

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9188 HOUSE JUDICIARY

UNIT: GENERAL GOVERNMENT	SUPERVISORS	LABOR, TRADES, AND CRAFTS	PUBLIC SAFETY	AVTECH	CORRESPONDENCE STUDIES
Placement of affected employees to be discussed during 30 day period.	State must give fair consideration to alternate plan.		Union may submit an alternate plan, if submitted within 15 days, plan must receive fair consideration.	State must give fair consideration to alternate plan.	No bargaining unit work may be contracted which results in layoff unless supported by the formal feasibility study.
No employee can be laid off and work contracted unless feasibility study or review of operational analyses shows contracting costs less.	No bargaining unit work may be contracted which results in layoff unless the contracting action will cost less.		Placement of affected employees to be discussed during 30 day period.	No bargaining unit work may be contracted which results in layoff unless supported by the formal feasibility study.	
Must make good faith effort to place employees elsewhere in state government.	Must make every effort to place employees elsewhere in state government.		No employee can be laid off and work contracted unless feasibility study or review of operational analyses shows contracting costs less.	Must make a good faith effort to find a laid off teacher a vacant teaching position in AVTECH or elsewhere in department of education.	
	Where members have been displaced, union may request cost effectiveness audits at state expense.		Must make good faith effort to place employees elsewhere in state government.		



Legislative Affairs Agency
Division of Administrative Services
Delta Junction Legislative Information Office
P.O. Box 1189
Delta Jct., AK 99737
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Official Business

To: House Judiciary
Fax: 465-4990 Phone: _____

Testimony on HB 124

Date Sent: 4/21/97 No. of Pages Including Cover Sheet: 2

Thank You,
Tammy Renee Hall
Tammy Renee Hall
Information Assistant



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee on HB 124, dated 4/21/97

committee name

bill/ subject

when this bill was heard by House State Affairs on March 11, no testimony was given in favor of this bill. Are you trying to fix something that isn't broke?

The Alaska Labor Relations Agency has done a lot of work to try to encourage mediation rather than strikes. Bargaining isn't always a big headline in the paper. An example was the city of Fairbanks employees froze agreement and deferred a raise for three or four years in 1986. The system appears to ~~be~~ working. Leave it alone.

Collective Bargaining is a basic right of workers even public employees. The right to bargain and to meet with employees to talk about working conditions is the basis of American Dream. This is what separates the U.S from other less fortunate countries. **Vote NO! HB124**

Signed:

Cheryl Bobo
 Testifier
"Self"
 Representing (Optional)
P.O. Box 174
 Address
Delta Jct. AK 99737
 Phone "



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on HB 124 , dated 4/21/97 .
 bill/ subject

Vote No on HB 124. It is not "leveling the playing field" - it is making it totally one sided! Think of why public employees wanted PERA in the first place!! Don't use arguments that don't line up with what you are doing!!

If you would only look around you would see that negotiations have run smoothly and efficiently. That is why "no one" gave testimony against it!! No testimony can be given against it because there is nothing wrong with the present system! PERA works - for everyone!!!

Collective bargaining is a right everyone has. Why deprive your own public employees? Something is wrong here!!

Signed: Aane L. Yates
 Testifier
Self
 Representing (Optional)
P.O. Box 444
 Address
Delta Tot Ak 99737

Anchorage Education Association



Post-It™ brand fax transmittal memo 7671		# of pages ▶ 2
To Rep Green	From Anch	
Co (H) Jud.	Co.	
Dept.	Phone # 907-8111	
Fax # 465-4316	Fax #	

Written on HB 124
1840 South Bragaw Street, Suite 103, Anchorage, Alaska 99508
(907) 274-0536

April 21, 1997

RE: HB 124

Chairman Green, members of the Committee, my name is Rich Kronberg. I am the president of the Anchorage Education Association. I want to thank you for this opportunity to testify on HB 124.

I don't know how this proposed legislation might affect other entities, but I can say with a good deal of assurance that it would be bad for the students who attend our school districts. There are two specific provisions of this legislation which are problematic. The first has to do with making contracting out of services an item not subject to bargaining. What this means to me is that the services now provided by the Anchorage School District in the areas of special education, speech and language therapy, counseling, psychological services, Occupational Therapy, Physical Therapy, and Adaptive Physical Education would all be subject to privatization.

The practitioners who perform these services for the students in the Anchorage School District are all members of our bargaining unit. Under this proposed legislation the services they perform could all be privatized. It is surely an open question whether we would be able to attract enough practitioners in these special areas if these positions are not subject to collective bargaining. It is an even greater question whether we would be able to attract enough individuals to perform these services as inexpensively as they are now performed. Before we blithely accept the notion that public services can be performed more cheaply by privatized workers, we should examine the data. I would suggest you read the data from school districts which have attempted to privatize these services. I am absolutely positive that you will see that either costs for these services increased significantly, or that students were underserved as a result of the privatization.

Anchorage Education Association is working...in the schools, with the community, for the children.

The other problem I have with this bill is in allowing municipal voters to remove school districts from the Public Employee Relations Act. The only rationale I can see to this is to remove the rights of school employees to bargain. I don't think we need to go very far to find out why this is a bad idea. We have examples in the United States where school employees can not bargain. What impact does that have on student performance? The answers are pretty clear.

There is a direct, and significant, correlation between collective bargaining and student achievement. States which limit the rights of their school employees to bargain have the lowest student performance in this country. We hear a lot about the performance of US students on international tests. I would like to point out that the most outstanding fact about US student performance on these tests is the variability of our scores. Our best students, from our top districts, outperform the best students from around the world. On the other hand, students from states like Mississippi and other right to work states, score on the level of third world countries. Which future do we want for Alaska's children. The choice is pretty clear.

Beyond that, we have clear examples in Anchorage...and other districts...that the current process, outlined under PERA, works. This year, we settled a contract with the Anchorage School District. The process clearly worked. Bargaining was done in public and a settlement was reached and ratified. I grew up in the South Bronx, and we have an expression there, "If it ain't broke, don't fix it." I would submit to you that this legislation is clearly trying to fix something that ain't broke. HB 124, as applied to school districts, is simply bad public policy. I urge you not to pass it out of committee.

HB

131

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

Revision Date: _____
 Title: "An Act providing for an advisory vote on the issue of capital punishment."
 Sponsor: Representative Sanders
 Requestor: (H) Jud

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*

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

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS:

FULL-TIME	*	*	*	*	*	*
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Should legislation subsequently be enacted, the following fiscal analysis applies.

See attached.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Alison M. Elgee
 Date: 3/18/97

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ANALYSIS: (continued)

Introduction

HB 131 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Public Defender Agency.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Legislature.)

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 131. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

Of the ten cases which are projected to go to trial as capital cases, The Public Defender anticipates being assigned to seven, with the other three either involving private lawyers or attorneys secured through the Office of Public Advocacy (where the PD is unable to undertake representation because of legal conflict of interest).

Because the number of murders can vary significantly from year to year predicting actual numbers of cases is difficult. It is not difficult, however, to predict a profound fiscal impact for the PD once the death penalty becomes law. The concept of "super due process", established by the U.S. Supreme Court as the required standard of practice for defending death penalty cases, necessitates that highly capable lawyers and support staff (in sufficient numbers) be in place to handle any and all cases of this nature.

Fiscal Impact

Passage of death penalty legislation will have an undeniably significant impact on the entire criminal justice system, including the courts, corrections, prosecution, public counsel services and other related entities. Death penalty cases require greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is a consequence of the American jury system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. A commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

Capital felony trials are bifurcated, that is, two separate trials are actually held. The first determines guilt or innocence; the second determines whether aggravating factors exist to justify execution; whether mitigating factors exist that outweigh the aggravating factors, and whether to impose a period of imprisonment or death. The experiences of other states is that these trials require far more defense resources than first degree murder cases that do not involve

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the potential for execution.

Many states that have a death penalty provide a minimum of two defense attorneys to each capital defendant to insure that the required heightened procedural safeguards are met. The American Bar Association Standards for Criminal Justice: Providing Defense Services (3d. Ed.) note the following:

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-capital felony cases. In some states where death row populations are high, the situation has reached crisis proportions. After conducting a national survey, for example, attorneys in Florida arrived at an annual caseload standard of five cases per attorney when the defendant was not under a warrant of death, and three cases per attorney when a warrant for execution had been issued. In California, where the Office of the State Public Defender handled capital appeals in the California Supreme Court, one study concluded that the attorneys handling such cases should be responsible for only two to three briefs per year in such cases.

(at p. 73; footnotes omitted).

During the investigation and preparation phase of the case, crime scene evidence will have to be examined and the forensic examinations performed by the state will have to be scrutinized. Psychiatric experts are essential to deal with competency, insanity or diminished capacity issues. Motion practice in death penalty cases has been estimated to be five times more labor and cost-intensive than in non-capital homicide trials. Trial itself in capital cases is an extremely time consuming process, lasting in excess of six months in some cases. Serious scheduling conflicts will arise in staff resources to provide simultaneous representation in a number of cases.

A sentencing, or penalty phase trial is categorically different in breadth and procedure from any comparable proceeding in a non-capital trial. Heightened due process requirements continue. In addition to the expert witnesses employed during the trial phase, such expertise will be necessary when mental health issues do not rise to the level of perfect defenses but are important in establishing mitigators. Additionally, extensive investigation and presentation of the defendant's family friends, co-workers, neighbors, and school and social workers is minimally required. The analysis of defendant's entire life and the gathering of historical detail is absolutely mandated. In a recent California case 240 such witnesses were located and interviewed, and 120 of those were called as actual witnesses in a single penalty phase.

It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. There is also extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically utilized after a trial and sentencing:

1. Motion to modify the death sentence/reconsider before state trial judge;
2. Mandatory appeal of conviction and sentence to Alaska Supreme Court;
3. Writ of certiorari to the United States Supreme Court;
4. Post-conviction relief proceedings in state court;
5. Appeal of unsuccessful post-conviction relief proceedings to the Court of Appeals;
6. Petition for hearing of post-conviction relief proceeding denial to the Alaska Supreme Court;
7. Petition for writ of habeas corpus in Federal District Court;
8. Appeal to the United States Court of Appeals if writ unsuccessful;
9. Rehearing in the United States Court of Appeals;
10. Writ of certiorari to the United States Supreme Court;
11. Request for clemency/commutation to Executive Branch of government;

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12. Emergency stays to the United States Supreme Court prior to execution.

