

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9189 HOUSE JUDICIARY

Death Penalty Fact Sheet

ALASKA HISTORY SHOWS THAT ALASKA NATIVES WERE EXECUTED MORE THAN OTHERS

Prepared by Alaskans Against the Death Penalty: September 1996

Most Alaskans don't know that, until it was abolished by the Territorial Legislature in 1957, Alaska had a death penalty. The history of the death penalty in Alaska is important because it demonstrates that, even in Alaska, race and poverty have more to do with who is executed than the seriousness of the crime that was committed.

Between 1900 and 1957, at least 8 people were hanged in Alaska.¹ The most notorious criminals in Alaska during this period were white men, men whose exploits were described in detail in William R. Hunt's book Distant Justice: Policing the Alaska Frontier.² But after 1903, and the hangings of two white men who had committed murder in mining-related disputes, no white American man was hanged in Alaska. The six persons hanged between 1903 and 1957 were all either Alaska Natives, African-Americans, or other racial minorities. Most of the murders committed in Alaska were committed by white men,³ but it was not white men who went to the gallows.

Studying the records of the trials in these cases leads to serious concern that justice may not have been done. Defense counsel were given almost no time to prepare for trial. A number of the defendants spoke no English. Defense motions for fair procedures were frequently denied.

The list of persons known to have been hanged in Alaska between 1903 and 1957 includes:

Mailo Segura: Hanged in Fairbanks in 1921 for shooting a prominent mine-owner who refused to pay him two years of back wages. Segura, a native of Montenegro, was referred to as a "black fellow" or a "bohunk" in the town of Flat, where the shooting occurred. The judge refused to move the trial to another town. Segura was so terrified at the gallows that he had to be tied to a board and dropped through the trap door.

¹ The exact number of judicial hangings is unclear. Research on this is ongoing, but Territorial records were frequently extremely poor.

² Published by University of Oklahoma Press, 1987.

³ See K. S. Kynell, A Different Frontier: Alaska Criminal Justice, 1935-1965, University Press of America, 1991. Professor Kynell establishes that, in the period he studied, 75% of all homicides were committed by white people.

"John Doe" Hamilton: An Alaska Native hanged in Fairbanks in 1921, for shooting his cousin at Shageluk Slough. No record was made of his true name. Hamilton spoke no English. Trial began two weeks after arraignment, and lasted less than 4 days. At the sentencing proceeding, his own attorney stated "The man is guilty, and there is absolutely no reason which his counsel know why sentence should not be pronounced." Hamilton never appealed from his conviction. He was decapitated by the execution, according to published reports.

Constantine Beaver: A young Alaska Native hanged in Fairbanks in 1929, for shooting a friend during a drunken brawl. Beaver's wife was forced to testify against him at the grand jury proceedings. Defense counsel was given one week to prepare for the trial, although all the witnesses were located in distant towns. After trial, three jurors submitted sworn statements that they did not know Beaver would be hanged on their verdict, and that they would have submitted a different verdict if they had known that. Neither Beaver nor any of the witnesses spoke English. No appeal was taken. According to published reports, Beaver was so remorseful and so well-liked by his jailers that one of them, U.S. Marshal Frank Young, resigned shortly after the hanging.

Nelson Charles: Hanged in Juneau in 1939 for the killing of his mother-in-law. After trial, a retired deputy US Marshal from Charles' town testified that Charles was a peaceful, law-abiding person except that he became insane when he drank, and that he had seen him like this on the day of the shooting. No appeal was taken from the conviction.

Austin Nelson: African-American hanged in Juneau in 1948 for the murder of a local liquor store owner during a robbery. Newspaper headlines announced "Juneau Negro Hanged for Murder." Between 1935 and 1958, there were 74 homicides in the Juneau Judicial District, but there were only three hangings, all of minority persons such as Nelson.⁴

Eugene LaMoore: African-American hanged in Juneau in 1950 for the same homicide that Austin Nelson was hanged for, the only case of two executions for a single murder in Alaska's history. Claimed innocence of the murder to the last. Very little evidence of participation in the crime.

After 1903, all the people hanged in Alaska were non-Caucasians, people who were tried summarily, who could not afford to appeal, who could not raise financial or political resources sufficient to get a lesser sentence or to get their sentences commuted to life in prison. The murders for which they were hung were not the "worst" murders between 1950 and 1957, but just those done by people for whom the majority had no sympathy.

Is this just the problem of the past? No. In 1994, 32% of the inmates in Alaska jails were Alaska Natives, more than twice their usual representation in the state population. Of the persons who have been executed in America since 1930, 53% have been African-American. The effect of race on who gets sentenced to death remains a bitter problem in death penalty states.

⁴ See K.S. Kynell, A Different Frontier.

Death Penalty Fact Sheet

RACE AND THE DEATH PENALTY: UNFAIR IMPACT ON MINORITIES

Prepared by Alaskans Against the Death Penalty: September 1996

Racial Minorities are more likely to be sentenced to die: Numerous studies have clearly established that the death penalty is unfairly imposed on the basis of race, both the race of the defendant and the race of the victim.¹ The murder of a white person is *four times* more likely to be punished by death than the murder of a non-white person. Between 1930 and 1990, 53% of the persons executed in America were black, although only 12% of the national population was African-American.² Even after all states rewrote their death penalty laws in the mid-1970's, racial disparities continue to affect the criminal justice system.³

Alaska Natives and African-Americans will suffer if a death penalty statute is passed in Alaska: In 1977, the Alaska Judicial Council proved that racial bias influenced criminal sentences handed down in Alaska.⁴ The study was so persuasive that the Alaska Legislature completely rewrote criminal sentencing laws, and reduced the discretion of judges by mandating certain sentences for certain crimes. The death penalty bills recently proposed, however, are likely to increase racial bias, because they are vague and can be interpreted broadly. This means that a prosecutor, judge, and jury may interpret them one way when the defendant is white, and another way when the defendant is not. Right now, 32% of Alaska prison inmates are Alaska Natives, although Alaska Natives comprise only 16% of the state population.⁵

There is every reason to conclude that, if Alaska has a death row, too many of the people waiting to be executed will be Alaska Natives and other non-white people. Of the nine people hanged in Alaska between 1900 and 1957, only 2 are known to have been Caucasian. The death penalty in Alaska was abolished in 1957.

¹ See, for example, Gen. Gov't Div., U.S. Gen. Accounting Office Rep. GGD-90-57, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*, (Feb. 26, 1990), and Radelet, Michael and Pierce, Glenn: "Choosing Those Who will Die: Race and the Death Penalty in Florida," 43 Florida Law Review 1 (Jan. 1991) and the studies cited therein.

² Bedau, Hugo A.: *The Case Against the Death Penalty*, American Civil Liberties Union, p. 8, citing U.S. Bureau of Justice Statistics, "Capital Punishment," 1977, and NAACP LDF, "Death Row, USA" Spring 1992.

³ U.S. General Accounting Office, "Death Penalty Sentencing," pp. 5,6 (1990).

⁴ Alaska Judicial Council, S. Clark & M. Rubinstein: "Alaska Felony Sentencing Patterns: Multi-Variate Statistical Analysis, 1974-76," (1977).

⁵ State of Alaska Dept. of Corrections, "Inmate Profile for June 1993," p.8.

Death Penalty Fact Sheet:

THE DEATH PENALTY DOES NOT DETER MURDERERS

Prepared by Alaskans Against the Death Penalty: September 1996

No deterrent effect has ever been proven:

"Death penalty states as a group do not have lower rates of criminal homicide than non-death penalty states. During the 1980's, death -penalty states averaged an annual rate of 7.5 criminal homicides per 100,000 of population; abolition states averaged a rate of 7.4."¹

In Alaska, most murders are committed by persons who are under the influence of alcohol or drugs at the time of the crime. Intoxicated people do not go through rational decision making processes in deciding their actions, and thus the consequences that would deter normal people may have little impact on people who are inebriated.

Supreme Court Justices have never been convinced that the death penalty has a deterrent effect:

Supreme Court Justice Harry Blackmun stated: "I personally am opposed to the death penalty, and were I a legislator in a state or in Congress or something, I would not vote for the death penalty. In part that is because I am convinced that there is no element of deterrence in the death penalty. I come from a state that doesn't have it, hasn't had it for, oh, 70 years or so, and the crime statistics there are no different from what they are in states that have the death penalty."²

Justice Blackmun continued: "Every time there is a striking, vicious killing of some kind there is always a move for the death penalty. I can understand this, but I think we should accept it as pure, sheer retribution, and that there is no deterrent effect to it at all."

United States Supreme Court Justice John Paul Stevens also spoke to this issue: "I have no doubt that [the death penalty] is constitutional. But experience has demonstrated it is not a deterrent to crime. It places a terrible burden on the judicial system. It makes us as a country look not quite as good as countries in Western Europe that seem to get along quite well without it. It really seems to me that when you see elections turn on candidates stressing how vigorously

¹ Bedau, Hugo Adam: The Case Against the Death Penalty, ACLU Capital Punishment Project, citing Uniform Crime Reports, 1980-1989.

² Supreme Court Justice Harry Blackmun speaking to Ted Koppel and Nina Totenberg in a televised interview aired on November 18, 1993. A transcript of this interview is available from Alaskans Against the Death Penalty.

they will enforce the death penalty, it cheapens the process. It seems to me we ought to abolish it." ³

The death penalty wastes money which could be spent in truly deterring crime: The death penalty actually makes America less safe because the enormous amounts of money required to accomplish it are taken out of the monies which would otherwise be spent for more policeman and better crime prevention, two things which, unlike the death penalty, are proven to reduce crime. The fact is that there is not one reputable study which shows that the death penalty works to reduce crime. Because of this, every dollar spent on it is a dollar which is not going to crime reduction.

³ 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.

Death Penalty Fact Sheet

THE UNITED STATES IS ALONE AMONG WESTERN NATIONS IN PERMITTING CAPITAL PUNISHMENT

Prepared by Alaskans Against the Death Penalty: September 1996

Most Americans are not aware of the fact that, in the community of nations, the United States is the only Western nation which permits citizens to be put to death by the government for criminal conduct. The United States prides itself on bearing the torch of liberty, on standing at the forefront of every struggle for human rights and the dignity of the individual. But, among nations similar to us, we are alone in still using the electric chair, intravenous poison, the noose, and the firing squad.

The Secretary-General of the United Nations published a series of reports on capital punishment around the world in the summer of 1995, identifying that the United States' wide use of capital punishment puts it shoulder to shoulder with the most repressive countries in the world, and out of step with most of the countries with whom we have the most in common.¹

Countries which have outlawed the death penalty for all crimes include: Australia (1985), Austria (1968), Cambodia (1989), Denmark (1978), Finland (1972), France (1981), Germany (1949/1987), Greece (1993), Hong Kong (1993), Hungary (1990), Ireland (1990), Italy (1994), Netherlands (1982), Norway (1979), Sweden (1972), Switzerland (1992), and the Vatican City State (1969).

Countries which outlaw the death penalty for all crimes except for treasonous crimes under military law or during wartime include: Argentina (1984), Canada (1976), Israel (1954), Mexico, South Africa (1995), Spain (1978), and the United Kingdom (1973).

The countries which, like the United States, continue to permit punishment by death include: Chile, China, Cuba, Egypt, Ethiopia, Guatemala, India, Indonesia, Iran, Iraq, Japan, Kenya, Libya, Malaysia, Poland, Russia, Saudi Arabia, Singapore, Syria, Taiwan, Thailand, Ukraine, and Vietnam.

The United States has more people in prison, *per capita*, than any other nation in the world. According to Justice Department figures, 565 of every 100,000 Americans are behind bars. This rate is eight to ten times greater than that of the industrialized nations of Western Europe, none of which have the death penalty.

¹ *Capital Punishment: Report of the Secretary-General, UN document number E/1995/78, E/1995/78/Add.1, and E/1995/78/Add.1/Corr.1.*

cc:Mail for: Lisa Kirsch

Subject: Re[3]: Fiscal Notes
From: Shari Kochman at Gov_Juneau_Capitol 3/19/97 10:47 AM
To: Lisa Kirsch at LAA_TRANS
cc: Sam Shepard

hb 131 opa and pd notes should have been delivered by now --
checked with dps -- they have no record of doing a note on
this so not sure where that impression came from. so --
they won't be doing a note.
you should have all of them now: law, opa, pd, elections,
corrections.
let me know if you need anything else.

_____ Reply Separator _____

Subject: Re[2]: Fiscal Notes
Author: Lisa Kirsch at LAA_TRANS
Date: 3/18/97 5:45 PM

Last year's version of HB 131 had notes from OPA and the Troopers (apparently
because they would have to be especially meticulous about investigation in cases
with death penalty potential).

Subject: Re: Fiscal Notes
From: Shari Kochman at Gov_Juneau_Capitol
Date: 3/17/97 10:51 AM

hb115 -- no more notes coming
hb131 - pd agency (doa) coming -- should have by tomorrow
hb10 - law and commerce say no effect -- i'll check with dot
hb95 - will check with dps

thanks

_____ Reply Separator _____

Subject: Fiscal Notes
Author: Lisa Kirsch at JNL_LAA
Date: 3/17/97 8:16 AM

House Judiciary Committee

HB115

I have only one zero fiscal note for HB 115 (the revisor's bill), are there any
more forthcoming? We hear HB 115 today.

HB 31

I have two notes for HB 131 (Death Penalty vote) Dept of Law and Corrections.
I've asked Courts for one, but shouldn't I have some from Admin.--particularly
the P.D.L and OPA? Scheduled for the 24th of March.

HB 10

I have no notes for HB 10 other than cts.--does this bill not effect Dept of Law

or any other agencies that contract with design professionals? Scheduled for
March 21.

HB 95

Does the Trans. CS have no effect on the Public Safety note for hb95? Scheduled
for March 21.

HB 131

Barb Brink 264-4414

Bob Evans 586-6252

Dale Kelley 258-2296 off 277-0281 Fax

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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March 19, 1997

The Honorable Robin Taylor
Alaska State Senator
Capitol Building, Rm. 30
Juneau, Alaska 99801-1182

Re: Senate Bill 60 -- Advisory Vote on Capital Punishment

Dear Senator Taylor:

This is in response to questions you posed during my testimony in the Senate Judiciary Committee on Senate Bill 60, providing for an advisory vote to return capital punishment to Alaska after an absence of some 40 years. In particular, you questioned my statement that the death penalty has a disproportionate impact on minorities, and you referred me to an article that you had just received, published in *Texas Lawyer* magazine. The article was dated March 10, 1997, the date of my testimony.

The article in *Texas Lawyer* pointed out that blacks have constituted 38% of those executed in the last 20 years, or more than three times their percentage in the United States population. This is an obvious over-representation of minorities on death row, although you pointed out during the hearing that you believed this disproportionate impact may be explainable by other statistics.

You asked whether I had any data showing what percentage of murders are committed by blacks, because by knowing that percentage one might better attempt to understand why so many blacks are on death row. You again cited the article in *Texas Lawyer*, indicating that blacks commit a disproportionately high percentage of murders.

I have seen other research indicating that blacks do indeed commit a much higher percentage of murders than the percentage they represent in the general population. Assuming these figures are accurate, it suggests that a black who commits murder is no more likely to receive a death sentence than a white who commits murder. But that, in my opinion, is not the end of the analysis and does not permit us to say there is not a disproportionate impact on minorities.

