately large population of African-Americans. In Alaska, Alaska Natives comprise a disproportionately large segment of the jail population, and would likely receive a disproportionate number of death sentences. Indigent people who cannot afford highly skilled trial lawyers are also more likely to end up on death row. Additionally, nothing in the proposed bills would bar the execution of persons with mental illness or mental retardation, or minors who may not comprehend the magnitude of their crimes. Implementing a death penalty under these circumstances would run counter to fundamental concepts of justice and fairness.

CONCERN ABOUT MISTAKES. Every year, news reports are published about innocent people who were convicted and sentenced to death for crimes they did not commit. Mistaken identification, perjury, prejudice and governmental misconduct have each contributed to erroneous convictions. In the past twenty years alone, 48 convicted persons have been released from death rows in the U.S. because of well-established innocence.

CONCERN ABOUT BETTER ALTERNATIVES. Nationwide, polls show that most people prefer alternatives to the death penalty, such as sentencing murderers to life in prison without the possibility of parole for at least 25 years and requiring that restitution payments be made over time by the prisoner to the victim's family. Increasingly, people are recognizing that we can get "tough on crime" without the death penalty.

We believe that our fellow Alaskans, if informed about the realities associated with the imposition of the death penalty, will join us in opposing House Bill 162 and Senate Bill 127. We encourage you to join the efforts of the coalition by voicing your objections to the death penalty, volunteering your time, or offering your financial support. Please feel free to call us if you have questions. We invite all inquiries and interest.

ALASKANS AGAINST THE DEATH PENALTY
P.O. BOX 202296
ANCHORAGE, ALASKA 99520-2296
(907) 258-2296

MURDER

Continued from Page 1

whatever Susie had to endure."

So today, when Jaeger hears people talk of wanting revenge, she understands perfectly.

But don't expect her to agree. A torturous internal struggle to reconcile her urge for revenge with her religious beliefs has Jaeger certain of one thing: Society must resolve its problems through something other than violence.

Which is why Jaeger will be part of the Journey of Hope.

"I know people think this lady is off the wall," she said. "Or they think — and this really hurts me — they think I must not really have loved my little girl."

But that couldn't be further from the truth. Because Jaeger's opposition, ultimately, was born of love.

"I argued and argued with God and really had a wreaking match. I gave God permission to change my heart."

First, though, would come a test — agonizing and heartbreaking.

Within days of the disappearance, police received a call from the kidnapper offering to exchange Susie for a ransom. Other calls would follow, but the suspect could never decide how to make the exchange.

The family's hopes rose and fell as reports of possible suspect's and tips surfaced, then faded.

During that time, Jaeger took an unusual step.

"I began to pray for him every day, which initially was the last thing I felt like doing," she said.

"I worked hard to discipline myself, to remind myself this man was a son of God, even if he hadn't behaved like one."

Then, after a wire service story about Susie's disappearance appeared a day before the one-year anniversary, the kidnapper called again.

"It became clear he was calling to taunt me," Jaeger said. "But in spite of the fact he was being very smug and very nasty, to my own amazement, I realized that I was feeling genuine concern and compassion for him."

That concern stunned the kidnapper. He broke down and wept and the two began a conversation that would last an hour.

Jaeger flooded him with questions about her daughter: "How are you keeping her? Is she getting any education? How are you fixing her hair? What kind of clothes is she wearing?"

The call provided investigators with some much-needed clues. Coupled with other information — and details gleaned from another call to Jaeger — police arrested a 25-year-old man named David Meirhofer nearly three months later.

'Journey' to abolish death penalty starts at prison, ends at Statehouse

Star Staff Report

"Journey of Hope ... from Violence to Healing" is the creation of Murder Victims' Families for Reconciliation, several other national groups and Amnesty International.

The journey will begin with a rally at the Indiana State Prison in Michigan City on June 5. It will conclude two weeks later with a rally at the Indiana Women's Prison and a march to the state Capitol.

In between, it will make stops at a number of cities in Indiana and surrounding states.

Here is the full "Journey of Hope" itinerary:

June 5: March and rally at the Indiana State Prison, Michigan City.

June 7: Gary and Hammond.

June 8: South Bend and Mishawaka.

June 9: Elkhart and Goshen.

June 10: Lafayette.

June 11: Fort Wayne.

June 12: Chicago.

June 14: Bloomington.

June 15: Richmond, Ind., and Dayton, Ohio.

June 16: Evansville.

June 17: Louisville, Ky.

June 18: Meeting at Christian Theological Seminary, Indianapolis, 1 p.m., and at Martin University, 7:30 p.m.

June 18: March from the Indiana Women's Prison to the state Capitol at 10 a.m. Closing and concert at the United Auto Workers Hall, 6204 East 30th Street.

For information about specific events in each city, call the Journey of Hope office at (219) 982-7751.

A search at an abandoned Montana ranch turned up a chilling hint of Susie's fate, however: part of a backbone experts believed came from a young female child.

Later, Meirhofer admitted he had killed Susie about a week after he'd taken her.

Even so, Jaeger said she had no interest in revenge. She wanted Meirhofer treated, not executed.

"To have him killed in Susie's name would be to violate the goodness, the sweetness and beauty of who Susie was," her mother reasoned.

Meirhofer accepted an offer from federal authorities to plead guilty in exchange for life imprisonment. Four hours later, though, he committed suicide.

"It was not what I wanted for him," Jaeger said. "It was another terrible blow."

Since her daughter's death, Jaeger has met many parents who have lost children to acts of violence.

And she has seen the effects of keeping a vindictive mind-set.

"While I've been there and know it is a normal, valid human response, I also know we have to get beyond that," Jaeger said.

"I'm not saying you forgive and forget, because you never forget."

And she certainly doesn't believe people who commit violent crimes should be put back on the street.

But Jaeger rejects the notion that putting killers to death is a measure of justice for their victims' families.

"There are," she said, "no amount of retaliatory deaths that will compensate for the loss of our loved ones."

A change of heart

Bill Pelke is a steel worker in Portage who hadn't given the death penalty a second thought. Until 1965.

That was the year his 78-year-old grandmother — Ruth Pelke of Gary — was beaten and stabbed to death by a group of girls who knocked on her door requesting Bible lessons.

A 15-year-old girl named Paula Cooper was arrested and charged as the ringleader.

At the time, Bill Pelke wanted nothing less than her death.

