

2006 Fall Newsletter

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Washington Coalition to Abolish the Death Penalty

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Founded in 1984, WCADP is a statewide 501(c)(3) non-profit organization comprised of individuals and organizations. WCADP is dedicated to public education and activism to abolish the death penalty.

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The President's message

by Jeff Ellis, WCADP Steering Committee President

The death penalty in this country and in our fair state is governed by what has been termed “evolving standards of decency.” Those of us opposed to the death penalty know that “evolution” does not happen on its own. Instead, we are obliged to make it happen.

In 2003, the United States Supreme Court held that it was unconstitutional to execute anyone who suffers from “mental retardation.” In doing so, the Court cited to our state’s prohibition (along with others) against such executions as proof of a national consensus. In 2005, the Supreme Court once again listed Washington as one of the states prohibiting the execution of juveniles, when it held that the Constitution prohibited a death sentence for anyone under eighteen.

For many, the logical next step is to prohibit the execution of individuals who suffer from severe mental illness. For that reason, the Coalition is pushing a bill prohibiting death sentences for the severely mentally ill. Two recent events illuminate the need for such a law and provide reasons to believe that our bill can become law, soon.

First, in August 2006, the American Bar Association unanimously passed a resolution urging all jurisdictions (who have not yet ended their experimentation with the death penalty) to implement laws precluding death sentences for individuals who, “at the time of the offense, had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences

or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law.” As the commentary to the resolution makes clear “(o)ffenders who meet these requirements, even if found sane at trial, are not as culpable or deterrable as the average offender.” For example, under such a law people who, because of psychosis, erroneously perceived their victims to be threatening them with serious harm would be covered by this prohibition, as would delusional offenders who believed that God had ordered them to commit the offense. In short, the ABA’s recommendation sets up a conclusive

“...56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of local jail inmates, were found to have a mental health problem.”

“defense” against the death penalty for capital defendants who can demonstrate the requisite level of impairment due to severe disorder at the time of the offense.

The ABA’s resolution, which was the product of a task force comprised of some of this nation’s best lawyers and mental health professionals, is virtually identical to the Coalition’s proposed bill. The momentum that propels “evolution” is building.

Next, a recent government study demonstrates the scope of the problem. According the September 6th report by the Justice Department more than half of all prison and jail inmates, including 56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of local jail inmates, were found to have a mental health problem.

Among the inmates who reported

Continued, see “President’s Message” on Page 2...

Death Row Update

There are currently eight men under a sentence of death. The following are some of the cases that saw judicial action since the last newsletter.

Cal Brown

Cal Brown's death sentence was reversed in December 2005, by the 9th Circuit Court of Appeals. That Court then denied en banc review in June 2006. The State of Washington has 90 days from that decision to file a petition in the United States Supreme Court. If they choose not to do so, or if the petition is denied, Mr. Brown will be returned to King County Superior Court where Prosecutor Norm Maleng must decide whether to seek a second death penalty trial or agree to a life sentence.

Clark Elmore

Clark Elmore, who was sentenced to death over a decade ago, remains on death row while the Washington Supreme Court considers his Personal Restraint Petition. That document, which was filed over five years ago, includes claims that his counsel failed to discover significant mitigating evidence, that he was improperly shackled in front of his jury, and that a juror was dishonest about his background during the selection process.

Jonathan Gentry

Jonathan Gentry's case remains in the United States District Court for the Western District of Washington pending a decision on his writ of habeas corpus. An evidentiary hearing was conducted by Judge Lasnik in March 2006. At that hearing, Gentry's lawyers presented evidence in support of his claims and evidence that was helpful to Gentry and knowingly presented false testimony to his jury. Mr. Gentry was convicted fifteen years ago.

Dwayne Woods

Dwayne Woods' case is pending in the United States District Court for the Eastern District of Washington on his writ of habeas corpus. He is currently represented by Suzanne Elliott and David Zuckerman, who recently filed a motion requesting an order to compel the Washington State Department of Corrections to remove him from the Intensive Management Unit (IMU) in the Walla Walla State Penitentiary. Woods has been confined in the IMU, essentially in isolation and confined to his cell for 23 hours a day, since 2002, despite having lived infraction free.

Book Review: Truth Be Told

by Amy Luftig

Truth Be Told is a touching compilation of correspondence between Friday Harbor, WA resident Agnes Vadas and Richard Niels, currently a death row inmate in Ohio. Through their friendship and letters readers can come to know the true humanness and kind soul of a jazz musician on death row—and the gentleness and compassion of the only person supporting him. The state of Ohio must not put this man to death. A must read for death penalty opponents and supporters alike.