I do not believe that any of us understand precisely *why* blacks commit such a high percentage of murders. But perhaps we can narrow it down to two primary choices. Either:

(1) blacks are racially, genetically or somehow inherently prone to commit murder -- a proposition so preposterous that it is painful to even articulate; or

(2) murders often result from a complex interaction of factors affecting many minority populations in the United States, such as poverty, lack of education, lack of employment opportunities, ease of access to drugs, breakdown of family and community structures, lack of self-esteem and hopelessness.

I believe the same social factors affecting blacks in the rest of the United States also contribute to the over-representation of Native Alaskans in the Alaska prison system and could easily lead to their over-representation on death row in our state.

I do not mean to suggest that persons who commit crimes should not be punished. I believe they should be punished, regardless of social factors that may have disposed a particular individual to commit his or her crime, and I support the tough sentencing structure in Alaska. I am suggesting, however, that no matter what statistics are analyzed, certain minorities are condemned to death at a far greater rate than their percentage in the population. Because I believe that factors within our society contribute to that disparity, until that disparity disappears we cannot claim the moral right to inflict the ultimate punishment that society can impose.

A second, more subtle, form of discrimination is the difference in the way death penalty defendants are treated depending on the race of the *victim*. The

Texas Lawyer article acknowledged that, although whites and blacks comprise an equal percentage of all murder victims, in cases in which the death penalty is imposed the victim is almost always white.

The author of the article explained this significant racial disparity by the rather simplistic argument that "[a] crucial point is that capital murders and non-capital murders are two very distinct categories." The author noted that capital murder cases are more aggravated than other murder cases, and the perpetrator usually has a longer criminal record, and concluded that the race of the victim was therefore irrelevant.

The fact that the victims in death penalty cases are almost always white, however, leads me to one of two possible conclusions. Either:

(1) whites belong to the unluckiest of races to be so often subject to aggravated murders by persons with long criminal records; or

(2) prosecutors, jurors, and judges in other states are more likely to view the murder of a white person as an aggravated offense, compared to the murder of a black person.

If the race of the victim were indeed irrelevant, as the author of the article claims, then whites who murder blacks, and blacks who murder whites, should receive the death penalty at about the same rate. That is not the case, however. A comprehensive study in Georgia in 1991 found that blacks who kill whites are four times more likely to be sentenced to death than whites who kill blacks. This disparity held, even when over 250 other variables were factored in. A study of sentencing patterns in Texas showed that when an African-American or a Mexican-American killed a white, 65% of the defendants faced the death penalty, whereas whites who killed African or Mexican-Americans faced the death penalty only 25% of the time. These data also show that a black who kills a white person is more likely to face the death penalty than a black who kills a black.

As indicated in previous testimony, there is little or no evidence to believe that the threat of the death penalty deters people from committing murders and protects the public. If one believes such a deterrent effect exists, then one could

also reach the conclusion that it only deters those who might murder white victims, and does little to deter those who murder blacks. In other words, assuming the death penalty protects the public, it is not the minority population being protected.

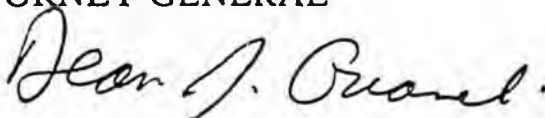
Based on the foregoing, I continue to stand by my testimony that the way in which capital punishment is administered has a disproportionate impact toward minorities -- both defendants and victims. As I indicated during my testimony, however, among the other reasons for opposing capital punishment are that our system is not perfect, thus running the risk of executing innocent people; that capital punishment tends to skew the case law that affects other criminal cases; and that the legal process leading to an execution is a lengthy and expensive one, that does not allow the families of victims to bring the matter to closure for many years. I believe that the present sentencing practices in Alaska, whereby first degree murderers routinely receive lengthy sentences averaging over 70 years, adequately protects the public.

As a final matter, you requested a citation to an article in the Stanford Law Review relating to innocent persons being executed. Charles Campbell tells me that the article is Badeau and Radelet, *Miscarriage of Justice in Potentially Capital Cases*, 40 Stanford Law Review 21 (1987),

Thank you for the opportunity to respond to your questions. As usual, I appreciated your courtesy during the committee hearing.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Dean J. Guaneli
Chief Assistant Attorney General

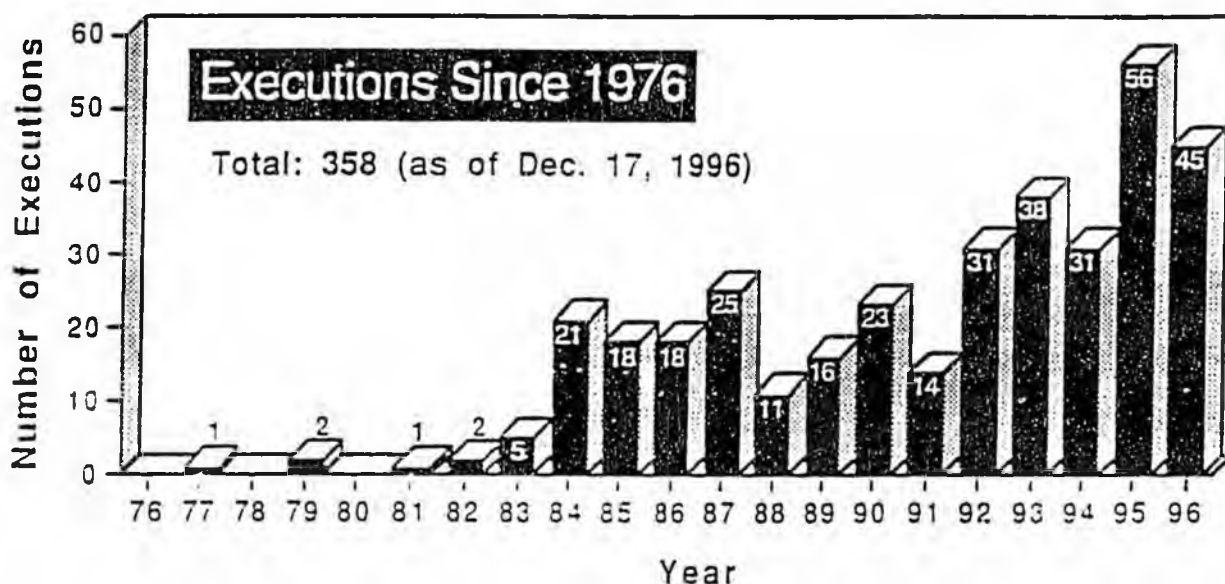
cc: Members of the Senate Judiciary Committee

The Death Penalty in 1996: Year End Report

Death Penalty Information Center
December 1996

Executions in 1996 Second Highest Since 1976

The overall pace of executions in the United States remained high in 1996 and the prospects for the future are for even greater numbers of people put to death each year. As of December 17, there were 45 executions, mostly by lethal injection. This represents a slight drop from last year when 56 executions represented the highest number since capital punishment was reinstated in 1976. The 20% decrease in executions this year was probably due to the passage of numerous federal and state laws designed to speed up executions. Some of these new laws created a legal logjam as courts considered the constitutionality of the curtailed appeal process.



Texas, the nation's leader in executions for many years, virtually stopped executions this year pending resolution of a challenge to the state's new appeal laws. Once that matter is resolved, Texas will likely renew and even accelerate its frequent executions. On the federal level, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 which will make it increasingly difficult for even innocent defendants on death row to secure federal review. Congress also eliminated all money for the death penalty resource centers which had been overseeing a major portion of death penalty appeals. Both of these pieces of legislation will result in less thorough representation for those on death row.

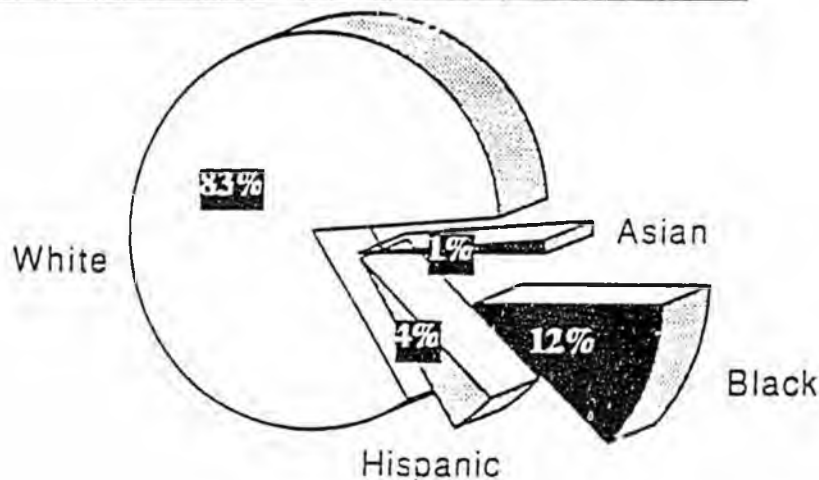
This year, the five states with the largest death rows (California, Texas, Florida, Pennsylvania and Illinois) together were responsible for only 8 executions. But these same states have over 1,500 people on death row, indicating that the likelihood for increased executions in the near future is great.

<u>States With Most Executions Since 1976</u>		<u>States With Highest Per Capita Execution Rate</u> (per 100,000 pop. since 1976)		<u>States With Most Executions in 1996</u>	
Texas	107	Delaware	1.20	Virginia	8
Florida	38	Texas	0.63	South Carolina	6
Virginia	37	Virginia	0.60	Missouri	6
Missouri	23	Louisiana	0.55	Delaware	3
Louisiana	23	Arkansas	0.51	Texas	3

Racial Disparities Even More Prominent

Although the number of people executed varies from year to year, the typical death row inmate remains the same. He is likely to be a poor man who never graduated from high school. He is likely to be a member of a minority. And with only rare exceptions, he has been convicted of murdering a white person. Almost all of the executions this year involved a case with a white victim in the underlying murder. Of the 45 executions carried out this year, only 4 involved the murder of a black victim, even though blacks are murdered as often as whites in the U.S. (one additional case involved black and white victims). No white person was executed this year for the murder of a black person, while ten black men were executed for crimes involving white victims. This sends a message that black lives are worth less than white lives. Since the death penalty was reinstated, 90 black men have been executed for the murder of a white victim, while only 4 white men have been executed for the murder of a black victim.

Race of Victims: Almost All Capital Cases Involve White Victims



Since 1976

In Kentucky, a recent study found that *none* of the people on that state's death row were there for the murder of a black person, despite the fact that there have been over 1,000 blacks murdered in Kentucky since the death penalty was reinstated. Legislation to prevent further racial injustice failed by one vote in the state legislature.

The federal death penalty continues to be targeted mainly at minorities. Almost 80% of those for whom the federal government sought the death penalty under either the "drug kingpin law" of 1988 or the 1994 Crime Bill have been black or Hispanic.

Death Penalty Reality Often Differs from Expectations

Many of those executed in 1996 did not fit the stereotype of death row inmates as repeat killers who stalk strangers. In fact, many of the cases this year involved murders by close acquaintances of the victim:

- William Flamer was executed in Delaware for killing his aunt and uncle.
- Jeffrey Paul Span was executed in Missouri for murdering his brother and was suspected of killing other family members.
- James Clark was executed in Delaware for killing his adoptive parents.
- Joseph Savino was executed in Virginia for the murder of his male lover when the relationship went sour.
- Fred Kornahrens was executed in South Carolina for killing his ex-wife, her father and her 10-year-old stepson. Kornahrens said he went out of control when his marriage broke up.
- Emmett Nave was executed in Missouri for murdering his landlady after confrontations about his apartment.
- Thomas Battle was put to death in Missouri for the murder of an 82-year-old neighbor who had befriended him.
- William Frank Parker was executed in Arkansas for murdering the parents of his former wife. He also shot his wife, but she survived.
- Joe Gonzales was executed in Texas only ten months after his conviction for murdering his former boss. Gonzales acted as his own attorney and waived his appeals.
- Richard Zeitvogel was executed in Missouri for the murder of a fellow prisoner. The prosecution said he murdered because he *wanted to be placed on death row*.

The most prominent capital case involving family members has been evolving this year in Delaware, the nation's per capita leader in executions. When 18-year-olds Amy Grossberg and Brian Peterson were accused of murdering their newborn infant, Delaware immediately announced that it would seek the death

penalty against both of them, without full knowledge of their mental state or other crucial information.

Election Year Politics

This year was an election year, and the death penalty was the focus of both highly publicized punitive legislation and campaigns demanding swifter executions. Bob Dole campaigned in front of California's death row and criticized President Clinton's appointment of judges as soft on crime. Clinton responded by emphasizing his commitment to less federal review for death row inmates. Congress cutback the opportunity for federal habeas corpus and completely defunded the death penalty resource centers. States, too, pushed for more executions. Virginia, Pennsylvania and Ohio, for example, set multiple execution dates for defendants who had not yet completed their normal appeal. This manipulation of execution dates puts additional burdens on the justice system, since every death warrant results in litigation over a stay of execution, independent of the appeal arising from errors in the case.

Electoral races in which the death penalty played a prominent role produced mixed results, with some candidates surviving attacks based on their reservations about capital punishment. Sen. John Kerry of Massachusetts was re-elected in the face of Gov. William Weld's attack on his opposition to the death penalty. In California, Representatives Vic Fazio and Walter Capps were elected to the U.S. House of Representatives, even after extreme accusations that attempted to align them with the murderer of young Polly Klass.

Politicization of judicial selection intensified. One of the latest victims was Tennessee Supreme Court Justice Penny White. White lost her position on the court after a single death penalty decision in which she *upheld* the conviction of a death row inmate, but joined a decision by other justices overturning the death sentence. A conservative anti-tax group mounted a successful campaign against White, erroneously charging her of being weak on crime because of this single decision.

Twenty Years of Capital Punishment

This year marked the 20th anniversary of the Supreme Court's decision in *Gregg v. Georgia* upholding the constitutionality of the death penalty under newly passed statutes. However, many of the problems which the Court had identified in the application of earlier capital punishment laws, such as its arbitrariness, racial discrimination and the potential for fatal mistakes, still remain.

Innocence: Four more inmates were released from death row in 1996 after charges against them were dropped: Verneal Jimerson (Illinois), Dennis Williams (Illinois), Roberto Miranda (Nev.) and Troy Lee Jones (Calif.). This brings the total number of death row inmates released since 1973 because of evidence of their

innocence to 66. In addition, two other death row inmates had their sentences commuted to life because of strong doubts about their guilt: Donald Paradis (Iuaho) and Joseph Payne (Virginia). At least four other death row inmates (Joseph Spaziano (Fla.), Donald Gunsby (Fla.), Kerry Max Cook (Tex.) and Lloyd Schlup (Mo.)) had their convictions overturned in 1996 and will either be retried or permanently freed from death row.

Prosecutors Indicted: In Illinois, three former prosecutors (one of whom is now a state circuit judge) were indicted for obstructing justice in the mistaken death penalty prosecution of Rolando Cruz and Alejandro Hernandez. Cruz and Hernandez were released in late 1995 after spending years on death row for a crime they did not commit. The indictments allege that the prosecutors and police officers knowingly presented false information and proceeded with the case against individuals whom they should have known were innocent.