While precise numbers may be difficult to predict, the conclusion is inescapable: to meet the extraordinary workload difficulties of capital cases extraordinary resources must be allocated.

Breakdown of Fiscal Impact

1. Personal Services. Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy.

Assuming that the Public Defender Agency is appointed to seven capital cases per year, death penalty units will be established in its two largest offices: Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. Even if only 4 cases proceed to trial in that year, preparation must begin immediately. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals). The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

2. Travel and Contractual. Travel expenses will be necessarily high given the broad geographic area served by these teams. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of vitiating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

Contractual expenditures for expert witnesses will be significant. As the Department of Law pointed out in its fiscal note recent cost studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000 on the average. This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

3. Supplies and Equipment. These expenses naturally accrue when additional staff are required. Estimates which follow are very conservative projections without consideration of inflationary factors.

4. Training. Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs which are conducted on a yearly basis related to these kinds of cases on an on-going basis.

Conclusion

Due to the accrual of cases from year to year, once implementation of the death penalty occurs expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. Continued additional staff will have

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to be added to this agency beyond the fourth year of implementation of the capital crime law. Despite our best predictive efforts, this cost estimate very well might understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

(Analysis continues on next page)

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Fiscal Impact--FY 98

First Year Cost Summary

Development of two Capital Defense Teams, one in Anchorage and one in Fairbanks.

OBJECT	(2) Atty V	(2) Atty IV	(2) Assoc Atty I	(2) Invest	(2) Paralegal	(2) Sec I	Total
100 - Salaries & Benefits	193.4	181.6	117.3	122.8	108.1	76.9	800.1
	<u>193.4</u>	<u>181.6</u>	<u>117.3</u>	<u>122.8</u>	<u>108.1</u>	<u>76.9</u>	<u>800.1</u>
200 - Travel							
Staff Travel & Per Diem	15.0	15.0	10.0	15.0	10.0	6.0	71.0
	<u>15.0</u>	<u>15.0</u>	<u>10.0</u>	<u>15.0</u>	<u>10.0</u>	<u>6.0</u>	<u>71.0</u>
300 - Contractual							
Communications	7.2	7.2	2.4	7.2	2.4	2.4	28.8
Copy & Discovery	11.2	11.2	11.2	11.2	11.2	11.2	67.2
Office Space Leases	10.0	10.0	5.0	5.0	5.0	3.0	38.0
PC Network Maint.	3.0	3.0	3.0	3.0	3.0	3.0	18.0
Westlaw	2.4	2.4	2.4	0.0	2.4	0.0	9.6
	<u>33.8</u>	<u>33.8</u>	<u>24.0</u>	<u>26.4</u>	<u>24.0</u>	<u>19.6</u>	<u>161.6</u>
400 - Supplies							
Office Supplies	3.6	3.6	3.6	3.6	3.6	2.4	20.4
Law Library	2.4	2.4	2.4	1.2	2.4	0.0	10.8
New Position Supplies	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	<u>9.0</u>	<u>9.0</u>	<u>9.0</u>	<u>7.8</u>	<u>9.0</u>	<u>5.4</u>	<u>49.2</u>

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500 - Equipment

New Position Equipment	5.0	5.0	5.0	5.0	5.0	5.0	30.0
Personal Computer	8.0	8.0	8.0	8.0	8.0	8.0	48.0
	13.0	13.0	13.0	13.0	13.0	13.0	78.0

TOTAL	264.2	252.4	173.3	185.0	164.1	120.9	1159.9
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Second Year Cost Summary
Additional Costs

Development of Capital Appellate Team in Anchorage

OBJECT	(1) Atty V	(1) Atty IV	(1) Paralegal	(1) Secretary	Total
100 - Salaries & Benefits	90.6	85.1	53.1	37.8	266.6
	90.6	85.1	53.1	37.8	266.6
200 - Travel					
Staff Travel & Per Diem	3.5	3.5	2.5	0.0	9.5
	3.5	3.5	2.5	0.0	9.5
300 - Contractual					
Communications	4.0	4.0	2.4	2.4	12.8
Copy & Discovery	18.0	18.0	9.0	0.0	45.0
Office Space Leases	5.6	5.6	5.6	5.6	22.4
PC Network Maint.	2.4	2.4	2.4	0.0	7.2
Westlaw	1.5	1.5	1.5	1.5	6.0
	31.5	31.5	20.9	9.5	93.4

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400 - Supplies

Office Supplies	1.8	1.8	1.8	1.2	6.6
Law Library	3.6	1.2	1.2	0.0	6.0
New Position Supplies	1.5	1.5	1.5	1.5	6.0
	6.9	4.5	4.5	2.7	18.6

500 - Equipment

New Position Equipment	2.5	2.5	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	4.0	16.0
	6.5	6.5	6.5	6.5	26.0

TOTAL	139.0	131.1	87.5	56.5	414.1
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Third Year Cost Summary
Additional Costs

Development of second Capital Appellate Team in Fairbanks and addition of trial lawyers and staff in Anchorage and Fairbanks due to increased caseload.

OBJECT	(3) Atty V	(1) Atty IV	(1)Assoc Atty I	(2) Invest	(1) Paralegal	(3) Sec I	Total
100 - Salaries & Benefits	296.2	96.5	54.9	122.8	55.0	116.0	741.4
	296.2	96.5	54.9	122.8	55.0	116.0	741.4
200 - Travel							
Staff Travel & Per Diem	18.5	2.5	5.0	15.0	2.5	6.0	49.5
	18.5	2.5	5.0	15.0	2.5	6.0	49.5

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300 - Contractual

Communications	11.2	4.0	3.6	7.2	2.4	4.8	33.2
Copy & Discovery	28.0	18.0	5.0	5.0	9.0	3.0	68.0
Office Space Leases	16.8	5.6	5.6	11.2	5.6	16.8	61.6
PC Network Maint.	4.8	2.4	1.2	0.0	2.4	0.0	10.8
Westlaw	4.5	1.5	1.5	1.5	1.5	4.5	15.0
	65.3	31.5	16.9	24.9	20.9	29.1	188.6

400 - Supplies

Office Supplies	5.4	1.8	1.8	3.6	1.8	3.6	18.0
Law Library	3.6	1.2	1.2	1.2	1.2	0.0	8.4
New Position Supplies	1.5	1.5	1.5	3.0	1.5	4.5	16.5
	13.5	4.5	4.5	7.8	4.5	8.1	42.9

500 - Equipment

New Position Equipment	7.5	2.5	2.5	5.0	2.5	7.5	27.5
Personal Computer	12.0	4.0	4.0	8.0	4.0	12.0	44.0
	19.5	6.5	6.5	13.0	6.5	19.5	71.5

TOTAL	413.0	141.5	87.8	183.5	89.4	178.7	1093.9
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Additional Case Costs

First Year: 4 Trials

Expert Witness Fees
\$60,000 per case x 4 cases = 240.0

Witness travel and per diem
\$50,000 per case x 4 cases = 200.0

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Witness fees		
\$2,500 per case x 4 cases	=	10.0
Deposition/Court Reporter charges		
\$20,000 per case x 4 cases	=	80.0
Training and Consultation	=	50.0

Second Year: 6 Trials plus 4 Appeals

Expert Witness Fees		
\$60,000 per case x 6 cases	=	360.0
Witness travel and per diem		
\$50,000 per case x 6 cases	=	300.0
Witness fees		
\$2,500 per case x 5 cases	=	15.0
Deposition/Court Reporter charges		
\$20,000 per case x 6 cases	=	120.0
\$30,000 per case x 4 case	=	120.0
Training and Consultation	=	50.0

Third Year: 7 Trials plus 6 new appeals

Expert Witness Fees		
\$60,000 per case x 7 cases	=	420.0
Witness travel and per diem		
\$50,000 per case x 7 cases	=	350.0
Witness fees		
\$2,500 per case x 7 cases	=	17.5
Deposition/Court Reporter charges		
\$20,000 per case x 7 cases	=	140.0
\$30,000 per case x 6 case	=	180.0
Training and Consultation	=	50.0

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Cumulative Cost Summary

OBJECT	Year 1	Year 2	Year 3	Year 4
100 - Salaries & Benefits	800.1	1066.7	1808.1	1808.1
	<u>800.1</u>	<u>1066.7</u>	<u>1808.1</u>	<u>1808.1</u>
200- Travel				
Staff Travel	71.0	80.5	130.0	130.0
Witness Travel	200.0	300.0	350.0	350.0
	<u>271.0</u>	<u>380.5</u>	<u>480.0</u>	<u>480.0</u>
300 - Contractual				
Staff Contractual	161.6	255.0	443.6	443.6
Outside Services	380.0	665.0	807.5	807.5
	<u>541.6</u>	<u>920.0</u>	<u>1251.1</u>	<u>1251.1</u>
400 - Supplies	49.2	57.2	94.1	53.6
	<u>49.2</u>	<u>57.2</u>	<u>94.1</u>	<u>53.6</u>
500 - Equipment	78.0	26.0	71.5	17.5
	<u>78.0</u>	<u>26.0</u>	<u>71.5</u>	<u>17.5</u>
Total	1739.9	2450.4	3704.8	3610.3
PFT	12.0	16.0	27.0	27.0

FISCAL NOTE

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BILL NO. HB 131

Revision Date: _____
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 Sponsor: Representative Sanders
 Requestor: (H) Jud

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) Should legislation subsequently be enacted, the following fiscal analysis applies. Passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The OPA, as a purely reactive agency, must provide legal representation when appointed by the court. OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

The Department of Law has estimated it would seek the death penalty in approximately ten trials annually. Therefore, OPA anticipates it would be responsible for three capital cases in FY 00 and three more in each of the following years. Because almost no one in Alaska could afford the cost of defending capital cases, it is assumed the Public Defender Agency and OPA would represent all capital defendants. (See attached)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Administration

Date: 3/18/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

ANALYSIS: (continued)

The agency would assign at least two experienced attorneys to each capital case in accordance with the policy -- and legal requirement -- of most states in which the death penalty has become law. Each case will necessitate an exhaustive pre-trial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during pre-trial proceedings, trial and the many appellate stages.