This book is currently available from Amazon.com via the WCADP website (www.abolishdeathpenalty.org/WCADP_Store.htm). WCADP receives a small payment for each book sold via the website).

President's message

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symptoms of a mental disorder:

- 54 percent of local jail inmates had symptoms of mania, 30 percent major depression and 24 percent psychotic disorder, such as delusions or hallucinations.
- 43 percent of state prisoners had symptoms of mania, 23 percent major depression and 15 percent psychotic disorder.
- 35 percent of federal prisoners had symptoms of mania, 16 percent major depression and 10 percent psychotic disorder.

According to the study, mental health problems were primarily associated with violence and past criminal activity. For example, an estimated 61 percent of state prisoners and 44 percent of jail inmates who had a mental health problem had a current or past violent offense. In short, our country's mentally ill population is being treated (or more appropriately, *not* treated) in our jails and prisons.

These numbers should create a sense of urgency. Around this country, and in our state, individuals have been sentenced to death for crimes that were the product of their illness. It is time that we collectively stop this practice, as we move toward the day that we end this nation's vile "experimentation" with the death penalty.

Did you know? The death penalty appeals process

The following information—from the Attorney General’s website—is offered to help all those working to abolish the death penalty in their understanding of the processes and laws that impact the death penalty process.

Appeal and Review of Death Sentences in Washington State

The death penalty can be imposed on defendants in Washington State upon conviction for aggravated first-degree murder. When the ultimate penalty is imposed, a defendant has several options for appeal (*see below*). In the state-court system, the defendant or the defendant’s attorney can file an appeal directly to the Washington State Supreme Court. They can also ask the state Supreme Court to review additional issues by filing a “collateral challenge.” This is often in the form of a personal restraint petition. A defendant can also file a collateral challenge in federal court. A collateral challenge is most commonly known as a habeas corpus petition.

In addition to these optional appeals, Washington law requires that the state Supreme Court conduct a four-part review of every death sentence imposed in the State of Washington. This process is called “statutory” or “mandatory review” (*see below*) and cannot be waived by the defendant.

- During both appellate and mandatory-review proceedings the defendant has the right to court-appointed legal counsel. In federal habeas corpus petitions involving death sentences, the federal court also usually appoints counsel for the defendant.

- With one exception, only defendants and their legal counsel have standing to file any of these appeals. The only exception is if the defendant is or may be mentally incompetent. In that case, a court may allow a third party to file an appeal on the defendant’s behalf.

- New laws enacted by the Legislature and Congress since 1990 were designed to streamline the appeals process for defendants sentenced to death in aggra-

vated first-degree murder cases. These streamlining measures include time limits on when an appeal or petition may be filed and how many petitions may be pursued by the defendant.

Optional Appeals: State Supreme Court and Federal Court

State Supreme Court: A defendant sentenced to death has the right to present two separate kinds of appeal to the state Supreme Court.

In a “direct appeal,” the defendant can present any legal issue raised during the trial, as well as certain new constitutional claims that were not raised at trial. Such claims might include challenges to the trial court’s exclusion of evidence or jury instructions, or objection to arrest and search procedures.

In a “collateral challenge,” most commonly filed in the form of a personal restraint petition, the defendant can raise claims that were not addressed in a direct appeal. Claims might include allegations that a witness committed perjury, that the state withheld evidence tending to show that the defendant was innocent of the crime, or that the defendant had ineffective assistance of counsel. In a collateral challenge, the burden is on the petitioner (the defendant) to prove that the actions caused actual and substantial prejudice to the defendant’s case.

A case in which the defendant has prevailed on direct appeal or on a collateral challenge may be returned to the trial court for further proceedings. This may include a new sentencing proceeding or an entirely new trial. A defendant who does not prevail in the state Supreme Court may ask the U.S. Supreme Court to consider any claims pertaining to the U.S. Constitution.

Federal Court: U.S. District Court

and the Court of Appeals: A defendant who loses a direct appeal or collateral challenge in state court may file a federal habeas corpus petition in the U.S. District Court located in the district in which the crime occurred.

In order to raise a constitutional claim in a habeas corpus petition the defendant must have previously presented the claim to the Washington Supreme Court. In addition, under the Anti-Terrorism and Effective Death Penalty Act passed by Congress in 1996, the federal court can only find for the defendant on a habeas corpus claim where the state court’s decision was contrary to, or an unreasonable application of, a previous U.S. Supreme Court decision on the same issue.