Volunteers: An unusually high number of inmates gave up their appeals this year, thereby "volunteering" for execution. Ten of the 45 people executed this year waived their remaining appeals, including three in South Carolina. (Forty-seven of the 358 persons executed since 1976 have waived their appeals.) The isolated and demeaning conditions on death row, coupled with discouragement over an ever narrower appeal process and the lack of representation, seems to be leading more inmates to take part in state-assisted suicide.

Methods of Execution: One man was executed by a firing squad (John Taylor in Utah) and one man was hung (Billy Bailey in Delaware). Seven people were executed in the electric chair, and the remainder were executed by lethal injection. This latter method has been promoted as more humane, but the lethal injection of Tommie Smith in Indiana this year took one hour and seventeen minutes. The executioner could not find a vein in which to inject the poison chemicals. A doctor was summoned, and eventually the lethal injection was made through Smith's leg.

International Trends: The International Commission of Jurists released a report highly critical of the death penalty in the United States, based on its visit here. The report, entitled *Administration of the Death Penalty in the United States*, states: "By ratifying the Political Covenant and the Race Convention, the United States has accepted to submit its system of punishment for criminal offenses to the judgment of international opinion; and opinion in the Western democracies is unanimous that the death penalty offends civilised standards of decency." The Commission particularly singled out the racial disparities and due process violations evident in the use of the death penalty in the U.S.: "The Mission is of the opinion that . . . the administration of capital punishment in the United States continues to be discriminatory and unjust -- and hence 'arbitrary' --, and thus not in consonance with Articles 6 and 14 of the Political Covenant and Article 2(c) of the Race Convention."

Other international rights groups, including Human Rights Watch and Amnesty International, issued reports before this year's Olympics in Atlanta criticizing the death penalty in the U.S.

Who Were Executed?

As usual, the death penalty in practice looks different from the death penalty in theory. Here are descriptions of a few who were executed in 1996:

Walter Correll - The first man executed this year was an inmate in Virginia with mental retardation. Correll had an IQ of 68. His two co-defendants blamed the murder on him and received lighter sentences.

Richard Townes, Jr. - The second man executed this year was also from Virginia. Mr. Townes represented himself at trial, questioned no witnesses, and presented no mitigating evidence regarding sentencing. The jury did not know that, had he been sentenced to life, he would never have been eligible for parole. The executioners searched 22 minutes for a suitable vein before injecting the poisonous chemicals into his foot.

Billy Bailey - Bailey was hung in the state of Delaware in January, the first hanging there in 50 years. Bailey's legs were tied with rope, and he wore a black hood which reached to his waist. When the trap door below Bailey was sprung, he dropped and twisted before being pronounced dead by a doctor.

John Taylor - was executed by firing squad in Utah in January. Five state law enforcement officers were paid \$300 each to fire their rifles at Taylor's heart, which was marked by a white circle on his blue jumper. One of the five marksmen fired a blank. Taylor waived his appeals and asked to be executed by firing squad, just as the first person executed after the death penalty's reinstatement, Gary Gilmore, was also shot in Utah at his own request.

Stephen Hatch - was executed in Oklahoma for two murders in conjunction with a robbery. Hatch's co-defendant, the actual killer in this case, was sentenced to life in prison. Members of the victims' family watched the execution, thanks to a new law sponsored by one of the family who is now a state senator in Oklahoma. Allowing the victim's family members to view executions became a trend this year.

Ellis Wayne Felker - was electrocuted in Georgia this year. Felker's case attracted attention when the U. S. Supreme Court agreed to hear, on an expedited basis, his challenge to the new law curtailing federal review. Felker won his request to be able to file for review with the Supreme Court, despite apparent restrictions in the new law to such an approach. However, the Supreme Court did not accept his claim that new evidence of his innocence should stop his execution.

Commentary: Some Signs of Change

Although there were many executions in 1996, the long-predicted "flood" of executions has not occurred, and there was some movement away from the death penalty. The movie *Dead Man Walking* received wide acclaim and an Academy Award, generating much discussion about the wisdom of capital punishment. Sister Helen Prejean, the principal figure portrayed in the movie, traveled the country, engaging audiences with her stories and message of reconciliation. Rev. Jesse Jackson's first book, written with his son, Congressman Jesse Jackson, Jr., focused on the myriad of inequities presented by the death penalty in the United States. And shortly before his own death, Cardinal Joseph Bernadin, a strong opponent of capital punishment, demonstrated an act of compassion by visiting death row inmate Raymond Stewart in Illinois before Stewart was executed.

Virginia, which led the country in executions this year, saw its juries start to turn away from the death penalty once the alternative of life without parole became available to them. Only one person has been sent to death row in Virginia since the new sentence was instituted, whereas six people had been sentenced to death the year before, and ten the year before that. Indiana and Georgia, two other states which have recently instituted life-without-parole statutes, have also experienced a decline in death sentences. In Indiana, only 2 of 19 completed capital cases have resulted in a death sentence since its new law took effect in 1993. This positive movement away from the death penalty is in line with support in opinion polls for life-without-parole as an alternative to the death penalty.

Death Penalty Information Center

1606 20th St. NW
Washington, DC 20009
(202) 347-2531; fax: (202) 332-1915
email: dpic@essential.org
internet: www.essential.org/dpic
December 1996

The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information regarding capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion and serves as a resource to those working on this issue. This report was written by Richard C. Dieter, Executive Director of the Center. The sources for information in this year end report are available from the Center.

Alaskans **AGAINST** the Death Penalty

Secretary Al Adams
 Professor John Angell, PhD
 Robert D. Bacon
 Edgar Paul Bayko
 Barbara Brink

Representative Kay Brown
 Roy Howard Brown
 William Bryson
 Rex Bulter
 Judge Sashona J. Buckalov, Jr., Retired
 Judge Victor Carlson, Retired
 Reverend James Carpenter
 Steve Casper
 Chancy Crill
 Richard Currier

Harold Dauby
 Representative Betty Davis
 Shirley Decker
 Cynthia L. Ducky
 James E. Durbin

Senator Johnny Ellis
 Jeffrey Friedman
 Vic Fischer
 Hugh W. Fooseker
 Richard Friedman
 Mary C. Goides
 Peter Gruenstein
 Paul Gregory, Sr.
 Kathy Harris-Kaner

Wille Hershey
 Pastor Dennis Hovary
 Susan Humphrey Barrett
 Roy Hubbard
 Mike Inoué
 Professor Jerome Kerin
 Bishop Michael Kerney
 April Lerman

Suzanne Lohman
 Kimberly Marlin
 Carl Marrs
 James H. McConas
 Kevin L. McCoy
 Father Steven Moore
 Steven H. Morrison
 Harold MacLean
 Laurie Olin
 Pat Pounds
 John Richard

Christine Schenck
 Pastor John Studer
 Jeffrey Swenson
 David Stewart
 Cynthia L. Strout
 Arlos Sturgisworth
 Jan Styles

R. Scott Taylor
 Pastor John Tindal
 Reverend Wesley Hestich
 Phil Johnson
 Michael Holden
 Michael H. White
 Dr. Aron Wolf

Wesley Saberg Zarea
 Alaska Civil Liberties Union
 Alaska Native Justice Center
 Alaska Physicians for Social Responsibility
 Alaska Psychological Association
 Alaska Women's Lobby
 Amnesty International
 Ecumenical Unitarian Social Justice Comm.
 Chena Ridge Monthly Meeting of Friends

February 5, 1997

Dear Members and Friends of AADP,

On January 24, 1997, Sen. Robin Taylor filed his bill (SB 60) for an advisory ballot to return the death penalty to Alaska. This same bill lost in the legislature by a narrow margin last year, due in large part to the educational efforts of **Alaskans Against The Death Penalty**.


AADP is a broad based, non-partisan group of concerned citizens from every community across our state and we are working hard to dispel the myths and share the facts!

The Death Penalty: Kills innocent people * Favors vengeance over compassion * Does nothing for victims and their families * Abuses human rights * Sanctions and teaches violence * Fails to deter crime * Discriminates racially and economically * Goes against teachings of forgiveness found in all major faiths * Degrades our system of justice * Costs many times more than a life sentence

Public awareness, education, and response take money, energy and commitment! Join now in this effort - you can make the difference between life and death! Return the enclosed contribution form below today, and write to your Legislators. Talk to friends, family, neighbors, co-workers and encourage them to do the same - ASAP.

Every dollar, every letter, every minute counts!

Thank You!


Dale R. Kelley
 Executive Director

_____ **YES, I will renew my support of Alaskans Against the Death Penalty.**

Enclosed is my renewal gift of:

_____ \$25 _____ \$50 _____ \$100 _____ \$150 _____ \$200 _____ Other

_____ PFD Flight coupons to help in spreading the word to outlying areas

_____ I want to be on the Telephone Tree _____ Let me know how else I may help!

Name: _____

Address _____

Zip _____

Telephone _____ Fx _____

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee on H.B. , Advisory vote on Capitol Punishment dated Wed., March 12 at 1 pm.

I support **H.B. 131** for 4 reasons:

1. I am Catholic and the Church has always recognized and supported the death penalty for heinous crimes. (I realize Liberals have tried to undermine this position with-in the Church with lies.)
2. Actions have consequences! The sooner the State makes people realize it the sooner our violent premeditated crime rate will go down.
3. People are responsible for their actions and need to be held responsible for them.
4. Not to have an advisory vote is to circumvent learning what the voters really want.

Please vote for H.B. 131. Thank You.

Signed Virginia C. Phillips
Testifier

Self

Representing(Optional)

1404 LAKE ST., 2-D, SITKA

Address

907-747-8024

Phone

ALASKANS AGAINST THE DEATH PENALTY

March 20, 1997

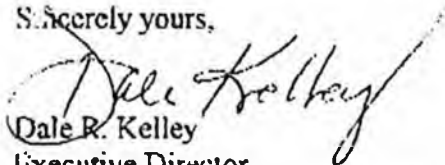
Dear Lisa,

Enclosed is a packet of materials that I hope will be helpful to the members of the House Judiciary Committee. They are self explanatory by title, basically, except I will call your attention to the letter from Judge Mark C. Rowland. We would appreciate it very much if his letter were part of the packet you are preparing for the committee members.

Please do call if there is anything else we can supply to you. I will be coming down to Juneau for the hearing on IIB131 scheduled for Monday, March 24. It was a pleasure for me to meet you on March 12 while I was at the Capital, and I look forward to seeing you next Monday.

Thank you, Lisa.

Sincerely yours,



Dale R. Kelley
Executive Director
Alaskans Against the Death Penalty
(907) 258 - 2296 Fax 277 - 0281

Post-it* Fax Note	7671	Date 3/20	# of pages 20
To Lisa Kirsch		From Dale Kelley	
Co./Dept. Judiciary Committee		Co. AADP	
Phone # 465-4731		Phone # 258-2296	
Fax # 465-4316		Fax # 277-0281	

FAX

To: Rep. Joe Green
Fax phone: 465-4316
Phone: 465-4931

Dear Rep. Green: This is a copy of the FAX I sent to Rep. James this morning re: HB131. Thank you for your attention.

1551 Farmers Loop
Fairbanks, Alaska 99709
24 March 1997
(907) 479-6912
FAX phone: (907) 455-6912

Representative Jeannette James
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801

Dear Ms. James;

We are writing in opposition to HB131. We believe the bill is too vague in asking for a yes or no vote without offering alternative sentences, and would present results that really wouldn't help legislators make a rational decision in the matter.

We are convinced that the possibility of errors in capital crimes is just too real. We understand that repeated appeals of sentence run up the cost of convictions way above that of life imprisonment for these crimes. At least if a person is sentenced to life in prison there IS the opportunity for redress in case of error.

Furthermore, we believe that the death penalty does not deter criminals from committing heinous crimes; this lack of deterrence is amply demonstrated in states that kill convicted murderers-- their rate of such crimes is not lower than in states without the death penalty.

Please do everything in your power to prevent our state from stooping to the level of the criminal by committing murder in the name of its citizens.

Sincerely,

Ruth and Carl Benson

24 March, 1997

To: Representative Joe Green
Chair, Judiciary Committee

Fax: 465-4316

From: Emily Nenon
1635 Northwestern Ave.
Anchorage, AK 99508

Phone/Fax: 277-8366

RE: TODAY'S JUDICIARY COMMITTEE MEETING
HB131 - Advisory Ballot Question on the Death Penalty
THIS BILL MUST NOT GET OUT OF COMMITTEE!

Dear Representative Green,

I am opposed to the death penalty for many reasons. My appeal to you today is on financial grounds.

You folks in Juneau have had your hands full trying to cut the budget recently (among other things) and I commend your hard and thoughtful work on behalf of your constituents. I saw the crowd at the LIO in Anchorage Saturday that showed up for the Finance Committee hearing; (I was there to listen in on the teleconference out of Fairbanks on religion and ethical issues.)

If this advisory ballot question is not stopped, the crowds are going to come out again in a couple years. How are legislators then going to explain to people which of their social programs, educational programs, even the most basic issues of sanitation in villages, must be cut to finance the 20 million dollars needed to set up the death penalty? Which village is going to have to stay on honey buckets a while longer because we need another 5 million dollars to kill someone?

I see putting out this ballot question to an uninformed public as shirking legislative responsibility as representatives of the people. Please save us all trouble in the future and don't let this bill go any farther.

Thank you for your time and consideration.

Sincerely,



Emily Nenon



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE H. JUDICIARY
COMMITTEE NAME

COMMITTEE ON HB 131 (CAPITOL PUNISH) DATED 3-24-97
BILL/SUBJECT

I HAVE MARKED MY CALENDAR TO REMIND MYSELF TO OBTAIN A WRITTEN TRANSCRIPT, IN A FEW WEEKS, OF THIS TELE CONFERENCE.

PUBLIC TESTIMONY ON THIS BILL (HB 131) HAS BEEN STRONGLY AGAINST ITS CONSIDERATION.

MOST PEOPLE WHO SPOKE TODAY ON THIS BILL STATED THAT THEY OPPOSED THE NOTION THAT PEOPLE REALLY HAVE EVEN CLAMoured FOR YOU LEGISLATORS TO BOTHER US WITH A CAPITOL PUNISHMENT ISSUE AT THIS TIME.

SIGNED SCOTT T. CAWDER
TESTIFIER

P.O. 75011

REPRESENTING (OPTIONAL)

ERIC WU 9074563346 (907) 2174-7174

Joe Green
Chairman, House Judiciary Committee
State of Alaska House of Representatives
Juneau, Alaska
via fax (907) 465-4316

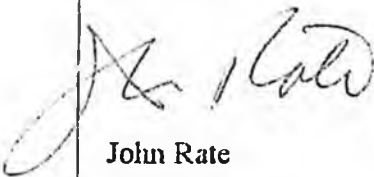
3/24/97

Dear Representative Green:

I am writing in opposition to HB 131 providing for an advisory vote on capital punishment. Given the public frustration with crime, it may be politically expedient to offer this simplistic solution. However, the people who deal daily with criminal justice, including police and prosecutors, agree that there is no rational justification for capital punishment. In fact, it aggravates the stresses on an already overburdened system.

As legislators, you are elected for your leadership and your ability to make sound, levelheaded policy decisions. I urge you to exercise your individual judgment on this issue and to recommend against passage of this misguided legislation.

