



Summer Newsletter 2000

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Two-Thirds of Death Sentences Flawed, Study Finds

A major study has been released which demonstrates the flaws in America's capital jurisprudence. Every appealed death-penalty conviction from 1973 to 1995 was reviewed by a team of lawyers and criminologists led by Columbia University law professor James Liebman, examining 4,578 state cases. They found that appeals courts determined that 68% of the cases had prejudicial errors and should be reversed. Of these, 37% were reversed because of serious errors by defense attorneys, and 19% were reversed because of misconduct by police officers and prosecutors. When retried, 7% of defendants were found not guilty, and 75%, though convicted, did not again receive the death penalty. Only 18% were sentenced again to death.

The most common errors were by egregiously incompetent defense lawyers who missed evidence that would have saved the defendant, and by police and prosecutors who suppressed evidence that would have helped the defendant. "Our 23 years' worth of results reveal a death-penalty system collapsing under the weight of its own mistakes," the Columbia team concluded. The existing system is "persistently and systematically fraught with error."

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The full report, entitled "A Broken System: Error Rates in Capital Cases, 1973-1995," is at <http://thejusticeproject.org>. The study was commissioned by the Senate Judiciary Committee; research began in 1991. Although the report's purpose was not to find evidence that an innocent person has been executed, Liebman's findings certainly add weight to claims that many innocent or less-culpable prisoners have not survived death row. The Chicago *Tribune's* series on June 11 and 12 (see "Death Row Updates" on page 4) similarly received wide publicity and detailed potentially fatal flaws in the Texas capital-punishment system. In addition, more and more conservative opinion leaders are now endorsing a moratorium, if not abolition; among these are the *Washington Times*, the Cato Institute, the Rutherford Institute, George Will and Pat Robertson.

First Federal Execution Delayed

The first federal execution in 37 years, which had been set for August 5, will be postponed, the White House announced on July 7. At press time, it was believed that President Clinton was to issue a reprieve lasting at least ninety days. This will delay the execution until after the November election.

The Coalition will publicly protest Garza's execution if it is rescheduled. For information on protest locations, contact WCADP president Kevin Glackin-Coley at KevinG@seattlearch.org or 206-382-4236 for information if a new execution date is set.

Juan Raul Garza was convicted in Texas of ordering the murders of three men to extend his control over a major drug trafficking ring. At the sentencing stage of Garza's trial, the prosecution introduced evidence that Juan Raul Garza had committed four other murders in Mexico. Mexican authorities have never solved these crimes, for which Garza was never prosecuted. The prosecution, with no physical evidence linking Garza to those crimes, relied instead on the testimony of three accomplices in the Brownsville drug ring, who were offered reduced sentences in return for their testimony.

Lawyers for Garza have taken his case to the Inter-American Commission on Human Rights, claiming that the US government violated his right to a fair trial by introducing this evidence which would be impossible for the defense to challenge. On January 27, 2000, the IACHR asked the US government not to allow the execution to proceed until it had examined the case and issued its judgement as to whether his rights under the inter-American system of human rights protection had been violated. The US government has not responded to the IACHR and is again ignoring a breach of international law and due process.

These were not, however, the reasons that Clinton stated for the reprieve. Rather, a Justice Department study into whether race and geography determine who is sentenced to die by the federal government has not yet been completed. Also, procedures for requesting clemency in capital cases, which Garza's attorneys will use when they are available, have not been finalized. President Clinton said in early July that he was disturbed by the racial composition of the death row population and the fact that "what your prosecution is may turn solely on where you committed the crime." Nearly half of the cases in which the federal death penalty was sought came from a handful of districts. Fourteen of the 21 federal death-row prisoners are from just three states: Texas, Virginia and Missouri. Seventeen of the 21, including Garza, are minorities.

Vice-President Gore reiterated on July 7 his refusal to endorse a federal moratorium, saying that he yet saw no evidence to justify it. In July, Wisconsin Senator Feingold renewed his February moratorium request, which Clinton had rejected. On April 26, Feingold supplemented his earlier abolition bill by introducing (with Senator Levin of Michigan) the National Death Penalty Moratorium Act, S. 2463.

\$25,000 Gift Launches Fund Drive

Sylvia Matthews, a generous WCADP member, started our \$150,000 fundraising drive with a \$25,000 leadership gift. She told WCADP, "I feel the impossible dream, ending the death penalty, is now possible. I am fortunate to be able to do this now to end the cycle of violence the death penalty represents."