"My thoughts were, they were handing out the death penalty for serious crimes and if she didn't get it, it would devalue the life of my grandmother," Pelke said.

He thought his prayers had been answered when the teenager was convicted and sentenced to die.

Four months later, he had a change of heart.

Personal troubles had set Pelke thinking about his life, his grandmother's life and her death.

He pictured tears running down his grandmother's face — tears he believed could stem only from love and compassion she felt for her young assailant, now sitting alone in a jail cell.

Convinced that his grandmother would want a family member to speak out against Cooper's execution, Pelke became active in the anti-death penalty movement. He participated in protest marches in Florida in 1990 and in Texas in 1991.

During the Texas march, Pelke suggested a march be held in Indiana and that Murder Victims' Families for Reconciliation — an

whose board he serves — should be its sponsor.

The Indiana event is expected to be one of the largest anti-death penalty events in recent years, drawing participants from across the country.

"Murder is a horrible crime," Pelke insisted. "But there has to be some other way than the death penalty."

Painful childhood memories

When Sam Sheppard talks about executions, childhood pain from long ago still seeps through.

In 1954, his father, Dr. Sam Sheppard, was a 30-year-old surgeon who owned a Dutch Colonial home in suburban Cleveland, a sporty Jaguar and a Lincoln Continental convertible.

His mother, Marilyn Sheppard, was 31 and four months pregnant.

Life, in short, was good.

But in July of that year, Sheppard's world was turned upside down.

"My mother was murdered when I was 7 years old. Within five to six months of the murder, the State of Ohio asked the jury to execute my father for a crime he didn't commit," Sheppard said.

"So my view is I lived through the trauma of a murdered parent and then was terrorized by the state with the threat of the execution of my father," said Sheppard, also a board member of Murder Victims' Families for Reconciliation.

A jury ultimately found the elder Sheppard guilty of second-degree murder, instead of first-degree, which meant the death penalty could not be imposed.

Eventually, Sheppard won a new trial and was exonerated in 1968. He died four years after being released from prison.

His son still shudders at the thought of what could have happened.

"I know that if they had convicted him of first-degree murder and executed him within six to 18 months, which they were doing in those days, I would not be alive."

"I could not have withstood another trauma of that magnitude in my life."

Like Pelke and Jaeger, Sheppard believes violence — whether in the form of guns on the street or electric chairs in state penitentiaries — is not the solution to violent crime.

"I sincerely believe it hurts people more, particularly the children," said Sheppard, who lives in Cambridge, Mass.

"I went to high school in Indiana, to Culver Military Academy. I know first-hand that people in Indiana are decent, solid people," he said.

"I think if they are exposed to the truth, they will be able to decide for themselves."

THE INDIANAPOLIS

STAR

3 who have been touched by murder unite in stand against death penalty

■ Love-filled memories stronger than a desire to bring about revenge.

By Rob Schneider
STAR STAFF WRITER

Marietta Jaeger was a mom, Bill Felke was a steel worker, and Sam Sheppard was a 7-year-old boy without a care in the world.

Living in different parts of the country, chances are their paths never would have crossed.

But murder has brought them together. In different times and places, each lost family members to crimes of stunning viciousness.

This week, all three will journey to Indiana to take part in a statewide demonstration — a two-week "Journey of Hope," sponsored, in part, by the families of murder victims.

And they, along with members of other organizations participating in the event, have a most



Marietta Jaeger conquered her rage by praying for her daughter's killer.

astonishing goal:

An end to the death penalty.

Ask Marietta Jaeger, and she will tell you about anger.

It overflowed within her one June day in 1973.

Her 7-year-old daughter, Susie, had been missing for days, kidnapped from her tent in a Montana campground.

The FBI, local authorities and volunteers had combed the area for clues. But they found nothing.

Finally, the searchers turned their attention to a river that ran next to the campground, dragging it for signs of the girl's body.

"The boat would move and it would stop. Every time it would stop, my heart would stop because I was so afraid they would find Susie," Jaeger said.

As she watched, it began to dawn on Jaeger that she might never see her daughter again.

And the anger began to well up inside her.

"Finally, I just couldn't keep it squelched anymore," Jaeger said. Her image of herself as a "good Catholic girl" began to crack.

By the time she went to bed that night, she could barely contain her rage.

"I said to my husband ... 'I could kill him,'" said Jaeger, who now lives in Detroit. "I meant it with every fiber of my being. I'm sure I could have done it with my bare hands and a smile on my face.

"I felt it was a matter of justice, that he needed to pay for what we had already gone through and for

See MURDER Page 2

MAGDALENO ROSE-AVILA

MAGDALENO ROSE-AVILA is the Western Regional Director of Amnesty International USA in Los Angeles, California. Amnesty International [AI] is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners, and an end to torture and executions. AI received the Nobel Peace Prize in 1977 for its work to promote human rights worldwide.

Mr. Rose-Avila has been a long-time human rights activist and outspoken opponent of the death penalty. Prior to commencing his current position in 1990, he was National Director of AIUSA's Campaign to Abolish the Death Penalty from 1987 to 1990. In that capacity, he coordinated international and national efforts to end capital punishment and traveled to other countries on behalf of abolition, including an Amnesty mission to Jamaica. From 1985-87, he served as Southern Regional Director of AIUSA in Atlanta, Georgia. In 1988, he was Media Coordinator for AI's Worldwide Human Rights Concert Tour, "Human Rights Now!", which featured Bruce Springsteen, Sting, Peter Gabriel, Tracy Chapman, and Youssou N'Dour and traveled to 18 countries, including Argentina, Brazil, Zimbabwe, Ivory Coast and Hungary.

Prior to joining Amnesty's staff, Mr. Rose-Avila was a Special Assistant to the Chair of the Democratic National Committee from 1981 to 1984, and a coordinator for the Peace Corps in Guatemala and Nicaragua from 1978 to 1980. He has also served as a Special Assistant at the U.S. Department of Labor (1986-88), as Director of the Colorado Migrant Council (1985-86), and as an organizer for the United Farmworkers of America (1970-74). Mr. Rose-Avila received a BA degree in Theater, Journalism and Communications from the University of Colorado at Boulder, and is the founder of Your Human Rights Theater and Teatro de Valle. He most recently acted in the Los Angeles production of The Last Pad by William Inge, a play about the last days of a death row inmate.