Sincerely,



John Rate
Box 2169
Homer, Alaska 99603



TANANA CHIEFS CONFERENCE, INC.

Upper Tanana Subregion
P.O. Box 129
Tok, Alaska 99780
(907) 883-5181
1-800-478-5181

TO: Legislative
Office
ATTN: John Benson

FAX: (907)883-1114

DATE: 3/24/97

NO. PAGES: 1

FROM: Betty Butler
P.O. Box 737
TOK, AK 99780

MESSAGE: on Bill - Capital Punishment.
Killing a human being from any point of
view is wrong and harmful behavior.
Doing it in the name of society, justice,
or superior attitude is wrong thinking.
Only by seeing all life through the
eyes of compassion can we elevate
ourselves as a people and create
a better society

**HC-01, Box 275
Gakona, AK 99586
907-822-5174**

Reimposition of the Death Penalty

I would like to thank the Judiciary Committee for this opportunity to testify on the Reimposition of the Death Penalty for capital murder. The brutal slaying of Alaska State Trooper, Bruce Heck, cries out for the death penalty. The alleged assailant, Mr. Phillips, had an extensive police record. It is time for us to send a message to criminals. We, as a society, will not tolerate criminals' barbaric behavior. We must have a deterrent that will be swift, sure, and severe punishment for those who assault, batter, or kill police officers. I do not know how to express the moral outrage and anger I feel. Juries should be given the opportunity to chose between the death penalty for capital murder or life with no parole.

Respectfully submitted for your consideration;

Larry D. Gondek



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY
committee name

committee on HB 131, dated MAR 24 1997
bill/subject

I AM OPPOSED TO THE DEATH PENALTY
AND ASK YOU TO VOTE AGAINST HB 131

Signed: *Richard Reichman* RICHARD REICHMAN
Testifier

Representing (Optional)

Box 2405 VALDEZ
Address

830-05-25
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____

committee on #Bil31: Death Penalty , dated March 24, 1997.
committee name
bill/subject

I disagree that this bill is not a philosophical issue. You would not be presenting this bill if you did not want a death penalty. I am testifying against this bill because I think the death penalty is immoral. It's because I think murder is so terrible that I don't want the State committing it on my behalf.

I don't doubt that you could whip up enough fear among Alaskans to make it seem that we "need" this. But there is no evidence in the world that violence makes people better. The Death Penalty is state violence, and is barbaric. We should be proud that we don't inflict the death penalty here.

I wish I could touch your heart so you might consider committing yourself to non-violence. I wish I could touch your heart so that you could realize that our safety does not depend on killing the people we are afraid of. Our safety depends on choosing to cherish all life.

Signed: Christine Reckman
Testifier

my own convictions
Representing (Optional)

Box 2405, Valdez
Address

835-5525
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on HB 131, dated MARCH 24, 1997
 bill/ subject

I THINK THIS BILL IS NECESSARY. IT SHOULD NOT STOP AT MURDER, HOWEVER, BUT SHOULD ALSO INCLUDE AGGRAVATED RAPE IF PROVEN BEYOND DOUBT THAT THE MAN WAS NOT ENTICED INTO THE ACT BY A WOMAN WITH A GRUDGE.

Signed:

Leigh B. Dennison

Testifier

Sell

Representing (Optional)

BOX 573 DELTA JCT. AK. 99747

Address

(907) 895 4555

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on H.B. 131, dated 3/24/97
 bill/ subject

Please pass this bill & let the people of Alaska decide whether or not we should have capital punishment for first degree murder.

I would like to see capital punishment extended to include cases of violent rape, such as the rapist who cut of both of his victim's arms.

Signed:

Hammelore K. Demmin

Testifier

noel

Representing (Optional)

PO Box 873, Delta, AK 99737

Address

(907) 895-4555

Phone No.

March 24, 1997

To the Members of the House Judiciary:

Please register my strenuous opposition to HB131. The place for informed debate and intelligent discussion of this issue is in the legislature. The advisory question does not promote or advance education - it invites only a superficial view of justice administration. If there is to be an advisory question, it should provide voters with full information as to the costs and alternatives in the sentencing process.

Please vote no on this bill.

Thank you!

Mary Geddes
2610 W 27th Avenue
Anchorage, Alaska
99517

Joyce Bamberger
1036 W. 22nd St.
Anchorage AK 99503

My name is Joyce Bamberger and I am an attorney. I testify on my own behalf and not for the Alaska Human Rights Commission of which I am chairman.

Recently, the American Bar Association announced its opposition to the death penalty because it cannot be administered in a manner that affords due process.

The ABA is a respected professional organization that does not take positions on issues without fully considering them. If the ABA has studied the death penalty and opposes it, as a lawyer, I must take heed of that view and you as legislators should also listen. The voters ~~cannot~~ do not have adequate information to respond to the initiative proposed in HB 131.

For this reason and others, I urge you to not proceed with HB 131.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

HOUSE BILL NO. 131

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SANDERS, Rokeberg, Kohring

Introduced: 2/13/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for an advisory vote on the issue of capital punishment."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** The lieutenant governor shall place before the qualified voters of the state at
4 the next general election the question advisory to the legislature of whether the legislature
5 should enact a law providing for capital punishment for murder in the first degree. The
6 question shall appear on the ballot in substantially the following form:

7 **Q U E S T I O N**

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

12 Yes [] No []

March 24, 1997

To the Members of the House Judiciary:

Please register my strenuous opposition to HB131. The place for informed debate and intelligent discussion of this issue is in the legislature. The advisory question does not promote or advance education - it invites only a superficial view of justice administration. If there is to be an advisory question, it should provide voters with full information as to the costs and alternatives in the sentencing process.

Please vote no on this bill.

Thank you!

Mary Geddes
2610 W 27th Avenue
Anchorage, Alaska
99517

Joyce Bamberger
1036 W. 22nd St.
Anchorage AK 99503

My name is Joyce Bamberger and I am an attorney. I testify on my own behalf and not for the Alaska Human Rights Commission of which I am chairman.

Recently, the American Bar Association announced its opposition to the death penalty because it cannot be administered in a manner that affords due process.

The ABA is a respected professional organization that does not take positions on issues without fully considering them. If the ABA has studied the death penalty and opposes it, as a lawyer, I must take heed of that view and you as legislators should also listen. The voters ~~cannot~~ do not have adequate information to respond to the initiative proposed in HB 131.

For this reason and others, I urge you to not proceed with HB 131.

(1)

POPULAR OPINION TOTALLY WRONG:
Executions Cost MUCH MORE Than Prison!

Q: Which do you believe costs more --
the death penalty or life in prison without parole?

74% life in prison costs more

21% death penalty costs more

5% unsure

THE TRUTH: It costs MILLIONS and MILLIONS MORE
to execute JUST ONE murderer than to keep him in
prison for life.

NORTH CAROLINA: \$2.16 Million MORE

CALIFORNIA: \$15 Million /execution
6 x MORE than prison

TEXAS: \$2.3 Million /execution
3 x MORE than prison

FLORIDA: \$3.2 Million /execution

*** MOST costs are at the TRIAL level,
NOT the result of appeals. ***

(2)

ALASKA CANNOT AFFORD THE DEATH PENALTY

Attorney General Botelho estimates the cost of obtaining a single execution in Alaska at \$5 MILLION -- that's HALF the ANNUAL PROSECUTION BUDGET!

* * * * *

Previous prosecutor, defender, and court estimates have conservatively predicted that 6 capital cases a year would cost taxpayers \$18.8 MILLION for the first four years alone. This estimate does NOT include costs of constructing, maintaining and staffing a death row/execution facility.

* * * * *

Alaskans can expect to spend well in excess of \$50,000,000.00 on the death penalty before even one person is executed!

P. Cook & D. Slawson, The Costsof Processing Murder Cases in North Carolina (Duke University Study, May, 1993); R. Dieter, Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty, D.P.I. Center (Rev. Ed. Fall, 1994); Letter from Atty. Gen. Botelho to AADP, August 27, 1995; Prior fiscal notes; Interview of OPA head, Brant McGee.

JAMIN, EBELL, BOLGER & GENTRY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
323 CAROLYN STREET
KODIAK, ALASKA 99615

TELEPHONE: (907) 486-6024
FACSIMILE: (907) 486-6112

REPLY TO KODIAK OFFICE

ANCHORAGE OFFICE:
1200 I STREET, SUITE 704
ANCHORAGE, ALASKA 99501
TELEPHONE AND FAX
(907) 278-6100

SEATTLE OFFICE:
300 MUTUAL LIFE BUILDING
805 FIRST AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 822-7634
FACSIMILE: (206) 823-7521

ALAN L. SCHMITT
ATTORNEY AT LAW
ADMITTED TO ALASKA BAR

E-MAIL: ALAN@JEBGKOD.COM

March 18, 1997

Honorable Joseph Green
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

RECEIVED

MAR 24 1997

Dear Representative Green:

As a practicing attorney in the State of Alaska, I have a strong interest in house Bill 131 which would place before the voters of Alaska an advisory ballot on the death penalty. I highly recommend that this bill not be passed.

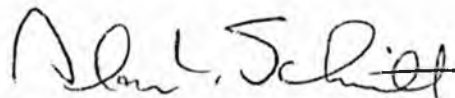
The actual costs of a death penalty case far exceed the costs associated with a capital case under our current system. Furthermore, the death penalty merely recognizes that violence is an appropriate action - it basically sanctions and teaches violence. The concept of using death as a means to end an unpleasant situation is repugnant to me as I believe our society should do everything it can to encourage life.

Please either vote against this Bill or do everything within your power to keep it in your committee until the 20th Legislature ends.

Thank you for your consideration.

Sincerely yours,

JAMIN, EBELL, BOLGER & GENTRY



Alan L. Schmitt

ALS/skh

cc: Representative Alan Austerman
Senator Jerry Mackie

STEVE COLE
STEVEN P. GRAY
GREGORY P. RAZO

GRAY, COLE & RAZO

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
328 CENTER AVENUE, SUITE 203
KODIAK, ALASKA 99615

OF COUNSEL
R. DANFORTH OGG

*Admitted to Washington and Alaska Bar

TELEPHONE
(907) 488-8505
FAX
(907) 488-2777

RECEIVED
MAR 24 1997

March 19, 1997

Honorable Joseph Green
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: House Bill 131

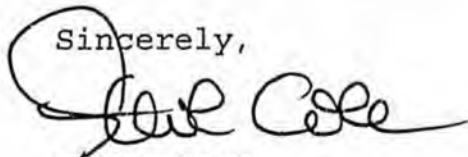
Dear Representative Green:

I am writing with regard to House Bill 131 which is designed to place an advisory ballot before the public on the creation of a death penalty for certain offenses in Alaska. My strong recommendation and opinion is that this bill not be passed.

The Alaska criminal justice system can not bear the costs of death penalty litigation; we are already struggling to pay for the current system which does not include capital cases. Further, the death penalty simply institutionalizes violence as a socially acceptable response to crime. We do not need social policy which uses violence to attempt to proscribe violence. Such a policy reflects not only circular reasoning but also shows a deterioration in the basic respect every Alaskan should have for human life.

I ask that you vote against this bill or take the procedural steps necessary to see that the bill itself dies in your committee before reaching our Legislature. Thank you.

Sincerely,



STEVE COLE
Attorney at Law

cc: Representative Alan Austerman
Senator Jerry Mackie

STEVE COLE
STEVEN P. GRAY
GREGORY P. RAZO*

OF COUNSEL
R. DANFORTH OGG

*Admitted to Washington and Alaska Bar

GRAY, COLE & RAZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

326 CENTER AVENUE, SUITE 203

KODIAK, ALASKA 99815

TELEPHONE
(907) 486-8505

FAX
(907, 486-2777

March 19, 1997

RECEIVED
MAR 24 1997

Honorable Joseph Green
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

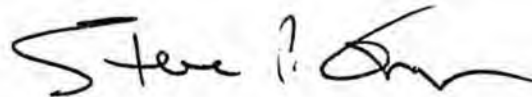
Dear Representative Green:

I am writing with regard to the "Death Penalty" legislation, House Bill 131 which is designed to place an advisory ballot before the public on the creation of a death penalty for certain offenses in Alaska. My strong recommendation and opinion is that this bill not be passed.

The Alaska criminal justice system can not bear the costs of death penalty litigation. We are currently struggling to pay for the current system which does not include capital cases. Further, the death penalty simply institutionalizes violence as a socially acceptable response to crime. We do not need social policy which uses violence to attempt to proscribe violence. Such a policy reflects not only circular reasoning but also shows a deterioration in the basic respect every Alaskan should have for human life.

I ask that you vote against this bill or take the procedural steps necessary to see that the bill itself dies before reaching our Legislature.

Sincerely,



STEVEN P. GRAY

cc: Representative Alan Austerman
Senator Jerry Mackie

STEVE COLE
STEVEN P. GRAY
GREGORY P. RAZO*

OF COUNSEL
R. DANFORTH OGG

*Admitted to Washington and Alaska Bar

GRAY, COLE & RAZO

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
326 CENTER AVENUE, SUITE 203
KODIAK, ALASKA 99615

RECEIVED
MAR 24 1997

TELEPHONE
(907) 486-8505
FAX
(907) 486-2777

March 19, 1997

Honorable Joseph Green
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Representative Green:

I am writing with regard to the "Death Penalty" legislation, House Bill 131 which is designed to place an advisory ballot before the public on the creation of a death penalty for certain offenses in Alaska. My strong recommendation and opinion is that this bill not be passed.

The Alaska criminal justice system can not bear the costs of death penalty litigation. We are currently struggling to pay for the current system which does not include capital cases. Further, the death penalty simply institutionalizes violence as a socially acceptable response to crime. We do not need social policy which uses violence to attempt to proscribe violence. Such a policy reflects not only circular reasoning but also shows a deterioration in the basic respect every Alaskan should have for human life.

I ask that you vote against this bill or take the procedural steps necessary to see that the bill itself dies before reaching our Legislature.

Sincerely,



GREGORY P. RAZO

cc: Representative Alan Austerman
Senator Jerry Mackie



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee name
 committee on HB131 Capital Punishment dated 3/24/97
 bill/subject

The American Bar Association
 (a conservative institution) is opposed.
 The Catholic Church
 (a very conservative institution) is opposed.
I (a responsible, conscientious human)
am opposed.
 It does not solve problems, it increases them.
 It does not save money, it costs many times
 more.
 Alaskan Natives (and other non-wealthy
 non-white males) are at a great risk.
 We are the only industrialized nation
 that keeps trying this failed experiment.
 I am highly insulted by the attempt to
 kill my neighbors (what this bill claims
 it is trying to prevent) in my name.
 It doesn't even work!

Signed: Kimberly Mack
 Testifier
Myself
 Representing (Optional)
P.O. Box 249, Barrow
 Address
907 / 852 - 6465
 Phone No.

House Judiciary Committee,

Re: House Bill 131 (Capital Punishment Advisory Vote)

I am an Assistant District Attorney in the Anchorage Office. I am opposed to the death penalty because I believe that it will make the job of a prosecutor more difficult.