The New York Defender Association has estimated expert witness fees as \$60,000 per case. Further, travel costs would be extraordinarily high because this Anchorage-based death penalty team must provide statewide representation.

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 01, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (nonlawyer) position, a paralegal, and a legal secretary. In FY 02, an additional trial attorney position would be needed to support the initial three-trial positions created in FY 00 and FY 01.

In FY 03, the death penalty defense staff would need to be enlarged by at least one attorney, to complete the formation of two larger teams, together with a paralegal and legal secretary.

OPA assumes that it will have only one or less conflict case per year. For this reason, the accumulating appellate costs are conservatively estimated at an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only three cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 97 budget of \$7,439.6 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

FISCAL ANALYSIS -- FY 00

Personal Services - Anchorage

Attorney V - Salary and Benefits	\$ 90.6
Attorney IV - Salary and Benefits	85.1
Associate Attorney II - Salary and Benefits	62.4
Paralegal Assist II - Salary and Benefits	53.1
Legal Secretary I - Salary and Benefits	<u>37.8</u>

Subtotal Personal Services 329.0

Travel

Staff Travel and Per Diem	28.0
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 178.0

Contractual

Communications	15.2
Copy & Discovery	28.0
Office Space	16.5
PC Network Maintenance	7.5
Westlaw	4.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case X 1 case per year)	432.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual 844.7

Supplies

Office Supplies	8.4
Law Library	4.8
New Position Supplies	<u>7.5</u>

Subtotal Supplies 20.7

Equipment

New Position Equipment	12.5
Computer Equipment	<u>20.0</u>

Subtotal Equipment 32.5

TOTAL FY 00 \$1404.9

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

FISCAL ANALYSIS -- FY 01

Personal Services - Anchorage

Salary and Benefits for 5 current positions	\$ 329.0
Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits 53.1	
Associate Attorney II - Salary and Benefits	62.4
Legal Secretary II - Salary and Benefits	<u>39.9</u>

Subtotal Personal Services 569.5

Travel

Staff Travel and Per Diem	37.5
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 187.5

Contractual

Communications	28.0
Copy & Discovery	73.0
Office Space	38.9
PC Network Maintenance	14.7
Westlaw	10.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$100.0 for appeals)	532.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual Services 1038.1

Supplies

Office Supplies	15.0
Law Library	10.8
New Position Supplies	<u>6.0</u>

Subtotal Supplies 31.8

Equipment

New Position Equipment	10.0
Computer Equipment	<u>16.0</u>

Subtotal Equipment 26.0

TOTAL FY 01 \$1852.9

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

Salary and Benefits for 9 current positions	\$ 569.5
Attorney IV - Salary and Benefits	<u>85.1</u>

Subtotal Personal Services 654.6

Travel

Staff Travel and Per Diem	40.0
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 190.0

Contractual

Communications	32.0
Copy & Discovery	91.0
Office Space	44.5
PC Network Maintenance	17.1
Westlaw	12.3
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 plus \$200.00 for appeals)	632.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual Services 1169.6

Supplies

Office Supplies	16.8
Law Library	12.0
New Position Supplies	<u>1.5</u>

Subtotal Supplies 30.3

Equipment

New Position Equipment	2.5
Computer Equipment	<u>4.0</u>

Subtotal Equipment 6.5

TOTAL FY 02 \$2051.0

FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

BILL NO. HB 131

FISCAL ANALYSIS -- FY 03

Personal Services - Anchorage

Salary and Benefits for 10 current positions \$ 654.6

Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits 53.1	
Legal Secretary I - Salary and Benefits	<u>37.8</u>
Subtotal Personal Services	830.6

Travel

Staff Travel and Per Diem	51.0
Witness Travel and Per Diem	<u>150.0</u>
Subtotal Travel	201.0

Contractual

Communications	40.8
Copy & Discovery	118.0
Office Space	61.3
PC Network Maintenance	24.3
Westlaw	16.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$300.0 for appeals)	732.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>
Subtotal Contractual Services	1333.9

Supplies

Office Supplies	21.6
Law Library	14.4
New Position Supplies	<u>4.5</u>
Subtotal Supplies	40.5

Equipment

New Position Equipment	7.5
Computer Equipment	<u>12.0</u>
Subtotal Equipment	19.5

TOTAL FY 03	\$2425.5
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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act providing for an advisory vote on the BRU: Statewide Programs
issue of capital punishment" Component: Spring Creek Correctional Center
 Sponsor: Representative Sanders
 Requester: House Judiciary COMPONENT SERIAL NO. #0772

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			68.4	68.4		
TRAVEL						
CONTRACTUAL			1,665.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				350.0	2,305.4	2,305.4
TOTAL OPERATING	0.0	0.0	1,733.4	418.4	2,305.4	2,305.4

CAPITAL EXPENDITURES				9,435.0		
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,733.4	9,853.4	2,305.4	2,305.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	1,733.4	9,853.4	2,305.4	2,305.4

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME			1	31	30	30
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached explanation.

Prepared by: Bruce Richards
 Division: Commissioner's Office
 Approved by Commissioner: Margaret M. Pugh
 Agency: Department of Corrections

Phone: 405-3307
 Date: 3/9/97
 Date: 3/9/97

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Assumptions

1. This fiscal note is based on the assumption the proposed advisory vote is approved by the residents of Alaska during the next general election. It further contemplates that the Alaska Legislature would enact a capital punishment law following such an advisory vote.
2. The Dept. of Law estimates that six individuals per year would be prosecuted and sentenced to death for first degree murder. Other states who have instituted the death penalty statute indicate that an individual convicted of a capital felony remains on death row for approximately ten years before execution. Using this estimate the Department of Corrections (DOC) would be required to construct a death row facility capable of housing 60 inmates. The death row facility would require construction that is of the highest security standards. The cost of this type of facility is estimated at \$180,000.00 per bed. The DOC does not expect to house prisoners until the year FY02. Engineering and design (E&D) would begin in FY00. The costs for E&D would be transferred to DOT & PF via an RSA. These costs are estimated to be 15% of the total cost of construction.
4. The DOC would be required to construct an execution facility for administration of the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility is estimated to be in excess of \$300,000.00 assuming it would be built in conjunction with the death row facility.
5. The DOC would not house death row inmates until FY02. A Facilities Manager I position is required to manage the DOC responsibilities in the planning and design phase. This position would begin in FY00 and remain in place until completion of the project in FY02. The cost of this position is \$68.4 per year.
6. Actual operation of the death row facility would begin in FY02, with staff hiring and training to begin in FY01. This cost is estimated to be \$350,000.00. Staffing of the new facility would require twenty-five correctional officers, and five administrative support staff. The average daily cost of housing an inmate is \$105.27 and is shown in the miscellaneous line.

Construction Costs

60 bed death row X \$180,000 per bed + \$300,000 execution facility = \$11,100,000.00

.15 X \$11,100,000 = \$1,665,000 for E&D in FY00

\$11,100,000 total cost - \$1,665,000 E&D = \$9,435,000 for facility completion in FY01

Operating Costs

60 beds X \$105.27 per day X 365 days = \$2,305,413 in FY02 and continuing into the future.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 131

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act providing for an advisory vote on the BRU: Trial Courts
issue of capital punishment Component: _____
 Sponsor: Rep. Sanders
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 88	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will place an advisory vote on the issue of the death penalty before the voters at the next general election. See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 03/24/97

Approved by: Stephanie J. Cole, Acting Administrative Director *SJC* Date: 03/24/97
 Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis

On the assumption that the advisory vote is approved by the voters and that the Legislature passes legislation which authorizes use of the death penalty, the court system has estimated the cost of processing 10 death penalty cases annually.

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months	\$58,500	\$35,602	\$94,102
Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months	58,500	35,602	94,102
Pro Tem Judge, Fairbanks Trial Courts, PPT, 6 months	29,250	17,801	47,051
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	33,480	14,181	47,661
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	33,480	14,181	47,661
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	38,592	15,498	54,090
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	38,592	15,498	54,090
Bailiff, Statewide, range 6A, NPP, 24 months	40,176	3,985	44,161
			<u>482,918</u>

Offset cost of existing caseload -

Under present law, first degree murder cases experience a 50% trial rate and last approximately one month. Thus, the court expects five trials which last a total of 5 months. The proposed legislation will result in approximately 39 months of trial activity (see the time calculations under Jury Fees in the Contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

(61,900)
 Net personal services 421,018

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use pro tem judges, which are among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for two non-permanent bailiffs, which will be hired at the designated trial site.

Travel

Jury sequestration costs - transportation, meals and lodging 126,000
 10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day

Offset cost of existing caseload -

See offset note in personal services.

(16,200)
 Net travel 142,200

Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day 386,100
 and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day

Contractual security guard to staff metal detectors 10,000

Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page 190,000

Freight for high security equipment kit 1,000

Total contractual services 587,100

Offset cost of existing caseload -

See offset note in personal services.

(75,300)
 Net contractual services 511,800

See additional note on contractual costs on the next page.

Alaska Court System
Fiscal Analysis (continued)

The Department of Law expects to prosecute 10 capital offenses each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials. 7,000

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site.

25,000

31,720

Total annual estimated costs

\$1,113,738



**DON'T KILL
FOR US
ALASKANS SPEAK OUT
AGAINST THE
DEATH PENALTY**

**SPONSORED BY THE ANCHORAGE CHAPTER OF
AMNESTY INTERNATIONAL
THE HUMAN RIGHTS ORGANIZATION**

DON'T KILL FOR US

ALASKANS SPEAK OUT AGAINST THE DEATH PENALTY

PHOTOGRAPHS BY: RACHEL KING

This collection of photographs introduces a number of Alaskans from different political ideologies, religious affiliations, and cultural and ethnic backgrounds who have raised their voices together with a simple plea: "DON'T KILL FOR US." As the messages here demonstrate, there are many reasons to oppose capital punishment. For some, it is simply wrong, morally, to take human life—whether the taking is done by a criminal or by government. For others, the death penalty is an ineffective and costly punishment that does nothing to make us safer and takes our limited time, attention, and resources away from meaningful crime prevention. For yet others, embracing killing as a way to combat killing makes no sense: history has shown, time and again, that violence begets violence, and that peaceful societies must abandon vengeance as a way to solve their problems.