MARIETTA JAEGER

MARIETTA JAEGER lost her 7-year-old daughter to violent crime in 1973. She is the author of *THE LOST CHILD*, a book that chronicles her experiences and spiritual journey surrounding the kidnap and murder of her daughter during a family camping trip. She is currently a Board Member of *MURDER VICTIMS FAMILIES FOR RECONCILIATION*, a national support group of murder victims' family members who work for abolition of the death penalty. In her passionate advocacy against state killing, Ms. Jaeger has stated:

Concerning the claim of justice for the victim's family, I say there is no amount of retaliatory deaths that would compensate to me the inestimable value of my daughter's life, nor would they restore her to my arms. To say that the death of any other person would be just retribution is to insult the immeasurable worth of our loved ones who are victims. We cannot put a price on their lives. That kind of justice would only dehumanize and degrade us because it legitimates an animal instinct for gut-level, blood-thirsty revenge.

Ms. Jaeger is an active member of Amnesty International, and in 1989 led AI's Campaign Against the Death Penalty in Japan and South Korea. She is a member of the National Coalition Against the Death Penalty, the Michigan Coalition Against the Death Penalty, and a past Director of the Michigan Coalition for Human Rights. She has spoken extensively against capital punishment at local and national conferences. She has also been a presenter for numerous lectures, workshops and retreats on forgiveness, reconciliation, peacemaking and non-violence in the U.S. and Canada. Ms. Jaeger lives in inner-city Detroit, Michigan, where she is a member of the Detroit Peace Community and Promotion Manager for *THE WITNESS*, an ecumenical social justice journal.

WHAT DO MVFR MEMBERS SPEAK ABOUT?

MVFR members describe the experience of losing a loved one through murder and their eventual recognition, unique to each one, of how hatred and a desire for revenge is deleterious and even destructive to themselves most of all. They share their struggles to let go of their vindictive feelings to move on an up to a healthier, more humane way of responding to the offender and dealing with their grief. Audiences are witnesses to their triumphs as MVFR members attest to the inner peace and healing which is restored to their hearts and minds as they begin to seek compassion and concern for the persons responsible for the crimes which took away loved ones from their lives. Many folks tell stories of forgiveness and reconciliation; all, for a variety of credible and compelling reasons, articulately and vehemently oppose the death penalty.

-MVFR

Please enter into the Record

Jt Judiciary

My name is Mark Boesser. I live at Lena Cove, Juneau. I have been a priest of the Episcopal Church for 42 years, serving 33 of those years in Alaska.

My question is: How can any society possibly benefit from re-enacting the very violence it so vehemently condemns? In my opinion we neither want nor need the death penalty.

If, as has been well documented, the death penalty does not serve as a deterrent, what purpose can it possibly serve?

I once naively thought it would save money. However I learn, to my surprise, that just the opposite is the case. For a number of reasons the death penalty proves to be even more expensive than holding an offender in prison for life.

If, as indeed the facts bear out, the death penalty is creating an ever increasing problem for correctional systems all across the country, why should we take upon ourselves problems we can avoid?

Historically the death penalty has been shown to be capricious, unfair, and racially biased.. served disproportionately upon economically disadvantaged members of ethnic minorities. Is that what is wanted? Surely not!

What purpose can it possibly be conceived to serve unless it be vengeance, and, I ask you, is that mankind's prerogative? It certainly cannot heal the devastating rage and grief of the victim's families. What is possibly gained by attempting to take vengeance into one's own hands?

The General Convention of the Episcopal Church, it's national deliberative and legislative body, has opposed capital punishment on the basis that the life of an individual is of infinite worth in the sight of Almighty God, and the taking of such a life falls within the providence of Almighty God and not within the right of human beings.

This opposition of the Episcopal Church to capital punishment has been reaffirmed again and again (1958, 1969, 1979).

The institutionalized taking of human life prevents the fulfillment of Christian commitment to seek the redemption and reconciliation of the offender.

And the reality is that there are incarceration alternatives for those who are judged to be too dangerous to be set free in society.

Given such considerations, the Episcopal Church has called upon its dioceses and members of the Church to work actively to abolish the death penalty in states that have it.

I, personally, am proud and grateful that the Territorial Legislature of Alaska had the wisdom to reject the death penalty years ago. To turn our back upon that wisdom and choose the death penalty now would, to my mind, be to take a tragic, tragic step backwards.

**I urge you with all my heart to reject HB 162
and SB 167**

Thank you.

**The Rev. Mark A. Boesser
17585 Lena Loop Rd.
Juneau, Alaska 99801
ph. (907) 789-1445**

2. of two



Alaska State Legislature

Please enter into the record my testimony to the Joint Judiciary Committee
committee name

committee on Capital Punishment, dated 11/16/93
bill/subject

I am opposed to capital punishment, I am for lifetime imprisonment without change of parole. I believe people who have committed heinous crimes ~~who~~ should never be freed to live in society, I also believe in the sanctity of human life, from conception to NATURAL death.

If we decide to kill someone because they've killed someone else, we would be no better than the murderer. We would have stooped to their level of behavior.

Currently, statistics say it's not even "cost-effective" to kill someone by capital punishment. It's "cheaper" to imprison for life. This way of thinking is distorted, in my opinion. How can life ever be equated to cost?

If life is not respected, then why not continue to promote a death culture by promoting abortion, euthanasia, assisted suicide? Why NOT destroy the weak and the old? They're not "cost-effective" to our society either.... There is another reason I am opposed to capital punishment. Innocent people; wrongly accused, sentenced to death. Two thousand years ago a man named Jesus Christ was put to death by capital punishment. As I pondered this event, I began to wonder WHY we would desire to put someone to death in 1994. Aren't there enough deaths in AK? Isn't there enough violence? Doesn't violence breed more violence?

From what I can tell, there is no correlation between enforcement of capital punishment and reduced crime rates, nor do I see a correlation between increased crime rates and states that ban capital punishment. Clearly, capital punishment is not a proven deterrent to crime.

Maybe, just maybe, life imprisonment with NO CHANCE of parole would be a deterrent. Lets work on "NO CHANCE OF PAROLE" and see if we can make some progress. Going to prison should NOT BE A JOKE. It should be a FATE WORSE than death. Thank-you for listening/reading

Signed: Mary S. Soltis
Testifier

Representing (Optional)
615 DeGroff Sitka AK 99835
Address
(907) 747-5624
Phone No.