A defendant who loses a habeas corpus claim in U.S. District Court can seek permission to appeal the decision to the Court of Appeals. If permission is granted, the District Court’s decision is reviewed by the 9th Circuit Court of Appeals. The non-prevailing party in a case heard by the 9th Circuit may seek further review by the U.S. Supreme Court.

The last-minute filing of a habeas corpus petition does not, in and of itself, prevent a scheduled execution from taking place. In order to stop a pending execution, a court must consider the petition and issue a stay of execution. Stays are intended to allow sufficient time for the court to consider the issues raised in the petition.

Mandatory Review: Washington State Supreme Court

Before a convicted defendant can be sentenced to death in Washington the jury must unanimously answer “yes” to this question:

“Having in mind the crime of which the defendant has been found guilty, are

Continued, see “Appeals Process” on Page 4...

We are going to limit Washington's death penalty, but we can not succeed without your help!

by Amy Luftig

This year, the Washington Coalition to Abolish the Death Penalty, with the support of a diverse and growing coalition, will be supporting two important bills in the legislature: one that will eliminate the possibility of the death penalty for the mentally ill, and one that brings together a group of specialists, including some legislators, to look at fairness issues when deciding which convicted criminals in Washington face the death penalty and which will not.

The prime sponsor of these bills has said that there is one thing that will most help these bills' chance of passage: constituents meeting with their legislators before session to show their support.

This is the single most important thing that you can do between now and the beginning of legislative session to help support these bills! Also, **make sure WCADP has your e-mail address so that you may receive updates.** (Send it to info@abolishdeathpenalty.org)

What does it mean to meet with your legislator?

You have three legislators in your area – two Representatives and one Senator. Your legislators represent you. They are elected (and paid!) to listen to the issues that matter to you. You may not always be able to persuade your legislators to vote for legislation that you like, but you can almost always educate them on the issue.

To find out who your legislators are (and how to meet with them in your district) visit: <http://www1.leg.wa.gov/legislature/>. There, you can type in your zip code and learn all about your 3 legislators – what their backgrounds are, where they work and volunteer in your community, and what issues matter most to them.

Most legislators prioritize hearing from their constituents above anyone else, and it is usually not difficult to get an appointment in-district. When you call your legislator's office, tell his or her assistant that you are a constituent who would like to talk (or bring a group of people in to talk) to him or her about your views on the death penalty.

The chances are that you know more about this issue than your legislator, and that your legislator will be looking to you to educate them. You don't need to know everything about the issue – just tell them why you have come to care so much about this issue.

There are just three main points – the ABCs – to remember when visiting your legislators!

A. Be Accurate. You don't have to know everything about an issue – just talk about why you oppose the death penalty. Personal stories are the best. If you don't know something, just say "I don't know," and try to get the info to them later!

B. Be Brief. Most appointments are 15-30 minutes long. Be brief and to the point, deciding before the meeting what your main points will be. Keep coming back to those points, even if your legislator wants to talk about other things!

C. Be Courteous. Even if your legislator does not agree with your position, this is a great opportunity to open their minds to the issue even a little bit. A courteous visit means you'll be invited back again.

If you want more information before visiting your legislator, or would like any additional fact sheets, information or tips, please call Amy Luftig, Steering Committee member, at (360) 561-9144, or e-mail her at sdpacwa@hotmail.com.

Appeals Process

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you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

The issues that the state Supreme Court must consider in a death penalty case review is...

1. Whether there was sufficient evidence to justify the jury's affirmative answer to this question.
2. Whether the sentence is excessive or disproportionate to the penalty imposed in similar cases;
3. Whether the sentence was brought about through passion or prejudice; and
4. Whether the defendant was mentally retarded within the legal definition provided by state law.

If the Supreme Court rules in the defendant's favor on any of these four issues, the case is remanded to the Superior Court for either a new sentencing proceeding or for resentencing to life in prison without parole.

If the Supreme Court answers each of the questions in a manner favorable to the prosecution, the Court affirms the death sentence and remands the case to the trial court for the setting of an execution date.

The death penalty: no evidence for deterrence

From the Death Penalty Information Center

In an article entitled The Death Penalty: No Evidence for Deterrence, John Donnohue and Justin Wolfers examined recent statistical studies that claimed to show a deterrent effect from the death penalty. The authors conclude that the estimates claiming that the death penalty saves numerous lives “are simply not credible.” **In fact, the authors state that using the same data and proper methodology could lead to the exact opposite conclusion: that is, that the death penalty actually increases the number of murders.** The authors state: “We show that with the most minor tweaking of the [research] instruments, one can get estimates ranging from 429 lives saved per execution to 86 lives lost.

These numbers are outside the bounds of credibility.”