1. It will be more difficult to obtain the cooperation of witnesses in capital cases. Friends, neighbors and relatives of the accused are frequently reluctant to cooperate with the police investigation or prosecution when the only sanction for the accused is imprisonment. If they know that their cooperation could condemn someone they know or love to death, they will be even more reluctant to cooperate with the government.

2. It will be more difficult to obtain convictions in capital cases. The legal standard of proof - beyond a reasonable doubt - will remain the same. But jurors will be loath to condemn someone to death unless they are convinced beyond any shadow of a doubt of the defendant's guilt. There would therefore be the anomalous situation of a not guilty verdict or a hung jury in close cases that, with the same jury, would have resulted in conviction. If the jury knew that a jail sentence was the only sanction and if a mistake had been made, it could be rectified, however belatedly, they would be more likely to convict in a close case with some doubt.

3. Capital punishment cases will be scrutinized very carefully by trial and appellate judges, and that is only right. Since a person's life is at stake and capital cases are so expensive to prosecute, trial judges will be more careful in capital cases than in any other kind of case before them, and when exercising discretion, will tend to err on the side of protecting the defendant's rights and the record on appeal. But, the result will be that we will get more defense oriented evidentiary rulings and rulings on the suppression of evidence, that will then apply all criminal cases and make the prosecutor's job that much more difficult.

4. There will be more collateral attacks on state convictions in federal court. In fact, all capital convictions will result in a collateral attack in federal court. For Alaska, that means that the Ninth Circuit Court of Appeals in San Francisco, which is one of the most liberal and activist federal appellate courts in the nation, will be passing on the propriety of Alaska convictions. The Ninth Circuit justices will be able to declare unconstitutional our statutes, procedures, court rulings - and our judges' evidentiary rulings at trial - on the basis of the justices' interpretation of federal constitutional provisions, for example, due process. The legislature will have no control over this situation. Even with a 2/3 majority, the legislature cannot

overrule a holding of the Ninth circuit Court of Appeals interpreting the U.S. constitution, in contrast to it's ability to promulgate new rules of court.

5. The media circus that surrounds capital punishment cases is very difficult for the loved ones of victims. I call it the Gary Gilmore syndrome - the death row inmate as celebrity: giving interviews, writing books, being the subject of made for TV movies. The slant of these stories is to make the defendant appear either as a hero, a victim or innocent. Capital cases drag on for years, and every time something happens (a conviction, reversal, new trial, execution scheduled or a reprieve) the publicity machine cranks up to full gear. For the victim's family it is like constantly reopening an old wound. In contrast, first degree murder convictions now are appealed and most often affirmed, with little or no publicity.

6. The bill as written contains no fiscal note and therefore a "yes" vote would be essentially meaningless. Municipal bond proposals tell each voter not only the exact total cost, but also how much each homeowner will be paying. Some bond propositions pass and some don't - because the people get to decide on each proposal whether they are in favor of it enough to pay for it. This bill does not even have a fiscal note. So the voters have no idea of how much capital punishment cases will cost the department of law, the court system or corrections. A "Yes" vote will therefore put the legislature in an untenable political position - not knowing whether the public is vaguely in favor of the "idea" of capital punishment, or if they are so strongly in favor of it as a practical alternative, that they are willing to pay for it through lower permanent fund dividends, an income tax, having each affected department simply pay for it out of their present budgets, or taking money away from other departments, programs and projects. Therefore, I do not know how legislators and their constituents are going to communicate meaningfully on this proposal. I do know, that if the prosecutor's office is expected to handle capital punishment cases without more money, then the capital punishment sponge is going to soak up so many dollars that other crimes will simply have to go unprosecuted. Since statistics show that capital punishment does not deter and does not reduce the homicide rate, then the anomalous result will be that capital punishment will not make our communities safer - it will make them less safe.

I respectfully request that the bill not be put on the ballot for an advisory vote until such time as it contains a fiscal note from all of the affected departments.

Respectfully,

Bonnie Lembo 3/24/97
Virginia Bonnie Lembo
1342 West 12th Avenue
Anchorage, Alaska 99501-4253

3-24-97

→ L.I.O. - T.C.
 - HOUSE JUDICIARY
 - HB 131 - ADVISORY VOTE ON
 CAPITOL PUNISHMENT

→ SCOTT CAUDER FAIRBANKS L.I.O.

IT IS IRONIC THAT EFFORTS TO OPPOSE POLICIES FAVORING ASSISTED SUICIDE, EUTHENASIA AND OTHER SUPPOSED RELIEFS OF SUFFERING, ARE NOT SO READILY AVAILABLE IN FAVOR OF POLICIES TO EXECUTE CRIMINALS (WITHOUT AN ADVISORY VOTE)

I DO NOT UNDERSTAND WHY IT WOULD BE THE CASE THAT CITIZENS ARE NOT CONSULTED ON OTHER EQUALLY IMPORTANT ISSUES.

BY OCCUPYING PUBLIC OPINION WITH THE TASK OF DECIDING ~~TO~~ WHICH MEMBERS OF SOCIETY TO SACRIFICE PUBLIC DISCUSSION ~~OF~~ ABOUT ALREADY EXISTING HUMAN RIGHTS ABUSES BY THE STATE OF ALASKA AGAINST ITS CITIZENS MAY BECOME PARALYZED

IN MY JUDGEMENT THERE ARE AS YET ~~UN~~UNADDRESSSED PROBLEMS ~~WHICH~~ WELL KNOWN TO THE 20TH ALASKA LEGISLATURE WHICH CLOUD EXISTING JUDICIAL ADMINISTRATION IN ALASKA.

I THINK WE NEED TWENTY VOTES, NOT ONLY ONE ADVISORY VOTE.

I BELIEVE IT IS INFLAMMATORY TO ASK THE QUESTION OF CITIZENS ABOUT CAPITOL PUNISHMENT AT THIS TIME, PRIOR TO HONESTLY ADDRESSING REASONS FOR DISTRUSTING THE PRESENT

3-24-97

GOVERNMENT
IF THE DESIRE IS TO ERADICATE
HEINOUS CRIMINALS, THEN INDIVIDUAL
LIBERTIES TO PROTECT ONESELF ARE THE
ANSWERS.

HONESTLY EVALUATING AND
SUPPORTING GOOD JUDGEMENTS OF
INDIVIDUAL CITIZENS, NOT KILLING
BAD PEOPLE, WILL HELP RELIEVE
THE SUFFERING OF PEOPLE WHO
DESERVE HELP.



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE HOUSE JUDICIARY
COMMITTEE NAME

COMMITTEE ON HB131 ADVISORY VOTE DATED 3-26-97
BILL/SUBJECT

MR. JAMES McCOMAS TESTIFIED TODAY ON "SIX REASONS TO OPPOSE THE ADVISORY VOTE ON CAPITOL PUNISHMENT." A SPOKES PERSON FROM THE ATTORNEY GENERAL'S OFFICE TESTIFIED IMMEDIATELY AFTER MR. McCOMAS, CITING SEVERAL OTHER REASONS TO OPPOSE HB131, ALSO.

I AGREE WITH BOTH OF THESE GENTLEMEN IN RESPECT TO EACH DETAIL OF THEIR TESTIMONY.

THIS ISSUE (DEATH PENALTY) IS A GREAT PUBLIC POLICY DISTRACTION OF PUBLIC OPINION.

SIGNED *Scott Calder*
TESTIFIER

SCOTT CALDER

REPRESENTING (OPTIONAL)
P.O. 75011 FBKS, AK. 99707 (907) 474-0174
ADDRESS/PHONE NUMBER

Department of Corrections
Inmates Incarcerated for Murder - 1st

Page 1

4/17/97

Females

Asian	0	0.00%	Average Age at Arrest - All	29
Black	1	11.11%	Average Age at Arrest - Female	31
Hispanic	0	0.00%	Average Age at Arrest - Male	29
Native American	1	11.11%		
Unknown	0	0.00%	Average Sentence - All	89
White	7	77.78%	Average Sentence - Female	67
			Average Sentence - Male	90
Total Females	9			

Males

Asian	5	2.98%
Black	15	8.93%
Hispanic	3	1.79%
Native American	39	23.21%
Unknown	0	0.00%
White	106	63.10%
Total Males	168	

Total Population

Asian	5	2.82%
Black	16	9.04%
Hispanic	3	1.69%
Native American	40	22.60%
Unknown	0	0.00%
White	113	63.84%

Grand Total	177	
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Department of Corrections
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
F	B	T70-15.010	3/10/45	7/6/78	33	Life
F	I	41.1	2/14/71	6/10/85	14	7/13/2075
F	W	41.1	9/12/56	6/10/91	35	12/14/2004
F	W	41.1	1/31/42	7/29/88	46	7/28/2008
F	W	41.1	12/9/61	4/10/87	26	8/8/2000
F	W	41.1	9/1/59	3/26/92	33	5/20/1994
F	W	41.1	12/8/38	6/25/82	44	4/24/2007
F	W	41.1	5/20/65	3/5/87	22	Life
F	W	41.1	6/15/65	3/10/84	19	6/2/2050
F	W	41.1	8/8/59	12/10/94	35	8/9/2051
M	A	41.1	7/30/63	8/2/86	23	4/3/2003
M	A	41.1	12/28/46	5/23/88	42	3/6/2005
M	A	41.1	2/17/17	10/4/88	71	6/4/2015
M	A	41.1	8/19/76	5/31/95	19	9/28/2028
M	A	41.1	1/26/56	11/7/89	33	11/06/2121
M	B	41.1	11/17/53	12/6/82	29	4/20/2049
M	B	T70-15.010	7/30/50	6/28/74	24	12/31/2099
M	B	41.1	4/18/50	7/8/87	37	07/11/2119
M	B	41.1	11/17/52	6/23/94	32	10/11/2039
M	B	41.1	5/15/65	6/12/85	19	9/10/2051
M	B	41.1	12/7/75	7/18/95	20	7/17/2035
M	B	41.1	5/3/50	9/20/86	26	9/19/2052
M	B	41.1	10/8/60	8/6/85	26	04/05/2255
M	B	41.1	7/15/55	5/6/87	31	9/3/2020
M	B	41.1	2/23/47	11/11/83	36	10/15/2018
M	B	41.1	11/6/61	9/4/80	29	3/5/1998
M	B	41.1	7/8/51	10/25/93	42	10/24/2129
M	B	41.1	4/14/73	10/6/89	16	2/3/2049
M	B	41.1	7/6/74	10/28/94	20	7/2/2041
M	B	41.1	2/26/63	12/26/88	25	12/25/2054
M	B	41.1	5/1/58	6/6/89	31	6/6/2055
M	H	41.1	7/31/50	5/20/95	36	9/18/2029
M	H	41.1	10/27/51	7/21/89	28	8/10/2059
M	H	41.1	11/19/56	9/21/89	33	5/21/2036
M	I	41.1	11/1/75	5/1/93	18	07/03/2099
M	I	41.1	12/17/60	10/31/95	35	10/30/2061
M	I	41.1	8/6/30	11/26/91	61	11/25/2067
M	N	41.1	7/12/72	7/9/95	23	7/7/2013
M	N	41.1	9/5/52	6/14/85	23	3/17/2012
M	N	41.1	11/30/66	11/18/88	22	3/9/1998
M	N	41.1	3/16/56	9/16/84	18	8/18/2028
M	N	41.1	5/1/62	4/22/81	19	11/14/2031
M	N	41.1	4/13/75	11/24/93	18	Life
M	N	41.1	2/27/68	7/31/83	15	3/30/2020
M	N	T70-15.010	11/13/43	7/21/71	28	11/27/2072
M	N	41.1	6/8/66	2/16/90	24	02/15/2122

Department of Corrections
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	N	41.1	4/11/45	10/20/94	49	12/5/2002
M	N	41.1	7/24/33	7/10/90	57	Life
M	N	T70-15.010	6/6/59	2/4/81	22	Life
M	N	41.1	8/7/71	8/7/92	21	8/7/2022
M	N	41.1	10/11/62	2/11/90	28	2/11/2040
M	N	41.1	11/12/69	7/22/89	20	3/21/2060
M	N	41.1	12/15/68	3/11/89	21	3/11/2039
M	N	41.1	5/17/48	3/24/85	37	5/4/2005
M	N	41.1	3/18/69	7/2/90	21	10/30/2033
M	N	41.1	3/11/66	5/2/87	21	12/30/2189
M	N	41.1	9/5/69	5/30/86	17	2/26/2033
M	N	41.1	12/3/53	4/24/93	40	8/23/2072
M	N	41.1	8/1/65	8/26/86	21	3/16/2053
M	N	41.1	11/26/47	12/27/82	35	06/25/2116
M	N	41.1	4/11/62	2/17/85	23	9/13/2049
M	N	41.1	10/13/74	2/12/92	18	6/13/2035
M	N	41.1	3/10/51	3/20/81	30	04/05/2179
M	N	41.1	3/19/62	9/18/95	33	1/18/2065
M	N	41.1	10/28/63	11/18/84	21	9/13/2011
M	N	T70-15.010	2/9/62	12/5/79	17	07/10/2080
M	N	41.1	9/10/65	9/6/94	29	9/5/2060
M	N	T70-15.010	11/8/57	3/23/76	20	1/1/2078
M	N	41.1	2/12/43	10/3/88	45	10/2/2030
M	N	41.1	8/1/53	9/6/95	42	1/6/2009
M	N	41.1	6/23/62	2/13/83	21	2/17/1998
M	N	41.1	5/7/57	2/10/84	27	5/8/2070
M	N	T70-15.010	8/25/51	9/16/77	26	1/22/2002
M	N	41.1	12/27/63	1/19/83	20	8/31/2013
M	N	41.1	10/21/51	5/25/95	44	Life
M	N	41.1	11/5/65	3/30/95	30	11/26/2021
M	N	41.1	3/3/54	3/17/81	27	4/18/2001
M	N	41.1	9/3/53	12/31/88	35	12/30/2038
M	W	41.1	9/7/28	9/23/83	55	12/3/2010
M	W	41.1	11/2/74	4/11/94	20	7/31/2067
M	W	41.1	12/23/63	4/24/87	24	04/22/2225
M	W	41.1	3/10/62	2/10/83	21	1/16/2052
M	W	41.1	9/24/49	6/14/80	31	2/8/2047
M	W	41.1	10/21/75	2/26/94	19	2/26/2044
M	W	41.1	6/12/69	3/23/91	22	7/22/2022
M	W	41.1	2/25/66	11/11/85	19	11/9/2026
M	W	41.1	4/12/67	1/17/84	17	Life
M	W	41.1	2/27/62	6/6/93	31	6/5/2023
M	W	T70-15.010	11/4/46	5/17/77	31	12/31/2099
M	W	41.1	5/13/64	11/9/85	21	11/29/2051
M	W	41.1	9/21/68	12/23/93	25	4/23/2027
M	W	T70-15.010	7/23/54	5/20/76	22	12/31/2099