Alaska State Legislature

House + Senate
Judiciary Committees

Please enter into the record my testimony to the

committee name

committee on Capital Punishment, dated

11/16/93

bill/subject

I am opposed to HB 162, SB 127 and HJR 43 for a wide variety of reasons. In part, these items pander to our fears and our need for revenge. I am not convinced ~~the~~ that the death penalty has been or will be applied evenly and fairly. I know a white male who killed someone and did not spend any time in prison. I know an Eskimo man who killed someone and he will spend most of his life in prison. The difference, in part, was personal wealth. Add this to the possibility of killing innocent persons and the system
(over)

Signed:

John J. Shaffer

Testifier

self

Representing (Optional)

303 Kinsham Sitka Alaska 99835-7124

Address

907-747-8725

Phone No.

has too many flaws. A lot of people will lie to gain favors from the system for their own crime and time.

These bills and resolution promotes the philosophy that we (society) will make a witness against murder by sponsoring state sanctioned murder. That is not logical to me!

I would prefer living in a state that did not have that philosophy.



Alaska State Legislature

Please enter into the record my testimony to the House/Senate Judiciary Comm.
 committee name
 committee on Death Penalty, dated 11/16/93
 bill/subject

I apologize for not being able to wait long enough to testify. I do wish to register my objection to House Bill 162 + Senate Bill 127 -

Aside from the factual argument that the death penalty is not a deterrent (evidenced by 37 states usage) implementation of the proposal would serve to actually cheapen the value of human life in Alaska. When 99% sentences (60 w) good time are available [likely more] a deterrent than threat of death to most offenders, the need to kill for retribution is made clear. Such a warning with the mind set of the offender is not a positive for Alaska nor will anyone be safer for it.

Signed: Moshe Calberg Zoren
 Testifier

Representing (Optional)
7540 E-17th Ave - Anchorage 99503
 Address
337 7741
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____ committee name

committee on Death Penalty, dated Nov. 16, 1993
bill/subject

In such a violent age, it is a gross mistake to perpetrate more violence by conveniently "killing our mistakes". Putting to death those who once merited our protection as an abused or neglected child. At what point do we withdraw that concern for those who are so deranged, angry etc. as to kill and in turn decide to kill back? It is inhumane in a society where we are afraid to spank a child on one hand but if he grows up sick we will kill him. We need to stop "growing" criminals to begin with, concern ourselves with

preserving our children, retaining family values

Signed: Riuka Chana Zorea
Testifier

Representing (Optional)
7540 E. 17th Ave

Address
333 4037

Phone No.

and somehow stop the killer before he becomes one.

November 18, 1993

Senator Robin Taylor
Chair, Senate Judiciary
P.O. Box 1441
Wrangell, Alaska, 99929-1441

Received

NOV 22 1993

881. R

Senator Taylor;

I am writing to you in re. to your role as the Chair person of the Senate Judiciary and pertaining to the hearing held on 11-16-93 re. the death penalty in Alaska. I was not able to attend the hearing, and so may sound redundant or misinformed at times in this correspondence.

I am an avid gun collector, and believe that one must maintain the right to defend one's freedom, safety, property, family, etc. from any entity that violates historical social boundaries, and that this defense is acceptable at whatever level is deemed to meet the definition of necessary or justifiable force for that moment. Thomas Jefferson, Paine, et al even went so far as to identify domestic governments, individuals, etc. as acceptable targets of that force if certain criteria were established.

I am also a licensed clinical social worker, a mental health professional, a licensed marital AND family therapist, a member of the AkCLU, ACLU, NRA, etc. I have a newborn baby daughter; Rayna Kathryn Nelson. I contemplate the legislation discussed at the hearing this past Tuesday when I look at her. I know that if someone were to victimize her physically, sexually, etc. that I would quite likely contemplate or even act in re. to seeking serious vengeance.

At the same time, I know that we live in arbitrary, fickle, unpredictable and illogical times. The occurrences of prosecutorial power being abused (see the Randy Weaver case, though I detest racists/aryan scoundrels, also see the case of Geronimo Pratt and Leonard Peltier), the frequency of over-zealous law enforcement, and the reality of victory in court often times being more based on who provides the best circumstantial evidence (drama), and who has the most manipulative attorney leads me to fear the thought of a very imperfect and biased system being able to define who lives and who dies. In the case of the person who witnesses the murdering of a family member, and takes the life of the perpetrator there on the spot with no question as to guilt or innocence, I have no problem with that. I do have a problem with an obviously flawed, biased system defining past events for which none of them were present, then ruling on who lives and who dies.

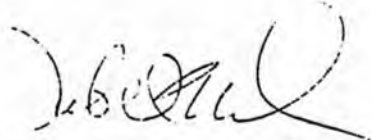
If this law were to include a section stating that if it were found . . . after the execution of the sentence was carried out that there was reasonable evidence that the accused had, in fact, not committed the alleged crime, that the judge, jury members, law enforcement officers, and prosecutors all serve the maximum amount of time allowable for negligent homicide (as that is what they would have committed), and that this was

unwaivering conditions for any and all trials involving a potential death sentence then I would not have as great a problem with the proposal as the persons behind such a verdict would be establishing their faith in the system at a very suitable level.

This is the same system that said that the recriminalization of marijuana, unconstitutional as it was, would not be enforced, but was rather just to make a statement to the "children." The same system that saw John Collette looking at life without parole for cultivation of marijuana less than three years later. Yes, Senator Taylor, it is a fickle, arbitrary and illogical system that I would certainly not trust with the power to decide life and death. In my work as a mental health practitioner, I have seen rapists sentenced and released after serving fifteen months, then watched as a first-time offender is sentenced to thirty-five years without parole for involvement in a non-violent and mutually agreed upon cocaine sale. Senator Taylor, the lack of logic and obvious lack of ability to prioritize criminal behavior scares the breath out of me when considering giving this "system" the power to kill people.

I beg of you to please consider this when deciding on the future of this very dangerous legislation.

Sincerely,



Dirk R. Nelson, LCSW, LMFT
P.O. Box 2437
Valdez, Alaska, 99686

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cc; House Representative Brian Porter
House Judiciary Chair
716 W. 4th Ave.
Suite 640
Anchorage, Alaska, 99501-2133

Legislative correspondence file

Tom Moyer
2047 Amy Dyan Road
Fairbanks, AK 99712

FAXED
11/15

November 15, 1993

Representative Jerry Sanders
716 4th Avenue Suite 360
Anchorage, AK 99501

Received

NOV 18 1993

Re: Capital Punishment

Dear Representative Sanders:

In anticipation of the hearings on November 16, I would like to take the opportunity to put my opinion of HB 162 and related measures (SB 127 and HJR 43) on the record.