Whatever you stand on the death penalty, we thank you for considering our message. We hope our voices will help foster discussion about the facts surrounding the death penalty, and help dispel the myths that perpetuate the death penalty in this country even as many of our world neighbors abandon it as an anachronistic and brutal practice. We welcome your comments and concerns.

**-Barbara Hood, Exhibit Coordinator
Amnesty International Group 224, Anchorage**

**This project was made possible through the generous support of the
AIUSA Special Initiatives Committee
c/o P.O. Box 202296
Anchorage, AK 99520-2296
JANUARY 1996**



DON'T KILL FOR ME

I Oppose The Death Penalty

"Once the death penalty is executed and a mistake has been made, you can't say 'oops, I'm sorry,' and make everything right. The system does make mistakes. Too often in the criminal justice system it's the poor, the minorities, the uneducated, and the ones who don't have access to the best legal help who pay the price."

**-Arliss Sturgulewski
Former State Senator and
Republican Candidate for Governor**



DON'T KILL FOR US

We Oppose The Death Penalty

“Capital punishment is a fallible and unjust way of trying to decrease crime. For many in the religious community, it also violates the deep belief in God as the creator and the redeemer of humankind. Instead of perpetuating the cycle of violence by taking human life, we must work to build communities of faith and trust where God’s grace can heal the personal and spiritual wounds caused by crime.”

**-Rev. Art Curtis
Unitarian Universalist Fellowship**

**-Rev. Dennis Holway
Turnagain United Methodist Church**

**-Sister Maureen McPartland, O.P.
Catholic Archdiocese of Anchorage**

**-Rev. Carol Ann Seckel
United Methodist Church**



DON'T KILL FOR ME

I Oppose The Death Penalty

"The death penalty will not help law enforcement do its job. During my career as a Police Officer and Homicide Detective, I did not see one defendant in a murder case who would have been deterred from his crime by the death penalty. Killers don't think they're going to get caught, or just can't think past the act of murder itself. Jurors always hold the prosecution to a higher burden of proof in capital cases. Mark Furman, Rodney King and Ruby Ridge are names that inflict a gaping wound on the credibility of law enforcement—names that will contaminate jurors' minds and further elevate the burden of proof demanded of the prosecution. Why risk a murderer going free?"

**-Sgt. Joe Austin (Retired)
Anchorage Police Department**



DON'T KILL FOR US

We Oppose The Death Penalty

"The NAACP advocates an affirmative, comprehensive approach to crime problems, and specifically that of the Death Penalty. We are strong supporters of the Fairness In Death Sentencing Act (also known as the Racial Justice Act), and Habeas Corpus Reform. This means that the NAACP must become a more active participant in helping to shape policy decisions and legislative actions. In that regard, we support Alaskans Against the Death Penalty, and offer aid and assistance in bringing to light the plight of minorities in death penalty decisions, incarcerations, and crime bill legislation and policy."

Celeste Hodge, Vice President; J. Paul Johnson, President & Chairman of the Board; Cynthia Madrey, Executive Board Member; and Donna Jean Brooks, Legal Redress Chair

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
ANCHORAGE BRANCH**



DON'T KILL FOR ME

I Oppose The Death Penalty

"In 1945, I was a young army doctor when our outfit surrounded and liberated a Nazi death camp. I experienced firsthand what can happen when a government gets into the business of executing its own people. Vengeance and killing come from humanity's dark side. An ideal government should function above them or run the risk of becoming like Nazi Germany. An ideal government's job is to very strongly protect its citizens from evildoers by separating them from the people, but this should be done without sacrificing the moral, humane virtues found in humanity's bright side."

-Dr. David Dolese, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"The death penalty causes some murderers to go free. When juries know their decision could result in the defendant's execution, they want to be absolutely, completely, 100% certain that he's guilty—and they can make the prosecutor's burden tougher than proof beyond a reasonable doubt. It's also simply wrong."

**-Peter Gruenstein
Former Prosecutor
Anchorage District Attorney's Office**

**-Dan Hickey
Former Chief, Criminal Division
State of Alaska, Dept. of Law**



DON'T KILL FOR US

We Oppose The Death Penalty

"Alaska's public revenues are falling and the state budget is not able to provide adequate funding for vital public interests, such as education needs. A 1993 Duke University study found that for each person executed in North Carolina, the state paid over \$2 million more than it would cost to imprison him for life. Alaska can use that money to deal with solutions to crime, like drug treatment programs or even prisons. In addition to many other reasons against it, Alaska cannot afford the death penalty."

-Hugh and Ian Fleischer, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"Having moved to Alaska from Texas, where executions are carried out on a regular basis but homicide rates remain among the highest in the world, we are proud to live in a state that had the foresight to abolish the death penalty in 1957. Not only do we hope Alaska never goes back to the death penalty, we also hope to see the death penalty abolished in the United States in our lifetime. But until the entertainment industry stops glamorizing violence, it won't happen."

-Kathy Harris-Kainer and Greg Kainer, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Being a parent is the most wonderful and the hardest thing. I try to teach my children respect for all human life, even the lives of those who have done wrong. Among other reasons, I oppose the death penalty because it violates the sanctity of life."

**-Kim McGee and her son Ari McGee-Vermont, 5
Anchorage**



DON'T KILL FOR US

We Oppose The Death Penalty

"The argument that the 'system' will prevent mistakes is absolute folly in the reality of the American justice system and human experience. Which one of you would give your son, daughter, mother, father, or friend to prove such folly? We must live with the undeniable fact that we as human beings are not perfect, our systems are not perfect, and our mistakes should not be final."

-Mary Ellen Ashton and Fred Dewey, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"Our family moved to Alaska from Ohio, a death penalty state. As an attorney, Rich worked on several capital cases in Ohio, and saw first-hand the impact on juries, witnesses, attorneys, judges, and their families. It was one very important reason for moving to Alaska. We would not want to see the violence and despair of death penalty litigation imported to our state. It's an experience we can all live without."

-Zane, Cole, Nancy and Rich Curtner, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"When politicians say that the death penalty is tough on crime, they're ignoring the facts. The death penalty is soft on crime because there is no proof that it deters violence or makes us safer. The opposite seems to be true. Canada's homicide rate has dropped 27% since it abolished the death penalty in 1976. U.S. states that impose the death penalty suffer significantly higher homicide rates than those that don't. Shouldn't it be plain by now that violence indeed begets violence?"

-Dirk Sisson and Barbara Hood, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Just say NO! to deadbeats for the death penalty. Society pays when the ultimate penalty is applied—costing us more in legal fees than life imprisonment. The death penalty allows the convicted to escape the psychological burden of crimes committed, and eliminates any possibility of restitution to families of victims."

-Joni Whitmore, Homer

Alaska Green Party Candidate for U.S. Congress, 1994

Current Democratic Candidate for U.S. Congress



DON'T KILL FOR ME

I Oppose The Death Penalty

**"Killings by the state teach violence as a
solution to one's problems.
There are better solutions."**

**-Kevin Cassity
Wilderness Guide, Anchorage**



DON'T KILL FOR US

We Oppose The Death Penalty

"Lots of innocent people have been sent to death by mistake, says 10-year-old Henry. Danny, 17, thinks it is wrong to kill people, whether the killer is a criminal or a court. In Anne's view, when the government kills, brutality becomes 'acceptable,' resulting in a more dangerous society. Jim knows race inevitably determines who is executed and who is spared. Our family stands together against the death penalty."

-Henry, Danny, Anne and Jim McComas, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Because there hasn't been a perfect human yet, there is no way to bring judgment perfectly. Spiritually, those who judge are no different than those who are being judged if the taking of a life is seen as a viable alternative. For spiritual, human reasons, I oppose the death penalty."

-Leslie Reed, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

**"I don't think civilized people
should kill murderers."**

-Ron Dailey, Engineer, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Where only the rich can buy the best lawyers, and where white juries pass judgment on non-white men, execution is mostly reserved for the poor and for the dark-skinned. Middle-class white men don't get to death row. You can see this clearly in the history of Territorial Alaska. Of the eight men hanged in this century, only two were white, although most of the murders in the Territory were done by white men."

-Averil Lerman, Attorney & Legal Historian, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

-After 13 years as a Public Defender for the State of Alaska, I am very aware that our criminal justice system makes mistakes. With a death penalty there is no ability to correct errors. Alaska should not be a party to the killing of innocent people."

-Barb Brink, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

**"Why should the government kill people to prove
that killing is wrong?"**

**-Sam Parker, 9,
with his parents Jim Parker and Jane Yokoyama, and
brother David, 7**



DON'T KILL FOR ME

I Oppose The Death Penalty

"Humankind has yet to fashion a justice system sufficiently free of bias, error, and other human shortcomings to administer this sanction with the degree of perfection which its irremediability demands. That the world contains people who deserve to die, I do not deny; that the world contains people who can infallibly sort out such individuals from the rest of us, I do not believe."

-Andy Harrington, Fairbanks



DON'T KILL FOR ME

I Oppose The Death Penalty

"I was born and raised in New Hampshire, but I grew up in Vietnam. There I learned that violence is never the answer. Capital punishment is state-sanctioned violence."

-Michael LeMay, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"I oppose the death sentence because it is not a deterrent; it is racially and ethnically biased; and it is fiscally prohibitive to the community that adopts it, due to the appeals process (for which the tax payers usually pay)."

**-R. William Green, Retired
Former Assistant Superintendent, Department of Corrections
State of Alaska**



DON'T KILL FOR US

We Oppose The Death Penalty

"We in the Religious Society of Friends affirm that there is that of God in everyone. We seek to address the causes of violence between human beings, and utterly deny the taking of human life as a redress of wrongs."

**-Anchorage Monthly Meeting
Religious Society of Friends (Quakers)**



DON'T KILL FOR US

We Oppose The Death Penalty

"We do not believe that the judicial system should order anyone killed, for we do not believe that the courts are perfect. Imperfect justice could kill an innocent person. Such a tragedy is unjust and unacceptable. History proves that judicial systems have been used to kill for class revenge, for racism, for religious and cultural intolerance. Our judicial system should be a model that spurns those aberrations and, by example, will not permit a single unjust killing."

