



### HALT TO DEATH PENALTY IN DELAWARE LIFTED

*Excerpted from Sean O'Sullivan's 2/1/10 article in The News Journal: Appeals court approves Del. execution protocols, lifts stay.*

Delaware's death penalty has been upheld as constitutional by the U.S. 3rd Circuit Court of Appeals, which also has lifted a stay on all executions in the state.

This appears to mean that Delaware can almost immediately resume executions, which have been on hold since 2006 when the lawsuit alleging that the state's method of execution presented an unconstitutionally unnecessary risk of pain and suffering by the condemned.

In a 47-page opinion handed down this morning, a three-judge panel of the appeals court ruled that Delaware's

newly adopted execution protocols – which have not yet been used – pass constitutional muster.

At the same time, the appeals court warned Delaware about "the worrisome course it appears to have taken at times" under its old execution method.

"The record before us reflects an occasional blitheness on Delaware's part that, while perhaps not unconstitutional, gives us great pause. We remind Delaware not only of its constitutional obligation ... but also of its moral obligation to carry out executions with the degree of seriousness and respect that the state-administered termination of human life demands," wrote Circuit Judge D. Michael Fisher on behalf of the panel.

### Death Penalty Economically Unfeasible

*Excerpted from the Death Penalty Information Center's series on death penalty issues, <http://www.deathpenaltyinfo.org/costs-deathpenalty#financialfacts>*

As the economic crisis has put many states in a budgetary freeze, officials must choose between funds needed for a broad variety of safety issues and those needed to prosecute capital crimes. Crime prevention, mental health treatment, education, victim services and drug treatment programs compete for the same funds as death penalty cases.

#### Why is the death penalty so expensive?

**Legal costs:** Almost all people facing the death penalty cannot afford their own attorney. The state must assign them two public defenders, and pay for the costs of the prosecution as well.

**Pre-trial costs:** Capital cases are far more complicated than non-capital cases. Experts will probably

be needed on forensic evidence, mental health and the social history of the defendant.

**Jury selection:** Because of the death penalty question, jury selection in capital cases is much more time consuming and expensive.

**Trial:** Death penalty trials can last over four times longer, requiring juror and attorney compensation, in addition to court personnel and other related costs.

**Incarceration:** Most death rows involve solitary confinement in a special facility. These require more security and other accommodations as the prisoners are kept for 23 hours a day in their cells.

**Appeals:** To minimize mistakes, every inmate is entitled to a series of appeals. The costs are borne at taxpayers' expense. These appeals are essential because some inmates have come within hours of execution before evidence was uncovered prov-

ing their innocence.

#### Recent Legislative Activity

In 2009, legislation was introduced to abolish the death penalty in many states, including New Mexico, Kansas, Montana, Nebraska, Colorado, New Hampshire, Connecticut and Maryland. The high costs of the death penalty were repeatedly cited in these debates.

Republican Senator Carolyn McGinn introduced the repeal measure in Kansas. She said the penalty is too costly, *(continued on page 2)*

#### Events

- 4/14 DCDOP Monthly Meeting.  
6:30 to 8pm. Pacem in Terris,  
1304 N. Rodney St. Wilmington
- 5/12 DCDOP Monthly Meeting.  
6:30 to 8pm. Pacem in Terris,  
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## The Death Penalty – It's Unworkable

*Excerpted from Michael Traynor's 2/4/10 opinion in the Los Angeles Times. Michael Traynor is president emeritus of the American Law Institute and lives in Berkeley. <http://www.latimes.com/news/opinion/commentary/la-oe-traynor4-2010feb04,0,5153396.story>*

The American Law Institute, instrumental in structuring the model statutes on which most death sentences are based, has withdrawn its support of such laws.

Nearly 50 years ago, as concern grew in the country about the fairness of death penalty laws, the American Law Institute published a "model statute" aimed at helping state lawmakers draft laws to ensure that death sentences were meted out fairly and consistently.

Last fall, the institute withdrew its support for the model death penalty law. The decision was a striking repudiation from the very organization that provided the blueprint for death penalty laws in this country.

The institute, with a membership of more than 4,000 lawyers, judges and law professors of the highest qualifications, is the leading independent organization in the United States producing scholarly work to clarify and improve the law.

In the decade after the institute published its law, which was part of a comprehensive model penal code, the statute became the prototype for death penalty laws across the United States. Some parts of the model -- such as the categorical exclusion of the death penalty for crimes other than murder and for people of limited mental abilities -- withstood the test of time. But the core of the statute, which created a list of factors to guide judges and jurors deciding when to sentence someone to death, has proved unworkable and fostered confusion and injustice.

Now, after searching analysis by our country's top legal minds, the institute has concluded that the system it created does not work and cannot be fixed. It concluded that we cannot devise a death penalty system that will ensure fairness in process or outcome, or even that innocent people will not be executed.

I am speaking for myself, not as a representative of the institute, but I can say with certainty that the institute did not reach these conclusions lightly. It commissioned a special committee and a scholarly study, heard various viewpoints and debated the issues extensively. A strong consensus emerged that capital punishment in this country is riddled with pervasive problems.