The authors conclude that the evidence of deterrence is far too weak to rely on as a justification for the death penalty:

The view that the death penalty deters is still the product of belief, not evidence. The reason for this is simple: over the past half century the U.S. has not experimented enough with capital punishment policy to permit strong conclusions. Even complex econometrics cannot sidestep this basic fact. The data are simply too noisy, and the conclusions from any study are too fragile. On balance, the evidence suggests that the death penalty may increase the murder rate

although it remains possible that the death penalty may decrease it. If capital punishment does decrease the murder rate, any decrease is likely small.

John Donnohue is a professor at Yale Law School and a Research Associate at the National Bureau of Economic Research. Justin Wolfers is a professor at the Wharton School of Business and a Research Affiliate at the National Bureau of Economic Research. (The Economist’s Voice, April 2006).

Read the entire article online at: www.deathpenaltyinfo.org/DonnohueDeter.pdf (Emphasis added.)

Reprieves, pardons and commutations: A stacked deck

The following information, from the Attorney General’s own website, highlights the fundamentally unfair challenges each person on death row must face. This alone is enough justification to abolish the death penalty in Washington.

Washington’s Constitution and several state statutes give the Governor significant powers over the fate of persons sentenced to death in the state.

Article 3, Section 9 of the Constitution grants the Governor authority to pardon convicted murderers and other criminals “under such regulations and restrictions as may be prescribed by law.” Court decisions indicate that unlike some gubernatorial duties, which can be delegated to the lieutenant governor when the Governor has left the state, the Governor’s pardoning power cannot be delegated to any other state official.

The Governor has the authority to commute a death sentence to life in prison at hard labor and, upon a petition from the offender, to pardon the offender. A commutation is generally defined as a lessening of the criminal penalty, whereas a pardon is often defined as the termination of the criminal penalty. The Governor also has the power to issue a reprieve (also

called a stay of execution or a “respite”) to temporarily delay the imposition of a death sentence. A reprieve is to be issued “for good cause shown,” and as the Governor thinks proper.

In addition to the Governor’s constitutional and statutory authority to issue pardons and commute death sentences, the Legislature has created a Clemency and Pardons Board to make recommendations to the Governor concerning petitions for pardon or clemency.

The board consists of five members appointed by the Governor and subject to confirmation by the state Senate. The board holds regular quarterly meetings, but can call special meetings at other times as deemed appropriate.

Under state law, the board is charged with receiving petitions “from individuals, organizations, and the department (of corrections) for review and commutation of sentences and pardoning of offenders

in extraordinary cases....”

After receiving a petition, the board evaluates whether the petitioner’s request merits a hearing. If a hearing is determined to be appropriate, the board will schedule the hearing, at which time it will take testimony from a variety of potential witnesses, including the petitioner, an attorney for the offender, the prosecuting attorney, and family members of the victim and the offender.

After the hearing, the board votes on a recommendation, which is then forwarded to the Governor. The Governor is under no legal obligation to follow the recommendation.

Since at least 1965, no Washington Governor has intervened to overturn a death sentence, and in only one instance was an execution postponed by a Governor’s action.

(From <http://www.atg.wa.gov/deathpenalty/pardons.shtml>)

Book Review: The Biblical Truth about America's Death Penalty

by Judith W. Kay

Dale Recinella's book, *The Biblical Truth about America's Death Penalty*, is addressed to those whose support for the death penalty relies on the Bible. As a conservative Catholic, Recinella regards the Bible as revealed truth. He is not a biblical scholar, but a corporate lawyer who, before his research, assumed that the Americans implemented the death penalty fairly by executing only the worst of the worse. For most of his adult life, he passively tolerated the invocation of Biblical passages to endorse the current system. His research into the biblical death penalty caused him to reject these assumptions. He concludes instead that people of biblical faith should condemn, not support, the American death penalty.

In the first half of the book, Recinella examines the Bible's teachings on who is deserving of death and who has the authority to kill. For those seeking to interpret specific biblical passages, Recinella's careful exegesis is a tremendous resource, showing how most passages are read out of context. He also shows "how extensively the Mosaic law has shaped our criminal statutes" (66). In the second half of the book, he examines the judicial procedures specified by the biblical death penalty, concluding, for example, that the biblical witness prohibits testimony from jailhouse snitches and the execution of those who are young or who suffer from mental illness or mental retardation. His exposé of the morally bankrupt procedures in the American system makes a compelling case against the death penalty, independent of his biblical interpretations.