Department of Corrections
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	W	41.1	10/1/49	7/26/85	36	7/5/2012
M	W	41.1	12/6/68	9/4/84	16	10/7/2005
M	W	41.1	9/5/47	1/26/85	37	11/25/2001
M	W	41.1	2/22/59	8/15/86	27	8/13/2016
M	W	41.1	8/29/64	4/4/85	21	1/14/2010
M	W	41.1	12/16/65	12/13/95	30	12/12/2025
M	W	41.1	9/19/72	3/21/91	19	3/20/2057
M	W	41.1	1/23/51	7/7/86	35	3/6/2013
M	W	41.1	7/25/65	4/4/85	20	9/11/2005
M	W	41.1	4/4/66	3/5/87	21	3/4/2037
M	W	41.1	1/4/63	5/25/85	22	3/10/2042
M	W	41.1	11/19/40	5/16/93	53	5/15/2033
M	W	41.1	9/1/57	1/1/94	37	1/1/2060
M	W	41.1	8/31/61	3/10/84	23	6/5/2024
M	W	41.1	5/25/66	5/14/89	23	5/14/2005
M	W	41.1	5/30/53	9/22/96	43	8/22/2002
M	W	41.1	3/18/58	4/11/83	25	11/24/2022
M	W	41.1	3/31/53	2/11/88	35	2/27/2054
M	W	41.1	5/28/52	11/11/85	33	7/11/2002
M	W	T70-15.010	8/24/60	10/3/78	18	06/14/2079
M	W	41.1	4/27/57	1/8/91	34	01/06/2157
M	W	41.1	4/9/60	10/22/86	26	2/20/2020
M	W	41.1	7/4/63	2/10/83	20	9/4/2008
M	W	41.1	2/15/39	10/27/83	44	02/27/2545
M	W	41.1	11/11/59	9/3/92	33	9/2/2078
M	W	41.1	7/10/54	9/29/86	22	8/28/2052
M	W	41.1	1/1/44	3/1/83	39	08/30/2458
M	W	41.1	5/22/71	4/3/88	17	12/3/2055
M	W	41.1	5/21/54	10/4/94	40	10/4/2060
M	W	41.1	10/20/58	4/9/86	28	8/9/2019
M	W	41.1	12/29/54	7/28/88	34	3/27/2015
M	W	41.1	1/9/45	11/8/80	35	8/24/2047
M	W	41.1	2/2/61	6/9/81	20	08/23/2094
M	W	41.1	1/5/72	3/21/91	19	3/20/2057
M	W	41.1	11/17/50	4/10/86	35	12/16/2012
M	W	41.1	8/31/41	10/13/88	47	08/20/2127
M	W	41.1	10/3/52	5/19/86	34	9/17/2053
M	W	41.1	7/4/73	4/10/86	13	10/19/2009
M	W	41.1	6/14/68	2/24/94	26	9/20/2037
M	W	41.1	12/23/63	12/27/84	21	12/4/2028
M	W	41.1	2/28/46	10/24/88	42	10/23/2054
M	W	41.1	11/3/71	12/18/92	21	12/18/2058
M	W	41.1	6/29/55	1/24/90	35	1/24/2056
M	W	41.1	2/1/61	3/10/84	23	5/25/2050
M	W	41.1	11/20/51	11/15/91	40	3/16/2035
M	W	41.1	9/9/44	12/24/82	38	6/4/2049

Department of Corrections
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	W	41.1	9/15/50	11/16/92	42	11/15/2032
M	W	41.1	6/18/65	6/28/88	23	11/11/2092
M	W	41.1	12/1/58	5/14/84	25	11/25/2002
M	W	41.1	8/31/62	3/5/87	25	3/4/2053
M	W	41.1	2/14/59	1/13/89	30	1/30/2029
M	W	41.1	3/8/41	1/15/83	42	5/25/2050
M	W	41.1	9/10/50	11/12/95	35	11/15/2061
M	W	41.1	10/22/49	5/19/86	37	5/18/2052
M	W	41.1	4/21/60	7/27/84	24	6/4/2011
M	W	41.1	10/1/47	5/7/82	35	10/13/2246
M	W	41.1	8/26/59	1/17/86	27	1/17/2052
M	W	41.1	10/30/24	12/10/81	57	6/3/2022
M	W	41.1	11/13/77	10/4/94	17	6/4/2031
M	W	T70-15.010	4/23/52	9/8/75	23	Life
M	W	41.1	12/28/51	6/12/92	41	6/11/2058
M	W	41.1	10/31/58	2/25/84	26	5/22/2024
M	W	41.1	1/17/69	8/5/90	21	08/05/2122
M	W	41.1	8/23/68	7/23/92	24	1/18/2061
M	W	41.1	11/21/47	2/18/93	48	10/18/2029
M	W	41.1	8/23/74	6/18/95	22	4/8/2064
M	W	T70-15.010	7/23/56	12/15/76	20	Life
M	W	41.1	8/18/77	10/4/94	17	2/1/2038
M	W	41.1	9/18/67	8/2/94	27	10/13/2005
M	W	41.1	5/3/61	12/3/81	20	6/19/2002
M	W	41.1	8/21/72	1/8/89	17	1/7/2065
M	W	41.1	12/24/62	8/6/95	33	8/5/2041
M	W	41.1	12/28/63	8/22/82	19	9/16/2055
M	W	41.1	8/2/57	1/9/95	39	1/7/2062
M	W	41.1	7/24/67	7/3/84	17	9/11/2004
M	W	41.1	11/21/76	5/27/94	18	5/25/2024
M	W	41.1	5/5/62	12/13/87	25	12/12/2053
M	W	41.1	3/25/66	8/22/82	16	3/9/2049
M	W	41.1	9/22/61	2/16/95	34	2/15/2039
M	W	41.1	4/2/55	3/22/86	31	7/20/2053
M	W	41.1	4/14/45	11/11/82	38	10/9/2001
M	W	41.1	2/5/53	1/9/80	27	12/31/2099
M	W	41.1	12/21/73	9/20/91	18	9/19/2057
M	W	41.1	8/12/58	5/29/82	24	10/29/2048
M	W	41.1	1/9/53	2/15/87	34	2/14/2053
M	W	41.1	1/15/47	2/17/83	36	11/27/2049
M	W	41.1	2/7/57	9/15/86	29	1/12/2053
M	W	41.1	9/13/48	6/2/89	41	6/1/2043
M	W	41.1	10/10/46	8/7/85	39	1/2/2009
M	W	41.1	12/31/58	7/17/86	28	11/20/2099
M	W	41.1	1/11/31	11/9/93	62	11/9/2059
M	W	41.1	7/13/43	11/16/81	38	9/27/2047

04/29/96
SB 52

HOUSE JOURNAL

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The Judiciary Committee has considered:

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO.
52(JUD)

An Act providing for an advisory vote on the issue of capital
punishment.

The report was signed by Representative Porter, Chair, with the
following individual recommendations:

Do pass (3): Porter, Vezey, Bunde

Do not pass (4): Finkelstein, B.Davis, Green, Toohey

The following fiscal notes apply:

Fiscal note, Alaska Court System, 4/29/96

FISCAL IMPACT OF CAPITAL PUNISHMENT

FIRST FOUR YEARS

CORRECTIONS

Spring Creek Correctional Facility \$16,197,600

ADMINISTRATION

Public Defender Agency \$11,505,400

Office of Public Advocacy \$7,734,300

LAW

Criminal Division \$10,289,400

COURTS

Trial Courts \$4,359,792

Total Estimated Costs First Four Years \$50,086,492

*Prepared
by
Rep. Croft*

Death Penalty Fact Sheet

The Costs of a Death Penalty System Will Vastly Exceed Current Costs

Prepared by Alaskans Against the Death Penalty: January 1994

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 only a few of the people who are tried in capital trials are actually sentenced to death and executed. 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 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.
- * 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.
- * 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.

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.

* 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 is at least \$700,000 more than the cost of imprisoning him for 40 years, and was a bargain compared

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.

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

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

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.

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

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

NEW YORK

A 1982 study showed that were the death penalty to be reintroduced in New York, the cost of the capital trial alone would be more than double the cost of a life term in prison."¹⁵

In 1989, The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million dollars annually. ¹⁶

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.

¹⁵ Bedau, Hugo Adam: The Case Against the Death Penalty, ACLU Capital Punishment Project, p.21, citing N.Y. State Defenders Assn., Capital Losses, (1982).

¹⁶ Dieter, Richard C.: "Millions Misspent: What politicians don't say about the High costs of the death penalty," A report by the Death Penalty Information Center, citing several sources for this data at n. 6.

KANSAS

In 1987, the Kansas legislature rejected the death penalty as too expensive, even though the Governor backed it. A coalition of Kansas death-penalty opponents estimated that capital punishment would cost Kansas taxpayers in excess of \$50 million by the time a 100-inmate death row had been built and the first person was executed. ¹⁷

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 will ultimately be executed, the cost to public agencies for each execution exceeds \$2 million dollars. ¹⁸

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.¹⁹

¹⁷ S. Maganini, The Sacramento Bee, "Closing death row would save state \$90 million dollars a year," March 28, 1988 at p.1.

¹⁸ 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.

¹⁹ D. Kaplan, "Death Mill, USA," The National Law Journal, May 9, 19889, 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.

AS APPROVED BY THE ABA HOUSE OF DELEGATES FEBRUARY 3, 1997:

AMERICAN BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF LITIGATION
SECTION OF TORT AND INSURANCE PRACTICE
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
MASSACHUSETTS BAR ASSOCIATION
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
NEW YORK STATE BAR ASSOCIATION

RECOMMENDATION

RESOLVED, That the American Bar Association calls upon each jurisdiction that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with the following longstanding American Bar Association policies intended to (1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed:

- (i) Implementing ABA "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" (adopted Feb. 1989) and Association policies intended to encourage competency of counsel in capital cases (adopted Feb. 1979, Feb. 1988, Feb. 1990, Aug. 1996);
- (ii) Preserving, enhancing, and streamlining state and federal courts' authority and responsibility to exercise independent judgment on the merits of constitutional claims in state post-conviction and federal *habeas corpus* proceedings (adopted Aug. 1982, Feb. 1990);
- (iii) Striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant (adopted Aug. 1988, Aug. 1991); and
- (iv) Preventing execution of mentally retarded persons (adopted Feb. 1989) and persons who were under the age of 18 at the time of their offenses (adopted Aug. 1983).

FURTHER RESOLVED, That in adopting this recommendation, apart from existing Association policies relating to offenders who are mentally retarded or under the age of 18 at the time of the commission of the offenses, the Association takes no position on the death penalty.

REPORT

INTRODUCTION

The American Bar Association has adopted numerous policies bearing on the manner in which the death penalty should be applied in jurisdictions where it exists. These policies were adopted in view of the ABA's extensive experience with the administration of the death penalty and in light of several ABA-sponsored studies. The policies concern: (1) competent counsel in capital cases; (2) proper processes for adjudicating claims in capital cases (including the availability of federal *habeas corpus*); (3) racial discrimination in the administration of capital punishment; and (4) the execution of juveniles and mentally retarded persons.

The time has now come for the ABA to take additional decisive action with regard to capital punishment. Not only have the ABA's existing policies generally not been implemented, but also, and more critically, the federal and state governments have been moving in a direction contrary to these policies. The most recent and most dramatic moves, both strongly opposed by the ABA, have come in the form of laws enacted by Congress in 1996. Federal courts already are construing one law to significantly curtail the availability of federal *habeas corpus* to death row inmates, even when they have been convicted or sentenced to death as a result of serious, prejudicial constitutional violations. Another law completely withdraws federal funding from the Post-Conviction Defender Organizations that have handled many post-conviction cases and that have mentored many other lawyers who have represented death row inmates in such proceedings.

These two recently enacted laws, together with other federal and state actions taken since the ABA adopted its policies on capital punishment, have resulted in a situation in which fundamental due process is now systematically lacking in capital cases. Accordingly, in order to effectuate its existing policies, the ABA should now call upon jurisdictions with capital punishment not to carry out the death penalty until these policies are implemented. Of course, individual lawyers differ in their views on the death penalty in principle and on its constitutionality. However, it should now be apparent to all of us in the profession that the administration of the death penalty has become so seriously flawed that capital punishment should not be implemented without adherence to the various applicable ABA policies.

BACKGROUND

The backdrop for this Recommendation is the two decades of jurisprudence and legislation since the United States Supreme Court upheld new death penalty statutes in Gregg v. Georgia,¹ after having invalidated earlier death penalty statutes in 1972 in Furman v. Georgia.²

¹ 428 U.S. 153 (1976).

² 408 U.S. 238 (1972).

In Furman, the Court believed that then-existing state statutes failed to properly balance the need to ensure overall consistency in capital sentencing with the need to ensure fairness in individual cases. Four years later, in Gregg, the Court concluded that new state statutes' special procedural requirements for capital prosecutions provided a means by which the states would achieve that balance.

However, two decades after Gregg, it is apparent that the efforts to forge a fair capital punishment jurisprudence have failed.³ Today, administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices with no internal consistency. To a substantial extent, this situation has developed because death penalty jurisdictions generally have failed to implement the types of policies called for by existing ABA policies. The pervasive unfairness of the capital punishment system that has evolved since Gregg has led two of the Supreme Court Justices who were part of the majority in Gregg to regret having upheld the death penalty's constitutionality. Retired Justice Lewis Powell, in a 1991 interview, expressed his doubt whether the death penalty could be administered in a way that was truly fair and stated that, in retrospect, his greatest regret was that he had voted to uphold the constitutionality of capital punishment in McCleskey v. Kemp, 481 U.S. 279 (1987), and other cases.⁴ Justice Harry Blackmun expressed similar concerns in his 1994 dissent in McFarland v. Scott:

When we execute a capital defendant in this country, we rely on the belief that the individual was guilty, and was convicted and sentenced after a fair trial, to justify the imposition of state-sponsored killing. . . . My 24 years of overseeing the imposition of the death penalty from this court have left me in grave doubt whether this reliance is justified and whether the constitutional requirement of competent legal counsel for capital defendants is being fulfilled.⁵

The already deplorable state of affairs noted by Justices Powell and Blackmun is exacerbated by three other, very recent developments. First, although certain states have begun to implement some ABA policies, more states are moving in the opposite direction—undermining or eliminating important procedural safeguards that the ABA has found to be essential.

³ See Carol S. Steiker & Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 Harv. L. Rev. 355, 357 (1995)(reporting that "[v]irtually no one thinks that the constitutional regulation of capital punishment has been a success"). See also James S. Liebman & Jonathan M. Moses, *Fatal Distortion: The Chronic Making and Unmaking of Death Penalty Law* (publication forthcoming).

⁴ See JOHN C. JEFFRIES, JR., JUSTICE LEWIS F. POWELL, JR. 451-52 (1994) (quoting Justice Powell).

⁵ 114 S. Ct. 2785, 2790 (1994).

Second, Congress recently enacted legislation that makes it significantly more difficult for the federal courts to adjudicate meritorious federal constitutional claims in capital cases. Title I of the Anti-Terrorism and Effective Death Penalty Act of 1996 establishes deadlines for filing federal *habeas* petitions, places limits on federal evidentiary hearings into the facts underlying federal constitutional claims, sets timetables for federal court action, limits the availability of appellate review, establishes even more demanding restrictions on second or successive applications for federal relief, and, in some instances, apparently bars the federal courts from awarding relief on the basis of federal constitutional violations where state courts have erred in concluding that no such violation occurred.

While the ABA has consistently supported meaningful *habeas corpus* reforms, this new federal legislation instead dramatically undermines the federal courts' capacity to adjudicate federal constitutional claims in a fair and efficient manner. Indeed, that may itself be unconstitutional, as the ABA already has asserted in an *amicus* brief. Congress' adoption of the 1996 Act only underscores the extent of this country's failure to fashion a workable and just system for administering capital punishment.