Personally, I am inalterably opposed to the death penalty. As a former legislator, I had the chance to spend a great deal of time reviewing the arguments from both sides of the capital punishment issue. My contemplations and research reinforced my personal belief that there simply is no argument that justifies the use of the death penalty.

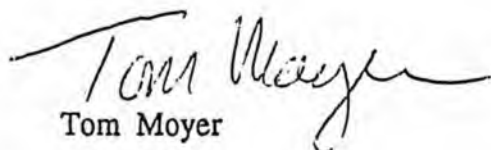
Admittedly, there is considerable support for the death penalty in our society. In far too many cases, the support for capital punishment stems from vengeance, anger and hate. Some advocates say it no longer matters whether it serves as a deterrence or not, that retribution alone justifies capital punishment, that society must exercise control and "do something". I cannot agree with those who think that vengeance is a human instinct and that it should be transformed into a judicial principle. The statistics show that the actual numbers of executions in our country are relatively low. Criminal justice experts believe this reflects the public's deep-seated ambivalence about the issue despite the fact that over three quarters of respondents to public opinion polls say they support the death penalty. Sometimes it is the job of a lawmaker to work to change "societal norms" when they are misguided rather than comply with them. That is a true test of leadership.

Friends or family members of the murder victims are understandably among the most fervent supporters of the death penalty. Demanding an "eye for an eye, a tooth for a tooth" is easy at such times. However, it is my belief that the state should not participate in what it forbids its citizens. It is our duty as citizens and the duty of our government to be rational at such times on behalf of all society. It is nothing less than a moral imperative that society as a whole enforce a rational, higher standard of conduct for our government. Do our laws allow the Commissioner of Corrections to "establish a procedure" to rape rapists or burn the homes of arsonists as punishment? No, of course not! Yes, murder is a more serious crime, the most serious of all; but using the official power to execute is simply an admission that we have failed as a contemporary society. Innocent people have been executed in the name of justice. Minorities and the poor have been given the death penalty in disproportional numbers. The former warden of San Quentin, Mr. Clinton Duffy once said, "The death penalty is the privilege of the poor." Rehabilitation efforts have been mixed at best. Abandoning them in favor of retribution is also an inexcusable admission that we have simply given up.

Cannot a modern, dignified, humane society, one on the verge of an unprecedented time of world peace, find better ways to prevent murder, help the victim's family, and treat the offenders than simply killing them? A life sentence without parole is not soft on crime, so says Mr. William D. Leeke, former South Carolina Commissioner of Corrections who had hoped never to have to go through an execution but was responsible for overseeing two late in his career. He said: "We would have a much more civilized society if we could find a way not to kill people, but that is perceived as idealistic and soft on crime and liberal, but I think putting people in prison for the rest of their lives is not being soft on crime."

The death penalty may even make great politics for some, but it is not good social public policy. Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Tom Moyer". The signature is written in dark ink and is positioned above the printed name.

Tom Moyer

cc: Chairs, House and Senate
Judiciary Committees

file

Kathy Kainer
311 Melody Place, Apt A
Anchorage, AK 99504

Received
NOV 19 1993
MAIL ROOM

November 16, 1993

To the Honorable Representatives and Senators of the House
and Senate Judiciary Committees:

I want to thank those of you who took time out of your busy schedules to listen to public comments about House Bill 162 and Senate Bill 167 - Capital Punishment for Murder. Although I was allowed to testify, the hour was late and I am a better writer than speaker, so please allow me to supplement my remarks with this letter.

I want to commend you on your efforts to make this state a safer place for law abiding citizens to live. I agree that it is the state's responsibility to protect us from violent crime. As an Anchorage resident who is afraid to walk the two blocks from my home to the nearest store after dark, I thank you for your attention to this issue. However, I think with the testimony you heard today you should realize that importing the death penalty will not make the streets of Anchorage or any other Alaskan city safer.

Representative Sanders stated that even if the death penalty does not serve as a deterrent this bill should be passed because it is the will of the people. He cited polls showing that the vast majority of Americans support the death penalty. Randall Burns countered that if people are informed about the option of life without parole and the costs associated with administering the death penalty, support drops to less than 45%. If you had asked me in 1985 if I supported the death penalty I would have said "yes", since I had never given the issue much thought. Once I joined Amnesty International and was exposed to the facts about the death penalty, I changed my mind. If you go back to your constituents and ask them about their support of the death penalty, spend some time sharing with them some of the facts you heard today about the cost and its inability to deter based on the experience of states that have the death penalty, and offer them the alternative solution of life without parole, I think you will find that support for the death penalty is a mile wide and an inch deep.

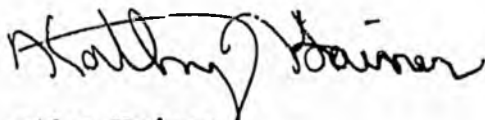
There will always be those who clamor for revenge, regardless of the cost. The desire for vengeance should not dictate public policy.

I encourage you to research the experience of our allies who have abolished the death penalty and still manage to have a much lower rate of murder and other violent crimes

than the United States. Ask your neighbors in Canada why they think Vancouver has such a lower crime rate than Seattle. They are both large cities, less than 100 miles apart, and Washington has a death penalty law that supposedly deters crime. Their answers may surprise you.

I hope you will carefully consider the testimony you heard today, abandon your efforts to import a death penalty and begin to focus on real solutions to the problem of crime in our communities.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Kainer". The signature is written in dark ink and is positioned above the typed name.

Kathy Kainer

The Constitutional Problem with an Alaska Death Penalty in a Nutshell.

by John Havelock (testimony of Nov 16, 1993)

Mr. Chairman, it may help the committee if I set out in as few words as possible why this bill is unconstitutional when obviously somebody has told you that it is constitutional. In a nutshell, the person so advising you has put too much reliance on a statement on the floor of the convention by a committee chair and not enough on the plain meaning doctrine and the importance of other doctrines used in making constitutional law.

At the convention, (1309), Delegate Awes was asked by Delegate McLaughlin, "was it the intent of this clause to abolish capital punishment on the theory that you cannot reform a dead man?"

Delegate Awes replied: "...this sentence has been almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment..." Delegate Doogan goes on to say that he believes the Supreme court of Indiana has so ruled and this clause was taken from Indiana.