The drive will fund a full time director with organizing, fundraising and lobbying skills so that WCADP can take advantage of the window of opportunity provided by the current debate over the death penalty. If we can raise funds now, we can hire the director in the fall and be prepared for the legislative session starting in January.

WCADP needs 2-3 leadership gifts in the range of \$15-75,000 each, and 50-75 major gifts of \$1000-2500 from individuals and organizations to help end the death penalty in Washington. Steering committee members will be calling on prospective donors over the summer. If you are willing and able to make a significant donation, please contact the Coalition at (206) 622-8952.

Abolition Passed and Vetoed in New Hampshire

We reported in the last issue that a bill was advancing in the New Hampshire legislature to repeal that state's death penalty. The bill passed the state senate on May 18, and was vetoed as promised by Governor Shaheen one day later. The passage did, however, make the New Hampshire legislature the first in the country to vote to abolish the death penalty since the ten-year national execution moratorium ended in 1977. A poll released on May 8 showed 55% of New Hampshire residents favoring abolition, with 35% opposed to the bill.

A required veto-override vote on June 27 failed to pass. The repeal bill is certain to be reintroduced in coming sessions.



Tacoma News-Tribune

Mitchell Rupe (left) shares a moment with his mother during his sentencing hearing. Rupe was sentenced on March 10 to life imprisonment without parole; his previous two death sentences had been overturned. See "Death Row Updates" in our spring issue.

Sam Sheppard Loses Suit

Sam Reese Sheppard on April 12 lost his civil suit seeking to prove that his father was innocent. The elder Sam Sheppard was convicted in 1954 of murdering his wife. He narrowly escaped a death sentence from a verdict that was thrown out by the US Supreme Court because of the "media circus" atmosphere and fundamental unfairness of the proceedings. The famous case became the basis for the television series "The Fugitive". The elder Sheppard died a few years after his release from prison. The jury in this year's proceedings accepted the state's request to ignore recent DNA evidence exonerating him.

Death-Row Survivor Speaks at UW

On April 9 in a lecture hall at the University of Washington, one small woman's words almost hurt to hear. The pain came from sixteen years as an innocent prisoner and the story came from Sonny Jacobs.

Jacobs spent 1976 through 1992 in the Florida State Penitentiary, including five years in solitary confinement on death row, accused of killing two policemen at a Florida rest stop. Her partner and father of her two children, Jesse Tafero, also sat on death row for the same crime. While Jacobs lives to tell her story, Tafero was executed before he and Jacobs were proven innocent.

"You hear stories about how comfortable life on death row is; well, no, it's not like that," Jacobs said. "From the front to the back of my cell was six steps and I could touch both side walls if I stood in the middle like this," Jacobs said, spreading her arms apart.

Jacobs' world was small but not without hope. She had time to think and her thoughts developed into an inspiration. "This little cell is my world and I'm going to make it a positive place," she told herself. "I do have control over my world inside this cell."

During her years on death row, Jacobs used creativity and positive thinking to make artwork for her wall, a mat to cover the toilet, and a lifesaving appeal.

As result of her 1981 appeal, Jacob's sentence was changed from death to life in prison. She was moved from solitary confinement to the general prison population where yoga helped sustain her for the next twelve years.

When Jacobs was found innocent, she was given freedom into a world far different than the one she remembered. Clothing styles had changed, technology was far advanced, her partner was dead, and her two children were grown.

"It's as if they did kill me," Jacobs said after leaving prison, "because I'm not that person anymore."

She can't go back to the seventies. She can't change what happened. So, Jacobs concentrates on being part of her children's lives, forgiving the people who put her in prison, speaking out against capital punishment, and showing current prisoners how yoga can turn the tiny world that was once her own into a positive place.

Jacobs spoke to nearly one hundred people including students, activists, and Washington State Representative Ed Murray as part of Death Penalty Awareness Week sponsored by Olympia Fellowship of Reconciliation. She spoke later that week in other Washington locations.

This June's Statewide Meeting

WCADP Members met at St. Andrews Church in Ellensburg on Saturday, June 17 for a statewide meeting. Issues on the agenda included fundraising, public education, and volunteer and membership development.