*(continued on page 3)*

### **Death Penalty Economically Unfeasible** *(continued from page 1)*

does not benefit the people, and should be replaced with life without parole.

### **Examples From Studies**

#### **Kansas**

Cases without the death penalty cost \$740,000, while cases where the death penalty is sought cost \$1.26 million.

#### **California**

Each death row prisoner costs \$175,000 more per year than those in general population. There are 678 inmates on California's death row.

#### **New Jersey**

The state's death penalty has cost taxpayers \$253 million since 1983, a figure that is over and above the

costs that would have been incurred had the state utilized a sentence of life without parole instead of death.

#### **Maryland**

The costs for a non-death penalty murder case is \$1.1 million (\$870,000 in imprisonment, \$250,000 in trial), while the costs for a death penalty case are \$3 million (\$1.3 million in imprisonment, \$1.7 million in trial).

#### **Florida**

Florida would save \$51 million each year by punishing all first-degree murderers with life in prison without parole.

#### **Tennessee**

Death penalty trials cost an average of 48% more than the average cost of trials in which prosecutors seek life imprisonment.

#### **Indiana**

Total cost of Indiana's death penalty is 38% greater than the total cost of life without parole sentences.

#### **New Voices**

"Investment in education is about the future, and it is about hope. Investment in prisons and especially in the death penalty is about a final reckoning, an admission of gross failure." Editorial, The Daily Astorian (OR), April 23, 2009.

"There is simply no place for such an enormously expensive government program that accomplishes nothing. And on that criterion alone, the death penalty ought to die." Jim Oppedahl, former court administrator in Montana, Helena Independent Record, Feb. 2, 2009.

**Delaware's death row now holds 17 men. By race, it has 8 black, 6 white, and 3 Latino men.**

## Death Penalty .. Unworkable

(continued from page 2)

The death penalty cannot balance the need for consistency in sentencing with the need for individualized determinations. Its administration is unequal across racial groups. There is a grave lack of resources for defense lawyers. The law is distorted by the politics of judicial elections, and it consumes a disproportionate share of public resources.

California's death penalty exemplifies these problems. Portions of California's law were copied from the institute's model statute. The system now is on the verge of collapse. There are about 700 people on death row in California, and it can take 25 years for mandatory appeals to be completed. Since 1978, California has executed 13 prisoners, while 72 have died of old age or other causes.

Resources are woefully inadequate. More than half of the people on death row don't have access to a constitutionally-required lawyer. A statewide commission found that there remains a serious risk that the state will execute an innocent person. And then there is the cost. Housing a prisoner on death row costs taxpayers \$90,000 a year more than if that prisoner were held in another type of high-security prison. The total additional cost for housing all of California's death row inmates is more than \$60 million a year.

These problems are entrenched in the death penalty system, both in California and nationwide. The cumulative result: Executions remain as random as lightning strikes,

or more so, and that is the very problem the institute's model statute intended to fix. In addition, across the country, at least 139 individuals have been released from death row after establishing their innocence.

The institute's action comes at a time of widespread re-evaluation of capital punishment. Fifteen states have abandoned capital punishment, including three in the last three years. In 2009, the country saw the lowest number of death sentences since the death penalty was reinstated in 1976.

We now have decades of experience, which the institute lacked when it proposed its model statute almost 50 years ago. Life without the possibility of parole, now an important alternative in nearly every state, was then virtually untried. To the extent that society needs to punish murderers severely, it can do so far more effectively using tough yet fair prison sentences rather than through an ineffective and extravagant death penalty.

The American Law Institute could have chosen to do nothing. But having laid the intellectual and legal groundwork for the modern death penalty, it concluded that it had a responsibility to act now that the system's fatal flaws have fully emerged.

The withdrawal of the model death penalty statute recognizes that it is impossible to administer the death penalty consistently and fairly, and it therefore should not remain a punishment option in this country. The institute could no longer play a role in legitimizing a failed system. How much longer can any of us?

### How You Can Help

Delaware has not had an execution since November 1995 when Brian Steckel was executed. Two of Delaware's death row inmates are likely to be executed this year. Robert Gattis is reaching the end of his appeals process. Shannon Johnson has declined further appeals. Before Delaware begins state-sanctioned killings again, please contact the Representative and Senator representing your home district and tell them Delaware can't afford to have the death penalty.

#### Talking points:

- 1) The death penalty is much more expensive than Life in Prison without the possibility of Parole. The death penalty is too expensive for Delaware. A cost study would identify just how much money we spend.
- 2) The American Law Institute, whose members drafted a model death penalty statute 50 years ago, has withdrawn its support for current death penalty laws as unworkable.
- 3) The Cornell study of Delaware's fairness in administering the death penalty is expected to be completed later this year. Preliminary results make a case for racial and geographic bias in Delaware's death penalty.
- 4) 139 people have been exonerated from death row with evidence of their innocence. We don't want innocent people to die.

If you don't know your state Representative or Senator, you can find out by calling the Commissioner of Elections at 302-577-3464 (New Castle County), 302-739-4498 (Kent), 302-856-5367 (Sussex) or on the web at <http://www.congress.org/congressorg/dbq/officials/?lvl=L>.

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For more information call (302) 656-2721 or (302) 984-3355.