Please note, and I will come back to it, that the Alaska delegates believed that what a Supreme Court said about this language at a particular time and place was the guiding principle in determining its meaning.

Delegate Doogan goes on to say, "it was purported to intend that this clause would have nothing to do until the time a person was sentenced... that this statement was more or less advisory or instructive to the penal institutions that they would work on the basis of reformation and not go back to the bread and water stage, but it was intended that it would apply after a person had received sentence...."

Let me first point out that statements of delegates and legislators while useful are not determinative. As the Supreme Court has said in *Division of Elections of State v Johnstone*, "adherence to the common understanding of words is especially important in construing provisions of the Alaska Constitution because the court must look to the meaning that the voters have placed on its provisions." That is, it is what the people might have thought, not what the delegates thought that is the determinative factor in legislative history. What was the plain meaning of the words? The plain

meaning was obviously the common observation of Delegate McLaughlin: dead men cant be reformed.

The other thing to remember is that the gloss that is put on a constitution over the years is far more important to understanding that constitution than the actual words. For example with regard to the U.S. Constitution, what did the original delegates think was included in due process or equal protection? Do you think they thought that it could control legislative apportionment? Even considering the present subject, do you think the Philadelphia delegates had the slightest notion that due process would result in the present constitutional fabric which governs the death penalty under the federal constitution? Surely the answer is "no" if not "hell no". The framers set out generalized principles and it is for the courts of succeeding generations to set out what these principles mean in particular applications just as it was for the Indiana court to determine the meaning of this language in its particular application given the evidence and the state of science at the time.

For an example of the treatment of the opinion of a delegate, look what Delegate Doogan said in the quote I gave. Is Doogan's interpretation the law today? "Hell no", any reasonably informed lawyer would answer. In dozens of cases, the court has held that this language is mandatory and not advisory, that it covers sentencing and that the judiciary is bound by it and it applies long before the person is sentenced. So much for Doogan's opinion.

So why is Awes shot in the dark any more likely to hit on what this general language means thirty five years later? As she said, the language is subject to the interpretation of courts. The court will consider the application of this phrase in its particular setting: social, economic, scientific not in 1956 but in 1990 whatever, if you make the mistake of passing this. It will hear evidence on whether the death penalty is required to meet the twin goals of sentencing, that it has embraced many times: protection of the public and reform of the offender. It will be weighed in the context of the constitutional doctrine (not available to delegate Hawes or to the Indiana Supreme Court) that the right to life is a fundamental interest and that the state must show a compelling interest to deprive a person of that right. Where is the evidence that would uphold this law? I just don't think it is there. And at the same time you have all kinds of evidence of legislative intent that runs against the ~~argument built on protection of the public. No one can predict perfectly what a court~~ will do, but I wouldn't give you more than a 10% chance of sustaining this bill.

Calista Corporation

Statement

of

Matthew Nicolai

Senior Vice President

Before the November 16, 1993 Joint Public Hearing

Alaska State Senate, Judiciary Committee

Alaska House of Representatives, Judiciary Committee

Concerning

Senate Bill No. 127

and

House Bill No. 162

Mr. Chairman, Robin Taylor of the Alaska State Senate, Mr. Chairman, Brian Porter of the Alaska House of Representatives, Members of the Joint Committees of the Senate and House Judiciary Committees'. My Name is Matthew Nicolai, Senior Vice President, Calista Corporation.

Calista Corporation is an regional Alaska Native Corporation established under the Alaska Native Claims Settlement Act of 1971. Calista Corporation has an enrollment of 13,308 shareholders. Calista region 56 villages encompass the Kuskokwim and the lower Yukon Rivers' of a population base over 20,000 people.

We appreciate the opportunity to testify before you today to discuss the Senate Bill 127 and House Bill 162 as it relates to the Yupik people of the Calista region. Calista Corporation is not in favor of either Senate Bill 127 or House Bill 162. We are not in favor of the death penalty.

In 1990 Calista Corporation published a paper to understand the plight of the Yupik people in western Alaska. "The Calista Region, A Gentle People- A Harsh Life," was prepared by our Land and Natural Resources Department and the Village Management Services to better educate the public of the lives of the Yupik people in our region. We attributed a whole chapter on, "A New Crisis in the Calista Region-'The Decline of Native Well-Being,' " examined alcohol abuse, suicides, domestic violence, child welfare.

We published our findings to bring this issues in the forefront of policy makers. We wanted to address problems faced by our Natives. We invested time and energy to develop testimony to bring forth our problems we face in the villages. We testified before federal and state committees on economic problems of our villages.

Our traditional values and customs have changed drastically over a short time period. The drastic change of lifestyles has eroded our established patterns of trust we have to our Elders. In the Yupik lifestyles, Elders were the center of traditional governing bodies and

justice system. Our traditional child rearing lifestyles are virtually non-existence in the villages.

Without Elders guidance and not understanding of new policies affecting our villages, we began to see confrontation by our young.

Lifestyle change is like an walking into an lions den that awaits its prey to tear apart. Alaska Natives are those people that have walked into the lions den. An unkind world with many laws that confront our own unwritten traditional laws. Confrontation breeds violence. Violence leads to heinous crimes and other crimes of passion.

Studies by state and federal governments show alcohol related violence is the leading cause of accidents and deaths in Alaska. We read every day of violence related crimes of our own Alaska Natives. The states correctional facilities all over the state list the Alaska Natives as it leading residents.

Passage of Senate Bill No. 127 and House Bill No. 162 will further erode our cultures. We do not favor the passage. However, we would like for these committees to investigate the Natives plight in the states justice system.

We thank the committees of the senate and house for holding hearing on these bills. We are available for further comment if necessary.



TESTIMONY OF TREFON ANGASAN ON HB 162

HOUSE JUDICIARY COMMITTEE

NOVEMBER 16, 1993

My name is Trefon Angasan, and I am the Vice President of Corporate Affairs of the Bristol Bay Native Corporation. I am testifying today on behalf of the 5,400 shareholders of the Bristol Bay Native Corporation, most of whom live in Alaska.

First, I am testifying as an Alaska Native upon behalf of Alaska Natives. Alaska Natives share the concern of the House Judiciary Committee with crime--specifically, with the crime that is the subject of HB 162: first degree murder. Let me explain why Alaska Natives have this concern. Homicide ranks as the sixth or seventh most common cause of death among Alaska Natives, a murder rate four times the national average. Native male homicide victims outnumber native women victims by about three to one. Nevertheless, Native women face a higher risk of death by homicide than women elsewhere in the United States.