A fundraising drive is underway to fund a full-time executive director. This position will coordinate events and contacts statewide. The major-gift campaign described on page 2 of this issue will support this initiative. "The Time Is Now" is the fundraising theme.

Public Education suggestions included non-events such as leafletting, tabling at events, ads, billboards, teach-ins at high schools and colleges, developing a speakers' bureau to fill speaker requests, and submitting guest opinions to local newspapers on the death penalty. Ideas for events included bringing in speakers to address the issues of innocence, racism, cost, disproportionate application of the death penalty, and the perspective of Murder Victims' Families for Reconciliation.

Volunteers are needed for leafletting, coordinating events, tabling at events, bulk mailings and creating new signs and banners for demonstrations. Five attendees of the meeting stepped forward to take on some volunteer duties.

Currently membership development is not supported by an active committee so progress is slow and your help is needed. The challenge of membership development among people of color and related organizations was discussed. Having a literature table at community events was seen as a great way to do outreach for new members. Two members at the meeting volunteered to do tabling.

Register Now for Major Conference This November

From Thursday, November 16, through Sunday, November 19, join the American Civil Liberties Union, American Friends Service Committee, Amnesty International, California People of Faith Working Against the Death Penalty, Death Penalty Focus of California, Murder Victims' Families For Reconciliation, the National Coalition to Abolish the Death Penalty and many others to celebrate, to expand and to learn about and from a sustained national momentum to abolish capital punishment. Coinciding with the opening of the San Francisco Opera Company's production of "Dead Man Walking," this conference is entitled "Committing to Conscience: Building a Unified Strategy to End the Death Penalty." It will be held at the Cathedral Hill Hotel in San Francisco.

Within the year 2000 exist fertile opportunities to galvanize individual and organizational activities, programs and talents into a unified focus that will effect a post-mortem on the "machinery of death." One of the largest conferences of its kind, "Committing to Conscience" will include addresses by Sister Helen Prejean, Danny Glover and Mike Farrell. There will be workshops on "...media and fund raising ... (together with) ... public demonstrations. ... Attendees will also help develop an anti-death penalty strategy."

For additional information, please contact any of the following: Pat Clark at American Friends Service Committee, (215) 241-7130, pclark@afsc.org; Amy Enslow at Death Penalty Focus of California, (415) 243-0143, info@deathpenalty.org; or Brian Henninger at the National Coalition to Abolish the Death Penalty, (202) 387-3890 ext. 14, bhenninger@ncadp.org.

Prejean and Coalition Aid Oregon Abolition Effort

On May 22 the WCADP hosted a fundraiser in Seattle for the Oregon "Life for Life Initiative" campaign, featuring Sister Helen Prejean, to help the campaign organizers in their efforts to gather enough signatures to place the initiative on the November ballot. If approved by the voters, capital punishment would be abolished in Oregon. It would be replaced by mandatory sentences of life without the possibility of parole and restitution to victims' survivors.

Sr. Helen spoke eloquently and passionately about the increasing national momentum for moratorium and abolition of the death penalty. She was particularly appreciative of our willingness to support the efforts of the Oregon campaign given our involvement in a campaign to secure funding for an Executive Director.

Sr. Helen will return to Seattle as a keynote speaker at the Catholic Educators' Conference on the morning of September 8. Recent newspaper reports mentioned her as a front-runner for this year's Nobel Peace Prize.

The Coalition was delighted this spring to be assisted by Emily Shier. Emily comes to us from Alaska, where she worked with homeless teenagers and in graphics. At present Emily is an assignment editor for Northwest Cable News. She also worked as the Coalition's staff office director from April through June. Emily has graciously volunteered for the time being to continue with some of the office work. The Coalition Steering Committee is continuing to evaluate our staffing arrangements.

Locke Signs DNA Bill; Federal Bills Offered

The DNA bill which we mentioned in the spring newsletter was signed into law by Governor Locke on March 24. As we reported, HB 2491 was heavily watered down from its original version, prompting some abolitionist organizations to (unsuccessfully) ask Locke for a veto.

HB 2491 allows prisoners convicted of aggravated murder whose personal-restraint petition request for postconviction DNA testing has been denied to appeal to the district attorney for the test. Appeals from the district attorney's decision are to the state attorney general. Critics note that appealing to advocates of the prisoner's guilt denies fundamental due process. Also, requests under this bill must be filed by 2002. This defeats the purpose of granting access to emerging DNA technology.