**-Cynthia Ducey, Attorney
Former Prosecutor
Anchorage District Attorney's Office**

**-David Stewart, Attorney
Former Prosecutor & Former
Alaska District Court Judge**



DON'T KILL FOR ME

I Oppose The Death Penalty

"The death penalty does not deter crime—the only reasons for it are retribution or to prevent the few who might reoffend from killing again. Life sentences without the possibility of parole, or with parole eligibility after 50 years or more, meet both objectives as well as or better than the death penalty. Clearly, some people have demonstrated that there can be no place for them in society; this has always been true.

But killing them diminishes us all."

**-Susan Humphrey-Barnett
Former Commissioner of Corrections, State of Alaska**



DON'T KILL FOR US

We Oppose The Death Penalty

"The death penalty is not a solution to violent crime in our rural communities; let's focus on preventive measures like supporting sobriety."

**-Professor Kimberly Martus
JAA Justice Center**

**-Caroline Hogan
UAA Justice Student**

**-Vicki Otte, Executive Director
Alaska Native Justice Center**

**-Heather Kendall, Attorney
Native American Rights Fund**



DON'T KILL FOR ME

I Oppose The Death Penalty

"For a long time I hadn't made up my mind about the death penalty. Then my son Michael was found in Kincaid Park ten years ago, beaten to death. As I grieved for him, it became very clear to me that it is a horrible thing to take a person's life. Now I believe that to cut someone's life off, whether individually or in the name of the state, is a great wrong."

-Shirley Dickens, Anchorage

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Mary Ellen Ashton
William Frederick Dewey

(907) 276-3299
FAX (907) 258-6419

March 26, 1997

Dear Members of the Committee:

I testified on Monday against putting the death penalty on the ballot. I am now writing to express in more detail why both the reinstatement of the death penalty in Alaska and a vote "up or down" are bad ideas.

The reinstatement of the death penalty is a complicated issue. Notwithstanding the moral debate, it involves a tremendous shift in law enforcement (both police and prosecutors) resources needed for the every day operation of our already strained courts. If the death penalty is instituted in Alaska, the budgets of prosecutors, defense agencies and the courts will require necessary increases - straining already scarce resources at the expense of other more vital law enforcement priorities. The costs of capital punishment -- with its added and necessary layers -- much longer pretrial and trial proceedings, and sentencing hearings (which may last as long as the trials themselves) - are enormous.

The language of the proposed ballot question references the voter to a death penalty under the "Constitution of the United States as interpreted by the United States Supreme Court". This language is very expansive language which the average voter will most likely not understand and will not come to understand with a

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To (H) Judiciary	From ANC LIO	
Co. Rep Green	Co.	

campaign of "30 second soundbites". In reality, the criminal justice system which has been developed over the centuries is a delicately balanced system which is not perfect, and is not meant to be perfect. To insert "death" into such a system is bad policy and will result in the execution of innocent people.

The reasons behind the above statements are discussed below:

**"..AS INTERPRETED BY THE UNITED STATES SUPREME COURT"
NECESSARILY INCLUDING MANY THINGS WHICH ARE REPUGNANT TO
THE AVERAGE ALASKAN**

The Supreme Court of the United States has held that procedural default can forever bar the post-trial litigation of a valid claim of actual innocence even in a death penalty case, and two Justices have stated in the context of an impending execution that no violation of the Eighth Amendment would occur from the execution of an innocent man. Herrera v. Collins, 506 U.S. ___, 113 S.Ct. 853, 122 L.Ed.2d 203,234 (1993), Justice Scalia concurring, joined by Justice Thomas. This opinion was based on the need for procedural "finality" -i.e., substitute "bureaucratic convenience at the expense of dead (legally murdered) innocent people" and you will see the moral cost the death penalty - turning respected jurists into characters out of Orwell's 1984. Will the average voter understand that this is the law of the land? Will the average voter know that Justice Stevens stated in an address to the

ABA, in 1993:

The recent development of reliable scientific evidentiary methods have made it possible to establish conclusively that a disturbing number of persons who had been sentenced to death were actually innocent.

Opening Assembly Address, ABA Annual Meeting, August 13, 1993, at 14.

In recent years, more than 50 men and women have been freed from death rows in this country after they were proven innocent. These lucky innocent citizens were freed as the result of habeas corpus proceedings. However, now the right to habeas corpus has been restricted to one petition, required to be filed within 180 days of decision on appeal, and our U.S. Supreme Court has upheld such a law. (See, The Anti-terrorism and Effective Death Penalty Act of 1996, amending 28 USC 153) Will the average voter know that 180 days is too short for an attorney to adequately review a record and prevent a potentially unjust execution? Will the average person know the U.S. Supreme Court allows the execution of minors, the mentally retarded, and as cited above, the potentially innocent? Will the average voter know that such a cavalier attitude on the part of the Supreme Court towards human life necessitates the "all out" effort of any attorney assigned to a death penalty case which will strain the resources of the justice system and sacrifice monies better spent on domestic violence, prosecution and incarceration of criminals before they kill? Will the average

voter read the studies showing racial disparities in executions, the case studies of innocent people killed unjustly before making the decision to support or not support this ballot measure?

**CAPITAL PUNISHMENT IS AN EXPENSIVE GOVERNMENT PROGRAM
THAT DOESN'T WORK AND PUTS A STRAIN ON A SYSTEM WHICH IS
DESIGNED TO NOT BE PERFECT**

As a criminal defense attorney for the last 16 years and as member of the profession which day to day works in the business of justice, I do have special knowledge of the limitations of our justice system. ¹ It is my duty to speak out, as a voice of experience as to the dangers of the public assuming that this system can act with the perfection necessary for decisions of life and death. The system is not perfect - nor is it designed to be perfect.

The justice system allows the state to give payments of protection and money for favorable testimony, trade immunity for testimony, and make "deals" with the most nefarious and

¹ What do Randall Dale Adams, James Adams, Clarence Brandley, and Walter McMillian have in common with your voters? They are all human beings, innocent of murder, but with two major differences - they have all spent time on death row awaiting their executions for crimes they did not commit and James Adams is dead by execution. See, Bedau & Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stan L. Rev. 21, 36, 173-179 (1987) detailing 23 cases of innocent people executed in the United States in this century - one in 1984 - James Adams executed in Florida on May 10, 1984. [Cited in J. Blackmun's dissent in Herrera v. Collins, 122 L.Ed.203,236 n.1 (1993)]. Also see, M. Radelet, H. Belau, and C. Putnam, In Spite of Innocence, at 5-10, Northeastern University Press 1992.

untrustworthy people to prove guilt. The same system prevents the defendant from having such powers in trying to prove innocence. While these kinds of tools are sometimes necessary to prosecute the guilty - they sometimes result in the wrong person being prosecuted and a distortion of the truth finding function of our court.

Our system of evidence rules allows a person's dishonest acts to be used in cross-examination. There is nothing wrong with such a rule, and in fact, in most cases such a rule allows both sides to legitimately attack the credibility of a witness. However, studies have shown that when it comes to believing a defendant's testimony the mere fact the defendant has been convicted in the past of any crime (even misdemeanor shoplifting) increases the defendant's chances of not being believed to the point that most juries will simply dismiss his or her testimony. In the specific case, can an innocent defendant with a truthful story to tell a jury afford under such a rule testify if he has a conviction for a crime of dishonesty? The reality is that such innocent defendants are convicted every day because they were not believed by the jury because of something as simple as a shoplifting conviction, or because they are advised to not take the stand.

Hopefully, most of these mistakes are found out - but should we insert death into this imperfect process - putting added pressure on the system to be perfect? More importantly, in regard to this bill, will a lay person understand the nuances of the necessity for such flexibility in the system when voting on this measure? Will the average voter know the "system" is designed to be imperfect? That mistakes are inherent? That someone's innocent

son, daughter, husband, wife, or friend will be put to death unjustly?

THIS BODY SHOULD NOT SPEAK FROM BOTH SIDES OF
ITS MOUTH REGARDING THE JUSTICE SYSTEM

Recently, this same body has overwhelmingly voted that the civil justice system should be changed - that juries should not be trusted to set money damages because they might be inflamed by the passionate pleas of plaintiff tort lawyers. How can this same body now say that juries should be trusted to not be inflamed by circumstances of a murder: to not make a mistake regarding guilt of a defendant, and to make decisions of life and death? Why are we comfortable in allowing decisions of life and death be handled by juries - but not decisions about money - especially when our court rules require flexibility which sometimes and inherently results in unjust and just plain wrong results? Why do we trust a now abbreviated criminal appeal process (recent limitations on habeas corpus) to correct mistakes at the trial level in the criminal area, when in the civil area we do not trust a more expansive appellate procedure to correct mistakes in awarding money damages? These concepts should either be reconciled rationally, or this body should not act in what would be a seemly hypocritical way.

Lastly, each and every member of this committee should think about the following: Sometime in the future, if the death penalty

becomes law, an innocent person will die in an execution (assuming history will repeat). By Mr. Sanders' and Mr. Taylor's own language this body cannot be indifferent to this inevitable result. In the original Sanders' and Taylor Death Penalty bills a person would become death eligible if they acted from within a group of more than 3 people "with indifference to human life" causing a death. You, in the language of those bills, cannot be indifferent to the human life which will be innocently taken if the death penalty passes with your vote. If and when such a death occurs - should law enforcement go back, charge the members of this body and seek the death penalty because you acted in a group of 3 or more persons with indifference to human life? In reality, the answer would be "no" - because you could hide behind the technicality of "legislative immunity". However, you could not hide from moral responsibility. This is not a time for weak hearts, minds, or knees -- I urge you to do the right thing and vote against this bill.

Sincerely,


William F. Dewey

#70521

PLEASE FAX TO
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VAL

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Luckhaupt
3/24/97

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 131

1 Page 1, line 8:

2 Delete "Shall"

3 Insert "If the Alaska State Legislature enacts a law providing for capital punishment
4 for murder, the following annual fiscal costs to the following state agencies are estimated to
5 result:

6 (INSERT FISCAL COSTS)

7 Considering this, shall"

8 Page 1, following line 12:

9 Insert a new bill section to read:

10 "* Sec. 2. Each department that expects to be affected by the enactment of a law
11 providing for capital punishment for murder in the first degree shall submit an estimate of
12 that fiscal impact to the lieutenant governor not less than 180 days before the time the
13 question in sec. 1 of this Act will appear on the ballot. The lieutenant governor shall insert
14 those estimates into the question at the place shown in sec. 1 of this Act."