Let me cite a few more statistics to show you why Alaska Natives are concerned with crime. Thirty four per cent of the Alaska prisoner population are Natives, although Natives represent only sixteen per cent of the total population.

Now, let me explain to you the reason for the Alaska Native crime rate. The vast majority of crimes committed by Alaska Natives are due to alcohol. A study of the Alaska Justice Forum in 1991 concluded that in those rural Alaska Native villages that were the subject of that study that ninety five per cent of felonies involved alcohol.

I cite these statistics to you so that you will appreciate the perspective of Alaska Natives on crime. We believe that the Alaska legislature should deal with the cause of crime and not place its emphasis on capital punishment. Capital punishment will not prevent an alcoholic from committing crime--it merely will eliminate him as a person. Please take all of the money that will be spent on the administration of a bill providing capital punishment, and spend it on the prevention and treatment of alcoholism.

I would also like to add that Alaska law enforcement officials treat Alaska Natives at times as though capital punishment was already a part of Alaska law. For example, the Alaska police department recently shot and killed a shareholder of the Bristol Bay Native Corporation whose major problem was alcoholism and not crime. This is happening to Alaska Natives across Alaska. Too often, Alaska law enforcement officials use lethal means of self defense when bullets are not called for in law enforcement.

In conclusion, I would like to address that provision of HB 162 which calls for an advisory vote at the November 1994 general election on capital punishment. Alaska Natives as well as many other Alaskans have called for a vote of Alaskans on the question of a preference for subsistence in times of need in rural Alaska.

Alaska Natives believe that the question of subsistence--a life or death issue for many Alaskans--certainly deserves a place on the ballot if the Alaska legislature decides to place capital punishment on the ballot.

Charles Campbell

3020 Douglas Highway, Juneau, Alaska 99801 (907)586-5793

Representative Brian Porter, Chairman
House of Representatives, Judiciary Committee
Juneau, Alaska

January 24, 1994

Dear Chief Porter:

You will recall that I was Director of Correction about fifteen years ago, when corrections was a part of Health and Social Services. During that time Helen Bierne asked me to prepare a position paper on a bill that had been introduced in the Legislature reauthorizing the death penalty. Helen wanted me to research the question and write up my conclusions. She did not tell me what conclusions she hoped that I would reach.

Although I had been in corrections for many years, I had had no experience with the death penalty. As a long-time federal prison man, the death penalty never came up for me. I had certain moral and religious compunctions about it (still do) but little in the way of practical knowledge to back them up.

I spent a couple of weeks almost exclusively on this matter; I obtained and read everything I could get my hands on about capital punishment. I had many long-distance telephone conversations with people who had been involved or otherwise had singular knowledge of the subject. I gave special consideration to Alaska's unique circumstances, especially in terms of our ethnic and cultural diversity, and the kinds of crimes that were, and still are, often committed here.

The result of all of this was that I became an implacable opponent of the death penalty- especially for our state. Over the years I have kept up with this subject, and have become more convinced every year that we should avoid returning to use of capital punishment here.

Aside from the damage it would do to the social fabric of our state, the main arguments against the death penalty are: 1. Lack of deterrent value (A friend of mine, a university based criminologist, told me recently that he does not know of one accredited person in the field of criminology that still holds the position that the death has deterrent value.) 2. High cost (far more costly than life imprisonment.) 3. The impossibility of administering the death penalty fairly, & 4. irreversibility.

With your permission I will testify on Wednesday. Meanwhile, here is a copy of a reference sheet, in which I spell out my views. You won't have time to read it anytime soon, but I hope you will have a look at it before taking a final position on this crucially important question.

However you may finally stand on this matter, I am glad you are Chairman of the Committee, because I know the question will be given full and fair consideration.

Best wishes to you,

Charles Campbell

Charles Campbell
Juneau, Alaska
January 1994
(907) 586-5793

TWELVE REASONS WHY ALL ALASKANS SHOULD OPPOSE THE DEATH PENALTY

More often than not, debate over the death penalty involves discussion of unresolvable philosophical, ethical and theological considerations. Opponents are convinced that violence begets violence and that use of the death penalty brutalizes all of us. Proponents tell us, on the other hand, that certain crimes are so reprehensible as to place a requirement on society to take the life of the perpetrator. Most religious leaders oppose the death penalty on theological and moral grounds, but ministers in some conservative Christian churches manage to find justification in the scriptures (primarily in the Old Testament) for use of the death penalty. I offer here twelve reasons for my opposition to the death penalty, none of which are based on philosophical or religious grounds. I will not deny that my personal convictions would prevent me from approving of the death penalty even if these practical reasons for opposing it did not exist, but these compelling considerations do exist. You may find certain of them debatable, but by no means all of them; the first of them, for example:

1. *The death penalty is irreversible:* James Adams was executed by the State of Florida in 1984. He had unwaveringly maintained his innocence throughout the trial and during the years of the appeal process. Substantial evidence has subsequently come to light, including forensic evidence gathered by the Florida Office of Law Enforcement, that at the very least would have raised reasonable doubt. Other persons who had substantial claims of innocence were Timothy Baldwin, executed in Louisiana in 1984, Edward Earl Johnson, executed in Mississippi in 1987 and Willie Jasper Darden, executed in Florida in March 1988. These men may have been guilty, but reasonable doubts have been raised and there is no bringing them back. A study published by the Stanford University Press in 1987 documents the incontrovertible innocence of twenty-three persons executed in our country during this century and the probable innocence of others. Many other innocent defendants have been sentenced to death in American courts and would have been executed had it not been for the belated appearance of witnesses, or the discovery of suppressed evidence. We will never know how many innocent people have been executed. In any case, it can hardly be denied that innocent people have been killed by the state, and will be killed occasionally, as long as we continue to retain the death penalty as a criminal sanction.

2. *The death penalty has no value as a deterrent:* This is a settled argument. If there is even one accredited criminologist remaining in the United States who continues to take the position that the death penalty has special value as a deterrent, he or she has been notably silent for several years. Three isolated investigations done in the 1970s purported to show that executions result in fewer murders. These studies used research methods normally restricted to economic research. Proponents of the death penalty continue to cite these studies, even though long ago discredited by social scientists. The methodology used was found to be seriously flawed by a National Science Foundation report.