A bill at the federal level to ensure access to DNA testing is likely to pass Congress this year. Senate Judiciary Committee chairman Orrin Hatch appears inclined towards a narrower bill to replace the Innocence Protection Act, which was introduced by Senator Leahy in February (see spring newsletter).

As DNA technology continues to demonstrate the weakness of many convictions, many prosecutors and judges around the country continue to thwart access to, or deny the results of, these tools. This spring, after openly admitting that the state feared that a DNA test would help show that executed prisoner Joseph O'Dell was innocent, the state of Virginia destroyed evidence in O'Dell's case that could have been tested.

Death Row Updates

National

Gary Graham was executed in Texas on June 22. Graham's case turned into a major media event. It was an obvious test of George W. Bush's declaration earlier this year that none of the more than 135 prisoners whose executions he has approved was innocent. Graham, who on death row was known as Shaka Sankofa, was convicted solely on the testimony of just one eyewitness whose identification of Graham was manipulated by police. Observers said that no other execution under modern law has taken place with such weak evidence. Alibi witnesses for Graham were never heard in court. His attorney, Ronald Mock, was renowned for incompetence. He assumed Graham's guilt, failed to interview witnesses, mounted almost no defense, and after several state-bar disciplinary proceedings, no longer defends capital cases. No physical evidence linked Graham to the shooting and the gun he was arrested with was ruled out as the murder weapon. Graham, a robber and rapist, was 17 at the time of the crime and thus the execution also violates international law banning execution of juveniles. Of the half-dozen countries to have executed juveniles in the past decade, two—Pakistan and Yemen—have now banned the practice, while the US has killed the majority. As usual, the state pardons board, whose independence of the governor is purely theoretical, ruled against the condemned.

Governor Bush did, however, reap favorable publicity at a time of rapidly mounting public doubt concerning the death penalty by granting a thirty-day reprieve to **Ricky McGinn** on June 1 so McGinn could pursue the DNA testing that the courts had denied him. It was the first such reprieve of execution Bush has ever granted. Bush did not explain why the courts failed to give McGinn relief, given Bush's repeated assertions that every Texas prisoner has "full access to the courts."

The *Chicago Tribune*, which ran an investigative series last winter which prompted Illinois Governor Ryan's unilateral moratorium in that state, ran a series on June 11 and 12 which likewise found widespread problems with Texas' capital punishment practices. The complete series is at <http://www.chicago.tribune.com/news/nationworld/ws/0,1246,45186,00.html>.

Florida Governor Jeb Bush, George W.'s brother, refused to halt the execution of **Thomas Provenzano** on June 21. As we have previously reported, Provenzano was so completely insane that he believed he was to be executed because he was Jesus. Last December, a state judge ruled that Provenzano met Florida's dismal standard of execution competence. Under any other standard, Provenzano could not have been put to death.

Eugene Colvin-El's life was spared by Maryland Governor Parrish Glendening on June 7. Glendening said Colvin-El's guilt was not absolutely certain. Racial disparity in Maryland's death sentencing was also raised by Colvin-El's supporters. Glendening rejected calls for a moratorium in Maryland.

Benetton Controversy Reviewed

On the evening of May 1, 2000, Gonzaga University law professor Speedy Rice spoke in Spokane at Gonzaga University about his behind-the-scenes work on the controversial Benetton-*Talk Magazine* supplement entitled "We On Death Row." The event also featured four poster-sized blow-ups of photos from the supplement, a slide-show, and a short video shot by Rocco Toscani, 19-year-old son of former Benetton photographer Oliviero Toscani.

The video features death row inmates sharing thoughts and feelings on the death penalty, their families, and about things they miss on the outside. Shot in a simple and direct style, the video effectively shows the ordinary humanity of the prisoners interviewed.

After the video, Professor Rice spoke about several points of controversy concerning the "We On Death Row" campaign: the Missouri lawsuit alleging that the state department of corrections was misled about the nature of the supplement before it allowed inmates to be photographed and interviewed; the severing by Sears of its agreement to sell Benetton products, ostensibly based on complaints about the supplement by victims' rights groups; and the more general issue regarding the absence in the supplement of references to victims of crimes committed by those featured.

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