ALASKA CHRISTIAN CONFERENCE
1997 BIENNIAL ASSEMBLY

RESOLUTION 97-2

TITLE: OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS: Jesus spoke clearly his opposition to the death penalty (John 8:1-11) and cautioned all with his words "Let anyone among you who is without sin be the first to throw a stone at her", and

WHEREAS: Jesus firmly rejected the concept of "an eye for an eye and a tooth for a tooth", (Matthew 5:38-42), and

WHEREAS: Jesus consistently took up the cause of the poor and disadvantaged, and

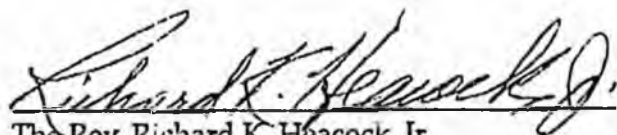
WHEREAS: In the history of the death penalty in the United States and specifically in the State of Alaska people of color have been put to death in numbers grossly disproportionate to their numbers in the general population, and

WHEREAS: The Alaska Federation of Natives, the Alaska Intertribal Bar Association, the Alaska Black Caucus, and the Alaska NAACP have all adopted resolutions in opposition to the reinstatement of the death penalty in Alaska,

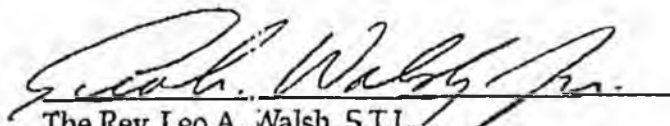
NOW, THEREFORE, BE IT RESOLVED that the delegates of the 1997 Biennial Assembly of the Alaska Christian Conference oppose adamantly the reinstatement of the death penalty in Alaska and urge all elected officials, all Christian believers, and citizens of Alaska to join us in this opposition.

THIS RESOLUTION IS A REAFFIRMATION OF RESOLUTION 95-1, ADOPTED BY THE ALASKA CHRISTIAN CONFERENCE ON FEBRUARY 22, 1995, AT SITKA, ALASKA.

ADOPTED: February 26, 1997, at Big Lake, Alaska.



The Rev. Richard K. Heacock, Jr.
President



The Rev. Leo A. Walsh, S.T.L.
Secretary

A Statement from
Alaskans AGAINST the Death Penalty
on its
Opposition to an Advisory Ballot Question

Two bills have been filed in the Alaska State Legislature, which if passed, would implement an advisory ballot on the question of enacting the death penalty in Alaska. The proposed question reads:

"Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?"

Although we believe that a fully informed public debate on the death penalty is necessary and appropriate, the advisory ballot proposal will not accomplish such a goal. As worded, the question is designed to produce a biased result without informing voters of the reasons why the death penalty is a bad idea. For this reason, we oppose the advisory ballot.

The advisory ballot does not provide Alaskans with any information about the death penalty, thus the voters will be largely uninformed when they go to vote.

Because most Alaskans have not had first-hand experience with a death penalty, or with the criminal justice system in Alaska, their vote on the subject will be largely uninformed. Many people have very strong opinions in favor of capital punishment. Revenge is a natural, understandable human reaction when someone has committed a heinous crime. If asked a general question about imposing a death penalty, many voters will likely vote yes. However, it would be a mistake for legislators to decide so serious a question based on the results of an uninformed poll of the public. The proposed ballot question does not provide an analysis of the impact of the death penalty on the state, nor a disclosure to the public of the monumental costs of instituting a death penalty.

Most Alaskans base their support for the death penalty on the erroneous belief that murderers do not serve lengthy sentences and that the death penalty will save them money. A statewide random sampling poll of Alaskans indicated that 78% of Alaskans believe that the average person convicted of first degree murder serves less than 20 years in jail. In fact, this is a legal impossibility -- the mandatory minimum sentence for first degree murder in Alaska is 20 years. According to the Department of Law, the average sentence for first degree murder is between 80 and 90 years and the typical sentence for the most serious murders (the kind that would be death eligible under proposed bills) is 99 years with parole eligibility restricted by the court. Therefore, people who are convicted of the types of crimes for which they would receive the death penalty are not released from prison. The same poll also asked Alaskans which they believed was more expensive, life imprisonment or the death penalty -- 74% replied life imprisonment was more expensive. In actuality, every state that has studied the economic costs of the death penalty have found that they are ~~between~~ between 2 to 6 times as much money to carry out a capital trial, appeals and an execution than to conduct a regular trial, appeals and incarcerate someone for life. Fiscal notes provided by the Department of Law, Corrections and the Public Defender Agency conservatively estimate that a single execution in Alaska will cost \$5 million dollars, or half of the annual prosecution budget for the state of Alaska!

The advisory ballot asks the wrong question by failing to include more popular options other than the death penalty.

We believe that many Alaskans who may answer the general advisory question in favor of a death penalty, might oppose a death penalty if they knew more information about the realities associated with implementing one. A national, bi-partisan opinion poll conducted throughout the United States revealed that if asked a general question about capital punishment, a large majority of Americans, 77%, favored capital punishment. However, if asked whether they would prefer capital punishment or life imprisonment without the possibility of parole and restitution to the victim's family, the percentage of those favoring capital punishment fell to 41%. The main reasons cited in support of capital punishment were the belief that capital punishment saves money and that murderers are serving lenient sentences. (See 1993 Greenberg/Lake and Tarrance Group Bi-partisan poll.)

(Continued on Reverse Side)

Page Two -- Statement Against Advisory Ballot

If asked a general question regarding support for capital punishment, most Alaskans may indicate favorable support, like those questioned in the Greenberg/Lake-Tarrance poll, because of their erroneous beliefs that murderers are serving lenient sentences and the death penalty will save us money. Until Alaskans are informed of the actual economic costs of the death penalty, and the truth about sentencing laws in this state, the results of this ballot question will be grossly biased by this misinformation.

The simple "yes/no" results of an advisory vote may be used by legislators to justify passage of death penalty legislation instead of relying on thoughtful analysis and studied consideration of the complex factors related to enactment of the death penalty.

Emotional considerations aside, the facts show that the death penalty is a bad idea for Alaska:

- In some states it is as much as 6 times more expensive to pay for a death penalty trial, appeals, and execution than it is to house a person in jail for life. The average cost per execution in California is 15 million dollars. Conservative estimates in Alaska indicate that implementing a death penalty will cost at least \$21 million dollars a year for 4 years and will continue to substantially increase over time as more and more of the death penalty cases back-up in the system. For example, Ohio has had the death penalty for over 14 years and has over 1000 people on death row, but not one person has been executed. Based on the experiences of other states, Alaskans can expect to spend well over \$50 million dollars on the death penalty before even one person is executed.

- The death penalty in the United States, and in Alaska prior to Statehood, was used predominantly against poor and minority people. 75% of all executions this century in Alaska were against African-Americans and Alaska Natives in spite of the fact that the vast majority of homicides were committed by White men.

- At least 1300 innocent people have been on death row in the United States this century; at least 24 innocent people have been executed.

While understandably very difficult, it is clearly the job of Alaska's elected legislators to weigh all the myriad public policy issues related to adoption of a death penalty bill, including such concerns as 1) the enormous costs of death penalty litigation and the impact a death penalty would have on the ability of the state's prosecutors and law enforcement divisions to maintain the resources necessary to adequately pursue its non-death penalty caseload; 2) the likely racist impact of a death penalty on Alaskan minority groups; and 3) the fact that innocent people will be executed. These are but a few of the very important and complex issues raised which will not be answered by a "simple" ballot question.

A legislator who has the benefit of all available information and who thoroughly educates him or herself on the well-documented problems surrounding death penalty cases and executions may decide that enacting the death penalty is not in the best interests of the state. However, if a majority of Alaskans were to vote in favor of the advisory ballot proposition, it might be difficult for that legislator to vote against future death penalty bills.

Throughout history, our country has had laws which enjoyed majority favor at the time, but later proved to be unjust. If put to an advisory ballot, Slavery, Jim Crow laws, no voting rights for African-Americans or women, are laws which all would have enjoyed support by a majority of Americans. In hindsight, these laws proved to be unjust and were ultimately abolished. The death penalty is a law which our society will ultimately decide was a grave mistake. Today, 28 European countries have abolished the death penalty, including France and Great Britain. Canada abolished the death penalty in 1976. Both Great Britain and Canada experienced a decrease in homicide rates after abolishing the death penalty. If Alaska passes a death penalty, we will live to regret it. We urge you to do all you can to oppose any form of an advisory ballot on the death penalty.

For more information and copies of all studies referred to contact:

Alaskans AGAINST the Death Penalty
P. O. Box 202296
Anchorage, AK 99520-2296
Phone/Fax (907) 258-2296

600 West 76th Avenue #507
Anchorage, Alaska 99518
March 14, 1997

House Judiciary Committee
State Capitol, Mail Stop 3100
Juneau, Alaska 99801-1182

Dear Committee Members,

I wish to submit this letter in opposition to any steps the Legislature might take to reinstate the death penalty in Alaska. I am sorry I could not be present personally at the committee hearing, but, when the hearing date was changed, I was precluded from attending by a previous commitment to be with my daughter during surgery in New Jersey.

I am a private citizen connected in no way with any group taking a stand on this matter, pro or con. I served on the Superior Court bench in Anchorage for nineteen years and recently retired.

In the first instance, I believe that the reimplemention of the death penalty at this time and in this place is morally wrong. I further believe that the moral responsibility for each and every execution is non-delegable and falls upon the shoulders of every citizen. I recognize that taking moral stances, based like mine are on religious faith as well as social policy, is a somewhat shaky business these days, but I do not believe that the moral conclusions I have drawn differ very much from those which would be drawn by a majority of our citizens, regardless of their faith, lack of faith, religious background or philosophical belief. Most people can agree, as a moral proposition, that the unnecessary killing of other human beings is morally wrong. That is not to say that all killing is wrong, but there must be compelling circumstances, exigent circumstances if you will, which make the killing necessary. Defense of self, others or country are some of the justifications we all seem to agree upon. From that point on, there's a lot of disagreement, but I think, if you look at the problem head on, a straightforward application of this generally agreed upon principal is dispositive. There is no moral place for the death penalty in Alaska at this time.