Anyone who treats every word of

the Bible as truth must adopt some strategies to deal with conflicting passages. Recinella proposes a distinction between God's permissive will and divine will. For example, after Cain murders Abel, God spares Cain's life. This expresses God's true intentions—that even though a person may deserve death, that life should be spared. However, ancient societies engaged in revenge cycles, with escalating waves of retaliation. By the time of Moses, God makes a concession to this harsh reality and grants a limited permission to Moses—only one life for a life may be taken. "Life for a life" is a permission, not an expression of divine will. When Matthew records Jesus as saying that he has come to fulfill the law, Jesus is referring to God's divine will expressed in God's protection of sparing of Cain's life, not the compromise with reality represented in the permission granted to Moses.

Recinella's method may not be compelling to all people of biblical faith. First, he regards the Bible as truth and assumes that if one accepts one piece of its teachings as true, one must accept all of it. This means that if one rejects the death penalty for those who violate the Sabbath (as commanded in the first five books of the Bible), then one must also reject execution of murderers. Many Christians have used a distinction between ritual law and moral law been to select which Old Testament commandment are obligatory. He rejects this kind of distinction. Second, he treats the requirements governing capital punishment in the Jewish Talmud (compiled in about 400 CE) as those necessary to meet the Biblical standards. Few Christians see the Talmud as authoritative.

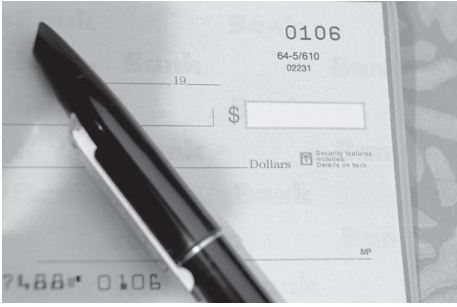
More compelling to Christians may be his rejection of a "satisfaction atonement" that has been "coupled with rugged individualism." This combination means "the grace of redemption can be relegated solely to a means for filling the hole left by personal sin...but providing nothing for the outpouring of love to others who are suffering outside the margins of society or the law" (13). Instead, he argues that Christ's life, death, and resurrection have reconciled God to humankind. "No additional redemptive sacrifice is necessary or proper or even possible" (79).

Recinella is at his best when exposing the actual hermeneutics of some religious supporters of capital punishment. For example, he challenges those who argue that the Old Testament endorses capital punishment and nothing in the New Testament abrogates it. This hermeneutic he argues, was the same as that used to justify slavery; it ought to be discarded.

Recinella does not propose that the American criminal justice system should be modeled on the Bible. But, those who accept the Bible as truth cannot and must not accept the death penalty as practiced in the U.S. "There is no possible way to support the American death penalty based upon biblical truth. If I do support it, I will be standing solely on my secular legal right to naked vengeance. Yet as a Bible-believing Christian, vengeance is not available to me. That is only God's prerogative" (114).

(Judith is a professor of ethics in the Religion Department at the University of Puget Sound).

Thank You For Your Support! Donors from 6/1/06 through 9/30/06



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The Washington Coalition to Abolish the Death Penalty is funded primarily through the support of individual donors like you. We sincerely believe in our motto: "It is easy to support the death penalty when you don't have the facts." That is why we are out at public events doing outreach and education. That is why we provide a speakers bureau to schools and other groups. That is why we work to educate our elected officials about this immoral practice. We need your help if we are to continue. Please consider clipping this form and mailing it in today with your gift. Every dollar we receive will bring us closer to that day when the death penalty is just a terrible memory.

Make checks payable to "WCADP" and mail to: P. O. Box 3045; Seattle, WA 98114-3045.

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(The Washington Coalition to Abolish the Death Penalty is a 501(c)(3) organization. Your gift is tax deductible to the full extent allowed by law.)

WCADP 2006 CONFERENCE AND ANNUAL MEETING

Saturday, October 28

Seattle University School of Law • Room 109

Conference: 10:00 a.m. to 12:00 Noon

Annual Meeting: 1:30 p.m. to 3:30 p.m.

The Evolving Standards of Decency of a Humane Society— The Death Penalty in Washington State in 2006 and Beyond

Featured Speakers:

Tim Ford, Criminal Defence Attorney

Tim is a Seattle attorney recognized as one of this nation's most accomplished anti-death penalty advocates.

Mark Roe, Snohomish County Prosecutor's Office

Mark is a Senior Prosecutor whose career has been marked by a sensitivity and dedication to the needs of victims of violent crimes.

Doors open at 9:30 a.m. (coffee, tea, juice, pastries)

No Cost to Attendees • Register at the Door • Donations Accepted • Bring Your Own Lunch
(Continuing Education Credits are Pending)

Washington Coalition to Abolish the Death Penalty
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