Third, and also contrary to longstanding ABA policies, Congress has ended funding for Post-Conviction Defender Organizations (PCDO's), which have handled many capital post-conviction cases and have recruited and supported volunteer lawyers in these cases for many indigent death row prisoners. The ABA had a major role in supporting the creation of the PCDO's.

Together, these three developments have brought the adjudication of capital cases to the point of crisis. Unless existing ABA policies are now implemented, many more prisoners will be executed under circumstances that are inconsistent with the Supreme Court's mandate, articulated in Furman and Gregg, that the death penalty be fairly and justly administered.

The ABA has worked hard to foster the fair and just administration of capital punishment. The ABA's Post-conviction Death Penalty Representation Project has provided expert advice and counsel to jurisdictions attempting to improve the delivery of legal services to death row prisoners. In addition, it has recruited more than 400 volunteer attorneys to represent indigent death row inmates. The Project also has assisted in the creation of PCDO's and strongly opposed the successful effort to cut off their federal funding. The ABA has testified in support of the Racial Justice Act and actively opposed the kind of *habeas corpus* restrictions enacted in 1996. And the ABA has conducted and supported a variety of training programs for lawyers and judges in capital cases and has advocated detailed standards for capital defense counsel. Also, various ABA groups have sponsored numerous education programs examining the fairness of capital punishment as implemented.

The ABA's efforts have had some impact. But recent developments have made the impact of incompetent counsel and the instances of uncorrected due process violations

substantially greater, and matters are likely to become worse in the future. It is essential that the ABA now forcefully urge that executions not occur unless each person being executed has had competent counsel and the due process protections that the ABA has long advocated.

I. Competent Counsel

The ABA is especially well positioned to identify the professional legal services that should be available to capital defendants and death row inmates. The Association has shouldered that responsibility by conducting studies and adopting policies dating back nearly twenty years. Seven years ago, the ABA recommended that "competent and adequately compensated" counsel should be provided "at all stages of capital . . . litigation," including trial, direct review, collateral proceedings in both state and federal court, and *certiorari* proceedings in the U.S. Supreme Court.⁶ To implement that basic recommendation, the ABA said that death penalty jurisdictions should establish organizations to "recruit, select, train, monitor, support, and assist" attorneys representing capital clients.

Eight years ago, the ABA published the "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" and urged all jurisdictions that employ the death penalty to adopt them.⁷ Those guidelines call for the appointment of two experienced attorneys at each stage of a capital case.⁸ Appointments are to be made by a special appointing authority or committee, charged to identify and recruit lawyers with specified professional credentials, experience, and skills.⁹ The guidelines make it clear that ordinary professional qualifications are inadequate to measure what is needed from counsel in "the specialized practice of capital representation." To ensure that the lawyers assigned to capital cases are able to do the work required, the guidelines state that attorneys should receive a "reasonable rate of hourly compensation which... reflects the extraordinary responsibilities inherent in death penalty litigation." Concomitantly, counsel should be provided with the time and funding necessary for proper investigations, expert witnesses, and other support services.¹⁰

⁶ Resolution of the House of Delegates, Feb. 1990.

⁷ Resolution of the House of Delegates, Feb. 1989.

⁸ The ABA previously had urged the federal government to adopt similar procedures and standards for counsel appointed to represent death row prisoners in federal *habeas corpus* proceedings. Resolution of the House of Delegates, Feb. 1988. Before that, the ABA had urged the U.S. Supreme Court and the Congress to provide for competent counsel to handle *certiorari* proceedings and petitions for clemency before the Court. Resolution of the House of Delegates, Feb. 1979.

⁹ In addition, the guidelines set forth the way in which counsel in a capital case should perform various defense functions, from plea negotiations, through jury selection, the trial and sentencing phases, and post-conviction proceedings.

¹⁰ In August 1996, the ABA adopted a policy regarding the appropriate representation of

No state has fully embraced the system the ABA has prescribed for capital trials. To the contrary, grossly unqualified and under compensated lawyers who have nothing like the support necessary to mount an adequate defense are often appointed to represent capital clients. In case after case, decisions about who will die and who will live turn not on the nature of the offense the defendant is charged with committing, but rather on the nature of the legal representation the defendant receives.¹¹

Jurisdictions that employ the death penalty have proven unwilling to establish the kind of legal services system that is necessary to ensure that defendants charged with capital offenses receive the defense they require. Many death penalty states have no working public defender programs, relying instead upon scattershot methods for selecting and supporting defense counsel in capital cases.¹² For example, some states simply assign lawyers at random from a general list—a scheme destined to identify attorneys who lack the necessary qualifications and, worse still, regard their assignments as a burden. Other jurisdictions employ "contract" systems, which typically channel indigent defense business to attorneys who offer the lowest bids.¹³ Other states use public defender schemes that appear on the surface to be more promising, but prove in practice to be just as ineffective.¹⁴

military defendants facing execution. To date, the military has failed to implement this policy.

¹¹ Marcia Coyle, et al., *Fatal Defense: Trial and Error in the Nation's Death Belt*, Nat'l L.J., June 11, 1990 (reporting the conclusions of an extensive six-state survey: capital trials are "more like a flip of the coin than a delicate balancing of the scales" because defense counsel are "ill trained, unprepared. . . [and] grossly underpaid").

¹² See Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime, But for the Worst Lawyer*, 103 Yale L.J. 1835 (1994).

¹³ Richard Klein, *The Emperor Gideon Has No Clothes: The Empty Promise of the Constitutional Right to Effective Assistance of Counsel*, 13 Hastings Const. L.Q. 625, 679-680 (1986).

¹⁴ See Bright, *supra* note 12, at 1849-1852, summarizing the current situation as follows:

The structure of indigent defense not only varies among states, it varies within many states from county to county. Some localities employ a combination of programs. All of these approaches have several things in common. They evince the gross underfunding that pervades indigent defense. They are unable to attract and keep experienced and qualified attorneys because of lack of compensation and overwhelming workloads. Just when lawyers reach the point when they have handled enough cases to begin avoiding basic mistakes, they leave criminal practice and are replaced by other young, inexperienced lawyers who are even less able to deal with the overwhelming caseloads. Generally, no standards are employed for assignment of cases to counsel or for the performance of counsel. And virtually no resources are provided for investigative

It is scarcely surprising that the results of poor lawyering are often literally fatal for capital defendants. Systematic studies reveal the depth of the problems nationwide and thus supply the hard data to support reasoned policy-making.¹⁵ Case after case all too frequently reveals the inexperience of lawyers appointed to represent capital clients. In Tvler v. Kemp¹⁶ and Paradis v. Arave,¹⁷ state trial courts assigned capital cases to young lawyers who had passed the bar only a few months earlier; in Bell v. Watkins,¹⁸ a state trial court appointed a lawyer who had never finished a criminal trial of any kind; and in Leatherwood v. State,¹⁹ yet another trial court allowed a third-year law student to handle most of a capital trial.

Other cases demonstrate that defense counsel in capital cases often are incapable of handling such cases properly. In Smith v. State,²⁰ defense counsel asked for extra time between the guilt and sentencing phases of a capital case in order to read the state death penalty statute

and expert assistance or defense counsel training.

The situation has further deteriorated in the last few years. This is largely due to the increased complexity of cases and the increase in the number of cases resulting from expanded resources for police and prosecution and the lack of a similar increase, and perhaps even a decline, in funding for defense programs. *Id.* (citations omitted).

Moreover, at an ABA Annual Meeting program in 1995, Scharlette Holdman described case after case of incompetent representation by counsel appointed by judges in California and other Western states, in which compensation is typically greater than that in most other states with capital punishment. *See* Holdman in *Is There Any Habeas Left in this Corpus?*, 27 *Loyola U. Chicago L.J.* 524, 581 (1996). Thus, as the ABA has recognized, the problem is not merely underfunding. It is also the appointment by judges of attorneys who lack either the expertise or the experience necessary to represent a capital defendant effectively.

¹⁵ Over the years, both the ABA and local bar and legislative groups have commissioned such studies. In one instance, illustrative of other states' practices as well, researchers found that Texas typically does not use central appointing authorities to choose counsel in death penalty cases, does not monitor the performance of assigned counsel in capital cases, and does not adequately compensate appointed counsel or reimburse them sufficiently for support services. The Spangenberg Group, *A Study of Representation in Capital Cases in Texas* (1993).

¹⁶ 755 F.2d 741 (11th Cir.), *cert. denied*, 474 U.S. 1026 (1985).

¹⁷ 954 F.2d 1483 (9th Cir. 1992).

¹⁸ 692 F.2d 999 (5th Cir. 1982).

¹⁹ 548 So.2d 389 (Miss. 1989).

²⁰ 581 So.2d 497 (Ala. Crim. App. 1990).

for the first time. In Frev v. Fulcomer,²¹ defense counsel, in purported compliance with a state statute, limited his presentation of mitigating evidence. Unbeknownst to defense counsel, that statute had been held unconstitutional three years earlier precisely because it restricted counsel's ability to develop mitigating evidence. In Ross v. Kemp,²² one defense attorney advanced a weak alibi theory, while his co-counsel mounted an inconsistent mental incompetency defense that necessarily conceded that the defendant had participated in the offense.²³ In Romero v. Lynaugh,²⁴ defense counsel declined to offer any evidence at all during the penalty phase of a capital case, and then made the following brief and ineffective closing argument: "You are an extremely intelligent jury. You've got that man's life in your hands. You can take it or not. That's all I have to say." The jury, in its turn, sentenced the defendant to death.

In Messer v. Kemp,²⁵ defense counsel presented very little of the mitigating evidence available, made no objections at all, then essentially told the jury that the death penalty was appropriate. That defendant, too, was sentenced to die. In Young v. Kemp,²⁶ the defense counsel was himself so dependent on drugs during trial that, as even he later admitted, he mounted only the semblance of a defense. His client received the death penalty, but then chanced to see the defense lawyer thereafter in a prison yard. The attorney had, in the interim, been convicted and sentenced on state and federal drug charges.

Even when experienced and competent counsel are available in capital cases, they often are unable to render adequate service for want of essential funding to pay the costs of investigations and expert witnesses.²⁷ In some rural counties in Texas, an appointed attorney receives no more than \$800 to represent a capital defendant.²⁸ Similar limits are in place in

²¹ 974 F.2d 348 (3d Cir. 1992).

²² 393 S.E.2d 244 (Ga. 1990).

²³ See Bright, *supra* note 12 (listing these illustrative cases and dozens more).

²⁴ 884 F.2d 871 (5th Cir. 1989).

²⁵ 831 F.2d 946 (11th Cir. 1987).

²⁶ No. 85-98-2-MAC (M.D. Ga. 1985).

²⁷ Spangenberg Group, *supra* note 15, at 159; see also Anthony Paduano & Clive A.S. Smith, The Unconscionability of Sub-Minimum Wages Paid Appointed Counsel in Capital Cases, 43 Rutgers L. Rev. 281 (1991)(providing a national survey).

²⁸ Marianne Lavelle, Strong Law Thwarts Lone Star Counsel, Nat'l L.J., June 11, 1990, at 34. In one celebrated Texas case, the Fifth Circuit Court of Appeals noted that an appointed attorney had received only \$11.84 per hour in a capital case and, at that price, had rendered particularly dreadful service to his indigent client. That, said the court, explained much of the problem. "[T]he justice system got only what it paid for." Martinez-Macias v. Collins, 979 F.2d

other states. In Virginia, the hourly rate for capital defense services works out to about \$13.²⁹ In an Alabama case, the lawyer appointed to represent a capital defendant in a widely publicized case was allowed a total of \$500 to finance his work, including any investigations and expert services needed. With that budget, it is hardly surprising that the attorney conducted no investigation at all.³⁰

Poorly prepared and supported trial lawyers typically do a poor job. When they do recognize points to be explored and argued, they often fail to follow through in a professional manner. And when they do not recognize what needs to be done, they do nothing at all or they take actions that are inimical to the needs of their clients. The result of such inadequacies in representation is that counsel often fail to present crucial facts. They also may fail to raise crucial legal issues, causing their clients to forfeit their opportunity to explore those issues later--in any court. In one recent case, appointed defense counsel scarcely did *anything* to represent his client at trial and, along the way, neglected to raise three significant constitutional claims. The federal court that reviewed the case could not consider any of these omitted claims because, under state law, counsel's numerous defaults barred their later consideration.³¹

The same pattern is repeated with respect to the legal services available for the appellate and post-conviction stages of capital cases. State appellate court standards for adequate representation under state law are extraordinarily low. These courts sometimes dispose of capital appeals on the basis of inadequate briefs containing only a few pages of argument--and, in so doing, often rely on defense counsel's "default" at trial to avoid considering constitutional claims on the merits.³² As for post-conviction, an ABA Task Force developed an enormous body of evidence in 1990 demonstrating that prisoners sentenced to death typically receive even less effective representation in post-conviction than at the trial stage.³³ The Supreme Court has held that there is no constitutional right to counsel in post-conviction proceedings, even in capital cases.³⁴ Although many states and the federal government once funded Post-Conviction

1067 (5th Cir. 1992).

²⁹ Richard Klein, *The Eleventh Commandment: Thou shalt Not Be Compelled To Render the Ineffective Assistance of Counsel*, 68 Ind. L.J. 363, 366 (1993).

³⁰ Deposition of Richard Bell, at 24-25, in *Grayson v. State* (Cir. Ct. Shelby County, Ala., Oct. 10, 1991). The state payment limit is now \$1,000.

³¹ *Weeks v. Jones*, 26 F.3d 1030 (11th Cir. 1994).

³² See Bright, *supra* note 12, at 1843 & n.55.

³³ American Bar Ass'n, *Toward a More Just and Effective System of Review in State Death Penalty Cases*, 40 Am. U. L. Rev. 1 (1990)[hereafter cited as *Toward a More Just and Effective System*].

³⁴ *Murray v. Giarratano*, 492 U.S. 1 (1989).

Defender Organizations, which recruited lawyers for death row inmates at the post-conviction stage and represented others themselves, today many of those centers have been forced to close because Congress has eliminated their federal funding.³⁵

The federal courts generally have not rectified this situation. The standard for effective assistance of counsel under the Sixth Amendment is so egregiously low that the potential for relief in federal *habeas corpus* on such grounds is almost always more theoretical than real. The federal courts found the "services" rendered in the Romero, Messer, and Young cases, cited above, to be "effective" for constitutional purposes--and, accordingly, all three prisoners were executed.

Compounding the effect of incompetent representation of capital defendants and death row inmates is improper representation of the state by prosecutors inadequately trained in avoiding constitutional violations. In describing this combined impact, former Pennsylvania Attorney General Ernest Preate said at an ABA Annual Meeting program, "[I]n too many capital cases, there is ineffective assistance of counsel on both sides [T]he defense counsel's ineffective assistance of counsel is not necessarily a mistake that the defense counsel originally made, but a mistake by the prosecutor. The prosecutor did something he or she shouldn't have done and the defense counsel failed to object or failed to take advantage of it"³⁶ Unfortunately, relief rarely is granted under any of the circumstances described above.