Starting with the proposition that the candidate for killing is in custody, there is by definition no need to execute the fellow in order to avoid further evil by his hand. We can be secure against any more injury from him by keeping him in jail. Because we are an affluent society, we can afford to keep him secured for the rest of his life. I have been told that it costs less to keep a person incarcerated for life than it does to execute them. The moral dimension of this question makes cost inconsequential. It would be morally bankrupt to allow the decision to turn on an accounting analysis in a society that hands out permanent fund dividend checks.

It is said by some that the death penalty is an effective deterrent to crime. There are several problems with that notion. It is generally not applied to persons convicted of crimes where it might serve as a deterrent, and it is generally not applied in a manner so as to take advantage of any deterrent value the execution might have. I have no doubt that capital punishment would be an effective deterrent to, say, speeding in a school zone, a somewhat facetious example, but it is generally applied in situations where rational thought was deserted long before the crime was committed. To a thoughtful person carefully considering his options the penalties in place provide ample deterrence.

These days executions are usually scheduled to take place at a time when the public is mostly asleep, and carried out in a manner (I have in mind lethal injection) that disturbs our sensibilities and consciences as little as possible. If it's deterrence we're after, the execution should be a visible and dramatic response to the commission of the act to be deterred. One would think that a beheading on the post office steps at high noon would more likely serve to maximize any deterrent effect the penalty might have, if that is the justification for the execution. The fact is, there is little reliable material which would substantiate that the death penalty has, or does not have, a deterrent effect. I, as a citizen participant, don't feel comfortable taking human life based upon undemonstrated speculation.

It seems to me that what prompts public clamor to reinstate capital punishment is anger about some event or events within our community which have particularly offended us. What we're really after is vengeance. We want to respond to violence in like kind. Barbarous cruelty is all too common today, and our initial response individually is to strike out against the offender. It is an understandable response. There are certainly persons in prison with whom I have had to deal over the years who raise such emotions in me. As individuals, we are taught from our earliest years to rise above such feelings; that it is wrong, immoral if you will, not to do so. These and similar lessons are what make us a civilized society.

It's hard for me to imagine that vengeance is a sound basis for public policy any more than it is for private action. I fail to see how doing something collectively legitimizes that which we could not do individually. For at least two thousand years, western civilization has sought to replace emotions like vengeance with nobler instincts. While particular individuals who have been directly affected by the violent act of some particular defendant may be overcome momentarily or even permanently by a desire to kill that defendant out of vengeance, it doesn't seem to me that a civilized community should join in and follow along but, rather, should exercise a cooler collective head and resist such motive. We abandoned capital punishment once in this State, and the move reflected a civilized trend we ought not now abandon.

In weighing whether morally we should return to the past, we ought also to consider and place on the scale the mistakes we are bound to make. I spent almost my entire adult working life as a lawyer and a judge involved in the trial of cases before our courts. Most of the cases were criminal cases. The processes we employ are of human design and implemented by human agency. There is no mathematical certainty. The processes try to minimize human error, but I think everyone involved recognizes it is impossible to eliminate it. Sooner or later but certainly we are going to kill the wrong person, an innocent, and it will be uncorrectable. If we decide in favor of a death penalty, this must be acceptable to us. Though I oppose the death penalty at this time and place, I do not think the certainty of mistake alone should forever dictate that it cannot morally be employed. It simply means to me we should look even more carefully at the circumstances of our community in deciding whether there are compelling reasons to employ it now and here. I, for one, see no such reasons present or on the horizon.

Aside from the moral issues that abound in considering an issue such as this, there are, I believe, sound practical social reasons for leaving the matter where it now rests. We ought to be concerned about the effect that the intentional taking of human life by the State would have upon society as a whole. We have already devalued human life to an appalling degree. Once life was sacred. Now the lines once firmly drawn are haggled over daily in various forums by those with some particular interest they assert as paramount. "It's not life." "It's not worthy life." "It's not life worth living." We're all familiar with the arguments which are now common parlance regardless of the side of a particular issue we're on. My purpose is not to denigrate the positions of those on either side of these other issues. It is only to suggest that often in these matters we, for tactical reasons, attempt to limit the moral dimension of the issue by definition so that we can make our positions seem more acceptable. In so doing we have lessened our traditional reverence for life in the public consciousness. What television and the movies have

done needs no comment. At present, the State stands four-square against the unnecessary taking of human life. To retreat from this position sends a powerful message to the public and, particularly, our youth. We are presently on the hackneyed, but accurately described, slippery slope. I hope collectively we shall resist further erosion and keep our feet under us.

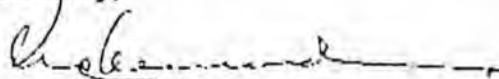
To reinstate the death penalty is to place an altogether unreasonable burden on those persons who legitimize the process for us; jurors, public defenders, prosecutors, witnesses and judges. I recall hearing about a young lawyer in Arizona when I lived there who, back in the 50s or 60s, had a client executed whom he had been appointed to defend. The circumstances were such that he did not feel he had properly understood the process or properly advised his client, and he felt responsible. The client pled guilty in exchange for a recommendation from the District Attorney that the death penalty not be imposed. The judge disagreed. The attorney never recovered. The executioner effectively took away two lives. I'm sure most people of conscience who participate in a case where the death penalty is in fact imposed are profoundly and adversely affected for the rest of their lives. To ask them to participate is to ask too much of them, unless there are compelling reasons to require such sacrifice.

I would have resigned from the bench if a death penalty bill passing constitutional muster had passed the Legislature. I would not have asked to be transferred to the civil division or looked for some other out. I would not have lent myself in any way to legitimize what I believe to be so morally and socially repugnant. I expect others who feel their spiritual health jeopardized will take the same action in the event the potential penalty is visited upon us again. It's not easy to give up your chosen professional path and livelihood, but the moral implications are so great and of such fundamental importance to the welfare of the soul that they cannot be overlooked by people of conscience. I hope for their sakes those who have drawn the conclusions I have will not be drawn in to participate through inertia and inattention.

Many members of the public, perhaps even a majority, say they want the death penalty. It's an easy response to a recent outrage when you're far removed from the process. It's almost a natural reflex. I think they have not thought it through. They don't have to. They don't think of themselves as prosecuting, defending, passing sentence or pulling the lever on the trap. They think of themselves as comfortably distant and comfortably outraged, and by all the processes we employ we allow them the luxury.

You must think this through on our behalf. I don't think a public opinion poll or referendum is going to help you much to make the right decision, and it may even interfere and trap you into the wrong one. I don't envy you. Since executions are carried out in our name, each of us will have a very real part in the killing. I hope you will not put my hand on the lever. It will not rest easy on my conscience or the consciences of many others.

Sincerely,



Mark C. Rowland

Death Penalty Fact Sheet

THE COSTS OF A DEATH PENALTY SYSTEM ARE VASTLY GREATER THAN THE COSTS OF LIFE IN PRISON WITHOUT PAROLE.

Prepared by Alaskans Against the Death Penalty: September 1996

Extraordinary Costs of the Death Penalty

It costs six times more to execute someone than to imprison them, according to an article in The Miami Herald, July 10, 1988, p. 12A, titled "Bottom Line: Life in prison one-sixth as expensive." The reasons for the vastly greater cost of a death penalty system are explained:

- Death penalty trials take longer, and involve twice as many pre-trial motions and a lengthy jury selection process;
- A separate sentencing trial is held to determine whether a sentence of imprisonment or a sentence of death should be imposed;
- Expensive investigation and costly expert witnesses are often required;
- Two lawyers usually represent both the prosecution and the defense;
- Every death sentence must be reviewed by the state Supreme Court, per order of the United States Supreme Court.
- The cost of maintaining an inmate on death row is significantly higher than the cost of maintaining an inmate as part of the general prison population.

The main reason that a death penalty system is so expensive is that such a system requires expensive approaches to almost all first degree murder trials, although a death sentence will be imposed and carried out on only a few of the people tried. Of the persons tried in capital trials, some are found innocent, some are found guilty of a lesser, non-capital offense, and others are found guilty of the offense, but sentenced to life imprisonment instead of death. This means that only a small percentage of the people who enter the capital punishment system are actually sentenced to die. But the public pays vastly higher costs than it would have to try those cases in a non-capital system, and then it still has to pay the usual costs of imprisonment on top of those costs.

The appeal process is expensive but absolutely necessary to insure fairness. In fact, more than half of all death cases are reversed on appeal. In a recent seven-year period, almost 75 percent of death penalties issued by state courts were found to be in violation of the United States Constitution, according to a report by Ninth Circuit Judge Stephen Reinhardt.¹

The costs required by a death system start out high, and then get higher every year. Once a state institutes a death penalty, it cannot execute people as fast as it can sentence them, and thus the population of death row will continue to grow, at a very significant expense. In 1991, for example, 266 persons were sentenced to death, but only 14 people were executed. By the end of 1991, there were 2482 people on Death Row, half of whom had been there for more than five years.²

Enlightened leadership will recognize that what the public wants is more personal security, less crime, and that the use of the millions of dollars necessary to fund each year of a death system wastes resources which could otherwise be used for law enforcement and crime prevention programs working in every neighborhood.

The High Costs of a Death Penalty in Alaska

The cost of instituting a death penalty in Alaska will exceed \$21 million dollars in the first four years, according to fiscal notes submitted by the Department of Corrections, the Department of Law, the criminal defense agencies, and the Court System. Costs will increase as time goes by, because more people will be in the capital system.

The Alaska State Department of Law submitted a fiscal note in March, 1992 of the cost of passing a death penalty bill. The Department estimates that, between 1996 and 1999, the Department of Law would require more than \$7 million dollars to litigate death penalty cases.

- * This estimate is based on an average of 6 death penalty cases per year, although in the past five years the number of first degree murder cases litigated annually was 25 cases per year. Thus, the actual cost may be much higher.
- * The Department of Law has studied the experience of other states, and concluded that death cases require three times more prosecutorial and investigative resources than other murder cases, and usually involve a fivefold increase in pretrial motions.

¹ San Francisco Daily Journal, June 20, 1991, p. 4: "A Costly Ultimate Sanction: Executions Cost Millions Yet Achieve Nothing but Revenge," by Judge A. Wallace Tashima, a federal judge sitting on the District Court for the Central District of California.