On the other hand certain other highly respected studies strongly suggest that the death penalty may be more apt to induce than deter violent behaviour, among persons predisposed to such behavior. Glenn Pierce and William Bowers of Northeastern University analyzed data on all executions that occurred in New York State over a period of fifty-seven years. Over that period of time one or more executions in a given month added a net average increase of two homicides to the total committed in the next month. This finding should not be surprising, given the bizarre thought processes of especially brutal, vicious murderers.

No social scholar has yet been able to refute the findings of Robert Rantoul, who conducted his extensive studies over a hundred years ago, and demonstrated an unmistakable pattern of increases in homicide rates following increased use of the death penalty. A recent F.B.I. Uniform Crime Reports publication, "Crime in the U.S." reported that murder rates in states that have abolished the death penalty average 4.9 murders per 100,000 population; states still using the death penalty average 7.4 murder. We can't know the precise meaning of these figures, or the exact significance of the lower incidence of murder in Canada since abolition of the death penalty in that country in 1976, but these facts are hardly supportive of arguments for restoration of the death penalty in Alaska.

3. *The death penalty is exorbitantly expensive:* In its 1976 *Gregg v. Georgia* ruling, which restored the legality of the death penalty, the U.S Supreme Court established stringent guidelines that render prosecutions of capital cases far more expensive than non-capital 1st degree murder cases, and far more expensive than holding the offender in prison for life. The "death is different" concept emerged from this ruling. Thus, the guidelines established provide the defendant with what lawyers call "super due process," a many layered labyrinth of appeals that invariably require many years to complete. The conservative Supreme Court now in place has chipped away at the death penalty appeal structure, but it has gone about as far as it can go. It is unrealistic to expect an execution to take place in less than seven years from time of conviction. Hundreds of defendants have been on death rows across the country for more than ten years.

We should be grateful that constitutional rulings prevent significant alteration of the process, because it a process that has been successful in correcting errors and saving innocent lives. More than a third of all death penalty sentences have been set aside or commuted since 1976.

Texas and Florida have spent over \$300 million executing 103 defendants since 1976. The murder rate in both states has continued to rise. Across the country millions of dollars have been squandered on the death penalty. The 227 executions carried out during the past eighteen years have cost the taxpayers from one to six million dollars each. At present there are more than 2800 people on death row across the country, comprising a dollar drain that will reach into the billions, this coming at a time when resources are desperately needed for effective law enforcement and crime control.

4. *The death penalty weakens law enforcement:* Every case designated for death penalty prosecution requires an inordinate investment of law enforcement resources. An extensive amount of investigative work is uniquely required in capital cases and an exceedingly heavy load falls on the office of the prosecutor. Because of the unique appeal process the burden continues long after conviction and sentencing. We are thus deprived of effort and resources that would otherwise be devoted to solving crimes and prosecuting criminals. The "death is different" concept, which issues from U.S. Supreme Court rulings on the death penalty, results in an additional disadvantage for law enforcement. Lower courts are inclined to exercise more stringent standards than might otherwise be required in ruling on Miranda questions, search and seizure and other such matters. These rulings can adversely effect the prosecution of non-capital cases. And it is of major significance that use of the death penalty, which has no value as a crime control measure, drains away resources that would be otherwise be available for law enforcement.

5. *The death penalty is capricious:* Since 1976 there have been more than 200,000 homicides in the United States. There have been 227 executions. By no means could all of those executed be considered more deserving of death than thousands of others who were convicted and sent to prison during the period. Most of those executed were victims of the luck-of-the-draw. As often as not, decisions to seek the death penalty are based on the quality of the evidence, the availability of witnesses and other considerations that have little to do with the offense itself. If a case is filed at a time when the prosecuting agency has funds and the staff isn't too busy, the death penalty is more likely to be sought than at times when funds are tight and caseloads are heavy. There is an intrinsic capriciousness in the use of the death penalty and no way to correct it in a justice system governed by our constitution.

6. *The death penalty is unfair:* Available data tells us that poor people who must depend on court appointed counsel during the original trial phase are far more likely to be executed than defendants who can afford "the best defense money can buy." Because of certain court rulings, further unfairness is inherent in the way juries are selected in death penalty cases. When a defendant goes on trial for his or her life, guilt or innocence will invariably be decided by a "death qualified jury," one in which there can be found "no taint of bias against the death penalty". What this means, of course, is that jurors who try capital cases are more likely to be conviction-prone than certain members of juries that try non-capital cases. In a mystifying departure from the usual standard of fairness, the Supreme Court decided that a state's right to a jury, all of whose members are morally untroubled by the death penalty, must take precedence over the defendant's right to trial by a jury from which individuals more likely to be sympathetic to the defense have not been systematically excluded. In effect, the majority of the Court took the position that it is acceptable for persons on trial for their lives to have a trial that is less fair than the trials of defendants in non-capital cases.

7. *The death penalty is cruel and unusual:* If this proposition is not always true, it is true all-too-often. The history of the use of the death penalty during recent years is replete with accounts of botched executions. Death specialists in Florida, Texas, Louisiana and Texas have acquired reasonable proficiency, but expertise in this line of work is hard to find elsewhere in our society. Especially when done infrequently, chances of a botched execution are very high. John Louis Evans, Alabama's first victim since the Gregg v. Georgia decision, underwent a gruesome fourteen minutes of agony before he died. The ordeal was so horrifying as to cause the authorities to drop the curtain in front of the witnesses viewing window while Evans was still smoking and writhing in the electric chair. More recently, in Alabama, a mentally retarded man was subjected to nineteen minutes of macabre ineptitude before dying. Indiana botched at least one of its executions even worse. The advent of lethal injections has not solved the problem. In 1988 executioners in Texas, despite all of their experience, took forty minutes of probing the arms and legs of Steven Peter Morin before finding a vein that would accept the poison. In 1983 the U.S. Court of Appeals had observed that there is "substantial and uncontroverted evidence... that execution by lethal injection poses a risk of cruel, protracted death... Even a slight error in dosage or administration can leave a prisoner conscious but paralyzed while dying, a sentient witness of his or her own asphyxiation." (Chaney v. Heckler, 718 f.2d 1174 [1983])

No matter how skillful and efficient state-paid executioners may become, most theologians, ethicists, and untold numbers of thoughtful people in our society, will continue to consider the act of killing a human being, when there are better options, to