II. Proper Processes

The ABA consistently has sought to ensure that adequate procedures are in place to determine whether a capital sentence has been entered in violation of federal law. No other organization has monitored the federal *habeas* system more closely, developed greater expertise regarding that system's strengths and weaknesses, or offered more detailed prescriptions for reform.

Fourteen years ago, the ABA publicly opposed three bills then pending in Congress that would have dramatically restricted the federal courts' ability to adjudicate state prisoners' *habeas*

³⁵ See generally, *The Crisis in Capital Representation*, The Record, Association of the Bar of the City of New York Vol. 51 169, 187-191 (March 4, 1996)[hereafter cited as Crisis]. The PCDO's were extremely effective. In 1989, Chief Judge Tjoflat of the United States Court of Appeals for the Eleventh Circuit told the ABA Task Force that the Resource Centers were "indispensable." Toward a More Just and Effective System, *supra* note 33, at 73. In 1994, Judge Arthur L. Alarcon of the Court of Appeals for the Ninth Circuit wrote that the PCDO's were "critical" to the efficient processing of capital cases. Memorandum to Judges Cox and Cedarbaum, Dec. 7, 1994, cited in Crisis, *supra* at 188-189. Nevertheless, they were defunded.

³⁶ Ernest Preate, in *The Death of Fairness? Counsel Competency & Due Process in Death Penalty Cases*, 31 *Houston L. Rev.* 1105, 1120-21 (1994).

claims. At the same time, the ABA proposed alternatives that would have streamlined *habeas* litigation without undermining the federal courts' authority and responsibility to exercise independent judgment on the merits of constitutional claims.³⁷

Since that time, the ABA has been deeply involved in the national debate over federal *habeas*--particularly in capital cases. The ABA task force that studied the situation in depth created a solid scholarly foundation for its work, then received written and oral testimony from knowledgeable individuals and organizations at hearings in several cities.³⁸ In 1990, the ABA House of Delegates adopted a set of recommendations for improving current law that were based upon the Task Force's work.³⁹ The recommendations included the principles that a death row prisoner should be entitled to a stay of execution in order to complete one round of post-conviction litigation in state and federal court; that the federal courts should consider claims that were not properly raised in state court if the reason for the prisoner's default was counsel's ignorance or neglect; and that a prisoner should be permitted to file a second or successive federal petition if it raises a new claim that undermines confidence in his or her guilt or the appropriateness of the death sentence.

Regrettably, none of these recommendations has been generally adopted. In fact, the Supreme Court has denied death row prisoners the very opportunities for raising constitutional claims that the ABA has insisted are essential. Prisoners have not been entitled even to a single stay of execution to maintain the status quo long enough to complete post-conviction litigation.⁴⁰

The federal courts typically have refused to consider claims that were not properly raised in state court, even if the failure to raise them was due to the ignorance or neglect of defense counsel.⁴¹ And prisoners have often not been allowed to litigate more than one petition, even if they have offered strong evidence of egregious constitutional violations that they could not have presented earlier.⁴²

The consequence of these legal tangles has been that meritorious constitutional claims often have gone without remedy. Contrary to popular belief, most *habeas* petitions in death penalty cases do not rest on frivolous technicalities. As Professor James S. Liebman has

³⁷ Resolution of the House of Delegates, Feb. 1982.

³⁸ See Toward a More Just and Effective System, *supra* note 33.

³⁹ *Id.*; Resolution of the House of Delegates, Feb. 1990.

⁴⁰ See McFarland v. Scott, 114 S.Ct. 2568 (1994).

⁴¹ E.g., Coleman v. Thompson, 111 S.Ct. 2546 (1991).

⁴² E.g., McCleskey v. Zant, 499 U.S. 467 (1991). Moreover, the Supreme Court has developed numerous other door-closing doctrines that restrict death row prisoners' access to the federal courts for *habeas corpus* adjudication. See The Death of Fairness? Counsel Competency and Due Process in Death Penalty Cases, 31 *Houston L. Rev.* 1105 (1994).

reported, in 40 percent of all capital cases, even in the face of all the procedural barriers, death row inmates still have been able to secure relief due to violations of their basic constitutional rights.⁴³ The percentage securing relief would be substantially higher if the federal courts had considered all death row inmates' claims on their merits.

Yet, in 1996, Congress enacted legislation that will make it even more difficult for the federal courts to adjudicate federal claims in capital cases. This new law, which the ABA vigorously opposed, establishes deadlines for filing federal *habeas* petitions, limits on federal evidentiary hearings into the facts underlying federal claims, timetables for federal court action, limits on the availability of appellate review, and even more demanding restrictions on second or successive applications from a single petitioner. The new law also contains a provision that, according to the *en banc* Seventh Circuit (and contrary to the ABA's position as *amicus curiae*), prevents a federal court from awarding relief on the basis of a claim that the federal court finds to be meritorious if it concludes that the state court that rejected the claim was not "unreasonably" wrong in doing so.⁴⁴

III. Race Discrimination

In 1988, the ABA adopted a policy of striving to eliminate "discrimination in capital sentencing on the basis of the race of either the victim or the defendant."⁴⁵ Nevertheless, longstanding patterns of racial discrimination remain in courts across the country.

Numerous studies have demonstrated that defendants are more likely to be sentenced to death if their victims were white rather than black.⁴⁶ Other studies have shown that in some

⁴³ Memorandum of James S. Liebman, Nov. 22, 1995.

⁴⁴ *Lindh v. Murphy*, 96 F. 2d 856, 870 (7th Cir. 1996). For a summary and analysis of the various new *habeas corpus* provisions, see Yackle, A Primer on the New Habeas Corpus Statute, 44 Buffalo Law Rev. 381 (1996).

⁴⁵ Resolution of the House of Delegates, Aug. 1988. In addition, the ABA has urged Congress to "prevent or minimize any disproportionate effects of general federal death penalty legislation on Native Americans subject to federal jurisdiction." Resolution of the House of Delegates, Aug. 1991.

⁴⁶ See Tabak, Is Racism Irrelevant? Or Should the Fairness in Death Sentencing Act Be Enacted to Substantially Diminish Racial Discrimination in Capital Sentencing?, 18 N.Y.U. Rev. L. & Soc. Change 777, 780-83 (1990-91) (summarizing various studies) (this law review article is an adaptation of the ABA's testimony in support of the proposed Racial Justice Act); U.S. GENERAL ACCOUNTING OFFICE, DEATH PENALTY SENTENCING: RESEARCH INDICATES A PATTERN OF RACIAL DISPARITIES (Feb. 1990), reprinted in 136 CONG. REC. S6889-90 (daily ed., May 24, 1990); L. Ekstrand and H. Ganson, in panel discussion on

jurisdictions African Americans tend to receive the death penalty more often than do white defendants.⁴⁷ And in countless cases, the poor legal services that capital clients receive are rendered worse still by racist attitudes of defense counsel.⁴⁸

Justice Blackmun lamented the Court's failure to fashion an effective means of preventing the "biases and prejudices that infect society generally" from influencing "the determination of who is sentenced to death."⁴⁹ After years of watching race play so large a role in the administration of capital punishment, he concluded, in part for that reason, that he no longer could find any execution consistent with the Constitution. The ABA need not go so far in order to resolve, as a matter of ABA policy, that executions should cease until effective mechanisms are developed for eliminating the corrosive effects of racial prejudice in capital cases.

The Supreme Court, in rejecting a constitutional challenge to the systemic pattern of

Race and the Death Penalty, in *The Death Penalty in the Twenty-First Century*, 45 *Amer. U. L. Rev.* 239, 320-23, 341, 345, 347, 348 (1995). See also Samuel R. Gross & Robert Mauro, *Death and Discrimination: Racial Disparities in Capital Sentencing* (1989). In Kentucky, approximately 1,000 African Americans have been murdered over the past 20 years. Yet none of the prisoners on that state's death row is there for having killed a black victim. Letter from the Death Penalty Information Center, April 2, 1996.

⁴⁷ E.g., David C. Baldus, George Woodworth & Charles A. Pulaski, Jr., *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* 399 (1990).

⁴⁸ Sadly, defense attorneys who shrink from rocking the boat locally still may fail, even in this day and age, to object to jury selection procedures that exclude African Americans from service. See Bright, *supra* note 12, at 1857, citing *Gates v. Zant*, 863 F.2d 1492, 1497-1500 (11th Cir.), *cert. denied*, 493 U.S. 945 (1989) (denying relief in such an instance). Cases in which defense attorneys use racial slurs in reference to their clients are also all too common. See Bright, *supra* note 12, at 1865, citing Transcript of Opening and Closing Arguments at 39, *State v. Dungee*, Record Excerpts at 102, (11th Cir.) (No. 85-8202), *decided sub nom. Isaacs v. Kemp*, 778 F.2d 1482 (11th Cir. 1985), *cert. denied*, 476 U.S. 1164 (1986), showing the following opening argument:

You have got a little ole nigger man over there that doesn't weigh over 135 pounds. He is poor and he is broke. He's got an appointed lawyer. . . . He is ignorant. I will venture to say he has an IQ of not over 80.

Unsurprisingly, the jury that heard that statement from defense counsel later sentenced the defendant to death.

⁴⁹ *Callins v. Collins*, 114 S.Ct. 1127, 1135 (1994) (dissenting opinion).

racial discrimination in capital sentencing, invited legislative action to deal with this situation.⁵⁰ Thereafter, the ABA, in conformance with a resolution adopted by the House of Delegates in August 1988, supported enactment of the Racial Justice Act, a measure designed to create a remedy for such racial discrimination.⁵¹ Although the House of Representatives twice has approved the Racial Justice Act, the full Congress has not enacted it. Accordingly, these patterns of racial discrimination remain unrectified. Ironically, Justice Powell, the author of the Supreme Court's 5-4 decision rejecting the constitutional challenge discussed above, has now indicated that he regrets his participation in that decision (as well as in other decisions upholding the death penalty) more than anything else during his tenure on the court.⁵²

IV. Execution of Mentally Retarded Individuals and Juveniles

The ABA has established policies against the execution of both persons with "mental retardation," as defined by the American Association of Mental Retardation,⁵³ and persons who were under the age of 18 at the time of their offenses.⁵⁴ Nevertheless, the Supreme Court has upheld the constitutionality of executions in both of those instances.⁵⁵ While many states now bar executions of the retarded, other states continue to execute both retarded individuals and, on occasion, offenders who were under 18 at the time they committed the offenses for which they were executed.⁵⁶

⁵⁰ See McCleskey v. Kemp, 481 U.S. 279, 319 (1987).

⁵¹ See Tabak, *supra* n. 46.

⁵² See JEFFRIES, *supra* n. 4, at 451-452.

⁵³ Resolution of the House of Delegates, Feb. 1989.

⁵⁴ Resolution of the House of Delegates, Aug. 1983.

⁵⁵ Penry v. Lynaugh, 492 U.S. 302 (1989)(refusing to hold that the execution of a mentally retarded prisoner violated the eighth amendment); Stanford v. Kentucky, 492 U.S. 361 (1989) (refusing to hold that the execution of prisoners who were 16 and 17 years of age at the time of their offenses violated the eighth amendment).

⁵⁶ Emily Reed, The Penry Penalty: Capital Punishment and Offenders with Mental Retardation 39 (1993)(reporting that mentally retarded prisoners account for 12% to 20% of the population on death row); Raymond Paternoster, Capital Punishment in America 95 (1991)(reporting that near the end of 1990 there were 32 death row prisoners who had been under 18 years of age at the time of their offenses); Victor Streib, Report (Sept. 19, 1995)(reporting 42 such prisoners only five years later). Since 1973, 140 death sentences have been imposed on juvenile offenders. Letter from the Death Penalty Information Center, April 2, 1996.

CONCLUSION

As former American Bar Association President John J. Curtin, Jr., told a congressional committee in 1991, "Whatever you think about the death penalty, a system that will take life must first give justice."⁵⁷ This recommendation would not commit the ABA to a policy regarding the morality or the advisability of capital punishment *per se*. Rather, this Recommendation would reinforce longstanding Association policies that seek to bring greater fairness to the administration of the death penalty. Those policies rest firmly on the special competence and experience that only members of the legal profession can bring to bear.

For many years, the ABA has conducted studies, held educational programs, and produced studies and law review articles⁵⁸ about the administration of the death penalty. As a result of that work, the Association has identified numerous, critical flaws in current practices. Those flaws have not been redressed; indeed, they have become more severe in recent years, and the new federal *habeas* law and the defunding of the PCDO's have compounded these problems. This situation requires the specific conclusion of the ABA that executions cease, unless and until greater fairness and due process prevail in death penalty implementation.

Respectfully submitted,

Leslie A. Harris
Chair, Section of Individual Rights and
Responsibilities

February 1997

⁵⁷ Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 102d Cong., 1st Sess. at 447 (1991).

⁵⁸ See, e.g., *Is There Any Habeas Left in This Corpus?*, 27 Loyola U. Chicago L. J. 524 (1996); *The Death of Fairness?*, see *supra* note 42; *Politics and the Death Penalty: Can Rational Discourse and Due Process Survive the Perceived Political Pressure?*, 21 Fordham Urban L. J. 239 (1994).

EXECUTIVE SUMMARY

a) Summary of the recommendation:

Under this Recommendation, the Association would call upon each jurisdiction with capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with longstanding American Bar Association policies intended to (1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed.

Specifically, the proposed resolution urges that the policies and procedures implemented by each jurisdiction be consistent with longstanding American Bar Association policies concerning (1) implementing ABA "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" (adopted Feb. 1989) and Association policies intended to encourage competency of counsel in capital cases (adopted Feb. 1979, Feb. 1988, Feb. 1990, Aug. 1996); (2) preserving, enhancing, and streamlining state and federal courts' authority and responsibility to exercise independent judgment on the merits of constitutional claims in state post-conviction and federal *habeas corpus* proceedings (adopted Aug. 1982, Feb. 1990); (3) striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant (adopted Aug. 1988, Aug. 1991); and (4) preventing execution of mentally retarded persons (adopted Feb. 1989) and persons who were under the age of 18 at the time of their offenses (adopted Aug. 1983).

In adopting this Recommendation, the Association would take no position on the death penalty, apart from existing Association policies relating to offenders who are mentally retarded or under the age of 18 at the time of the commission of the offenses.

b) Summary of the issue which the recommendation addresses:

While the ABA has policy addressing specific due process and fairness concerns in death penalty cases, few jurisdictions have adopted these policies to date. In the wake of the newly adopted federal *habeas corpus* provisions and the defunding of post-conviction defender organizations, this recommendation calls for jurisdictions not to carry out death sentences for convicted persons until federal and state governments implement longstanding ABA policies regarding counsel competency, due process concerns, and other fairness considerations with respect to death penalty cases.

c) An explanation of how the proposed policy position will address the issue:

If the proposed Recommendation is adopted, the ABA will be in a stronger position to encourage implementation of policies designed to address longstanding due process concerns in capital case representation that have been severely aggravated by the 1996 statute regarding federal *habeas corpus* and the defunding in 1996 of post-conviction defender organizations. Also, if jurisdictions do not carry out the death penalty pending resolution of due process concerns, federal and state governments will have more time to address the unresolved legal and funding issues directly related to competent legal representation and fair administration of justice in capital cases.

d) A summary of any minority views or opposition which have been identified:

None known at this time.