² Chicago Tribune, "Perspective" section article by Stephen Chapman, titled "The death penalty: A luxury we can no longer afford," February 7, 1993.

- * Capital cases involve a trial on the capital charge, and then another trial on the sentence to be imposed. The Department of Law expects that the time required for this bifurcated trial will vary between two and six months, at a minimum.
- * The average trial cost to prosecute a capital case is estimated at about \$300,000. This does not include the cost of much of the appeal process which will occur.
- * The Department of Law estimates that, as capital cases continue, the state will have to finance simultaneous appeals of at least forty capital felony defendants.

California

In 1988, California spent more than \$90 million dollars a year to provide a death penalty sentencing option. At that time, it was executing about 6 people per year. Thus, the California taxpayers were spending \$15 million per execution.³ Only 1 out of 10 capital cases results in a death verdict in California.⁴

"One empirical study in California concluded that it takes 5.3 times longer to select a jury in a capital case. ... The same study of capital trials in California found that it takes 3.5 times longer to try a capital case, compared to a non-capital murder case."⁵

Capital case appeals consume a huge percentage of judicial resources. In California, capital case appeals consume more than half the time of the California Supreme Court.⁶ Other cases take a back bench to death cases.

Half of all cases where a death verdict is given are reversed on appeal. This is a much higher percentage than in regular first degree murder convictions.

California taxpayers spent more than \$1.7 million dollars to execute San Diego murderer Robert Alton Harris on April 21, 1992, the first person executed by California in 25 years. This

³ S. Maganini, The Sacramento Bee, "Closing death row would save state \$90 million dollars a year," March 28, 1988 at p.1.

⁴ S. Maganini, The Sacramento Bee, "Closing death row would save state \$90 million dollars a year," March 28, 1988 at p.1.

⁵ San Francisco Daily Journal, June 20, 1991, p. 4 "A Costly Ultimate Sanction: Executions Cost Millions Yet Achieve Nothing but Revenge," by Judge A. Wallace Tashima, a federal judge sitting on the District Court for the Central District of California.

⁶ S. Maganini, The Sacramento Bee, "Closing death row would save state \$90 million dollars a year," March 28, 1988 at p.1.

is at least \$700,000 more than the cost of imprisoning him for 40 years, and was a bargain compared to the amount that will be spent on other capital cases.⁷

Texas

In Texas, a death penalty case costs taxpayers an average of \$2.3 million dollars, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.⁸

The immense cost of the death penalty in Texas has weakened even its most zealous proponents. Norman Kinne, Dallas County District Attorney stated:

"[E]ven though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his life ... I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed ... I think we could use [the money] better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education [and] especially devote a lot of attention to juveniles."⁹

Florida

Florida has estimated that the true cost of each execution is approximately \$3.2 million dollars, or approximately 6 times the cost of life imprisonment.¹⁰

⁷ Sunday San Diego Union-Tribune, May 24, 1992, p. A-1: "It's Hard to Put a Price Tag on a Killer's Life."

⁸ J. Painter: "Death Penalty seen as too costly for Oregon's Pocketbook," The Oregonian (Portland), July 27, 1987, cited by R.C. Dieter in "Millions Misspent: What politicians don't say about the high costs of the death penalty," a report by the Death Penalty Information Center.

⁹ C. Hoppe, "Executions cost Texas millions," The Dallas Morning News, March 8, 1992 at p. 1A, cited by R.C. Dieter in "Millions Misspent: What politicians don't say about the high costs of the death penalty," a report by the Death Penalty Information Center.

¹⁰ D. Von Drehle, "Bottom Line: Life in Prison One-Sixth as Expensive," The Miami Herald, July 10, 1988, at p. 12A.

Between 1973 and 1988, "The death penalty has cost Florida at least \$57 million since 1973, according to conservative calculations based on independent studies."¹¹

The Florida Supreme Court spends about half of its time on death penalty cases (just like the California Supreme Court).¹²

Georgia

The high cost of capital cases has caused civil disobedience by Lincoln County Commissioners, who balked at having to pay the costs of a lengthy death case, and spent a night in jail in protest.¹³

Illinois

Illinois built new prisons but does not have the funds to open them. It does, however, have the fourth largest death row in the country."¹⁴

Oregon

As stated by Chief Criminal Judge James Ellis: "Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."

North Carolina

Two researchers from Duke University determined that North Carolina taxpayers spend \$329,000 more to try, convict, and execute a murderer than to put that same murderer in jail for 20 years. Because only one out of 10 North Carolina defendants who receives the death penalty

¹¹ The Miami Herald, "Capital punishment in paralysis: Huge caseload bloats lethargic, costly system in Florida, US". July 10, 1988, p. 1A, 12A.

¹² M. Hansen, "Politics and the Death Penalty," The Palm Beach Review's Florida Supreme Court Report, Feb. 25, 1991, at 10B, 26B, cited by R.C. Dieter in "Millions Misspent: What politicians don't say about the high costs of the death penalty," a report by the Death Penalty Information Center.

¹³ B. Shepard: "Death Penalty in dollars and cents: Opponents stress high cost to taxpayers, often for defense as well as prosecution." Atlanta Journal and Constitution, March 3, 1992, C1, C8.

¹⁴ Funding the Justice System: A Call to Action, a report by the American Bar Association, August, 1992, at 18, cited by R.C. Dieter in "Millions Misspent: What politicians don't say about the high costs of the death penalty," a report by the Death Penalty Information Center.

will ultimately be executed, the cost to public agencies for each execution exceeds \$2 million dollars.¹⁵

Louisiana

As stated by John Dixon, Chief Justice (Retired of the Louisiana Supreme Court:

The people have a constitutional right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system.¹⁶

Washington

In the State of Washington, the cost to the state of bringing a death penalty case is three times greater than the cost of a typical murder trial, according to the *Seattle Times*.¹⁷ The added expense is from the effort that capital cases take, plus the larger jury panels, and greater security measures. The cost of these cases is especially problematic when there are numerous capital trials scheduled in the same year.

¹⁵ Press Release from Duke University, May 27, 1993, summarizing conclusions of professors Philip J. Cook and Donna B. Slawson after a 20 month study funded by the State Justice Institute.

¹⁶ D. Kaplan, "Death Mill, USA," *The National Law Journal*, May 9, 1989, at 40, cited by R.C. Dieter in "Millions Misspent: What politicians don't say about the high costs of the death penalty," a report by the Death Penalty Information Center.

¹⁷ *Seattle Times*, Dec. 28, 1995.

Death Penalty Fact Sheet:

IF ALASKA REINSTATES EXECUTION FOR MURDER, MORE INNOCENT PEOPLE WILL DIE

Prepared by: Alaskans Against the Death Penalty: September 1996

Hundreds of innocent people have been wrongfully convicted of capital crimes, and sentenced to death: Extensive research has proved that, since 1900, more than 400 innocent people have been convicted of capital crimes. After years of researching death penalty cases all over the country, Professors Michael Radelet and Hugo Adam Bedau published In Spite of Innocence: The Ordeals of 400 Americans Wrongly Convicted of Crimes Punishable by Death¹

By "innocent," they mean that the person who was convicted did not do the crime: They do not include people who were wrongfully convicted for some other reason, but might well have been guilty. In 90% of the cases they describe, innocence was shown by official government action (like release from jail).² In 10% of the cases they describe, innocence was established by undeniable evidence that the wrong person had been convicted. These were not people who got out "on a technicality," but people who could be proven to be innocent.³

Conviction of Innocent People is Unavoidable: Radelet and Bedau determined that wrongful conviction occurs most often because of one or more of these six events:⁴

- * **Perjury:** A prosecution witness lies intentionally, either for self-protection or for some other reason
- * **Mistake:** A prosecution witness makes an unintentional error, unknown to both the witness and the jury
- * **Mistaken ID:** The person convicted was mistakenly identified as the perpetrator of the crime
- * **Passion:** Fury about a crime enrages the community, and passion and prejudice control the outcome of the trial
- * **Police Error:** A bungled investigation fails to locate evidence showing the innocence of the person convicted, or the guilt of the true criminal

¹ Northeastern University Press, Boston, 1992. 399 pages.

² In Spite of Innocence, p. 17.

³ In Spite of Innocence, p. 16.

⁴ In Spite of Innocence, p. 17-19.

- * **Official wrong** Intentional misconduct by police or prosecution (such as the creation or destruction of important evidence) misleads the judge and jury.

Documented cases of 23 innocent people who were executed: Out of 450 cases studied, Radelet and Bedau identified 23 people whose complete innocence was established only after they had been executed.⁵

48 people convicted after 1973 and later proved to be innocent and released: In the past twenty years, at least 48 people have been released from prison after serving time on death row with significant evidence of their innocence.⁶ Stories of wrongful convictions appear every year. The story of Randall Dale Adams was made into The Thin Blue Line, a feature film, and others have been the subjects of wide public interest after publicity by celebrities.⁷

Even innocent people can not always be saved from execution: Our legal system is like a pyramid, with the greatest opportunity to establish innocence at the beginning of the case, and fewer and fewer opportunities after trial. People who don't have a good trial lawyer are often convicted, but cannot be helped much later even by a good lawyer, because the options are so much reduced. Supreme Court Justice Harry Blackmun stated in a televised interview that he believed that truly innocent people might have been executed.⁸

Most of the mistakes made in these cases will never be known: As Radelet and Bedau state:

During this century in the United States, more than 7000 men and women have been legally executed for capital crimes. Many thousands more have been sentenced to death. Probably a quarter of a million person have been convicted of criminal homicide. The errors, blunders, and tragedies recounted in the pages of this book barely scratch the surface of this vast output of the nation's criminal justice system. ... Hundreds of cases, many of them involving miscarriages of justice every bir as serious as any we describe, almost certainly remain to be investigated. Unknown hundreds of other cases have completely disappeared from sight; we will never know whether justice was done to the defendant.⁹

⁵ p. 272.

⁶ "Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions," Staff Report by the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, One Hundred Third Congress, First Session, issued October 21, 1993. Page 2.

⁷ The story of Randall Dale Adams' conviction is explained in detail in In Spite of Innocence, pp. 60-73.

⁸ Supreme Court Justice Harry Blackmun speaking to Ted Koppel and Nina Totenberg in a televised interview aired on November 18, 1993, on Nightline.

⁹ In Spite of Innocence, p.19.