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March 18, 2011

Chairmen Coleman and Fox  
Joint Committee on Judiciary  
Room 2500, Legislative Office Building  
Hartford, CT 06106

*Re: Senate Bill 1035; House Bill 6424*

Dear Chairmen Coleman and Fox and Committee Members:

Thank you again for the opportunity to speak before the Joint Committee on Judiciary on March 7, 2011. I ask that this letter and supplemental materials – intended to respond to the particular issues raised during the hearing – be included in the record, along with my previously submitted written testimony.

First, I am including three articles on the subject of the inefficacy of the death penalty as a deterrent. As I alluded to in my oral remarks, the claims that capital punishment has a deterrent effect are not borne out by the research, and where studies that ostensibly support that claim do exist, they are plagued with various methodological errors. In the very least, it is the overwhelming conclusion of statisticians, economists and other groups of social scientists and law professors that “the evidence on deterrence is uncertain, unreliable, and [too] risky for making law or policy.”<sup>1</sup>

I am also including two reports on the Brandon Mayfield case – one from the FBI and the other from the Office of the Inspector General, which I referenced during my oral testimony. This case revealed some of the problems with fingerprints, a traditionally well-regarded forensic discipline, and more widely, with the state of forensic science in general.

As demonstrated by the Mayfield case and by the National Academies of Science (NAS) report, proper scientific validation for pattern evidence – whether it be a partial fingerprint at a crime scene or analysis of striations on a bullet to be linked to a weapon – has not yet been done. Serious errors are possible. The basic and applied research called for by the NAS to establish a proper statistical

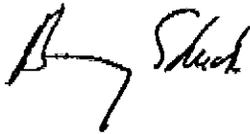
<sup>1</sup> Jeffrey Fagan, *Capital Punishment Costly And Doesn't Deter Murder*, Connecticut Law Tribune, Mar. 7, 2011, <http://www.ctlawtribune.com/getarticle.aspx?ID=39803> (last visited Mar. 10, 2011).

basis for these disciplines, with real measurement error, databases and error rates, has just begun.<sup>2</sup> In five to ten years we will know, with a scientifically validated statistic, just like a DNA test, the real probative value of an association to a partial fingerprint or a bullet found at a crime scene. The probative value of that evidence is not going to be a "unique" association or a result with a zero error rate, which are claims that fingerprint and ballistic examiners can no longer make. The problem, of course, is that death *is* different. An innocent executed today will not benefit from the research to be performed in these next five to ten years. This is an extremely serious problem, identified by the leading scientific organization in our country. It has very grave implications in capital cases and we who care about the risk of executing innocents must not ignore it.

In short, before deciding whether to continue to expend energy and resources on the administration of capital punishment – which cannot eliminate the risk of executing an innocent no matter how much you tinker, narrow, or modify it – Connecticut would do well to take stock of serious problems faced by the system and implement the simple and readily available reforms demonstrated to address them, including those highlighted in my submitted testimony.

If there are any questions that I did not address in this letter or my testimony, please feel free to call upon me at any stage in your work.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry C. Scheck". The signature is written in a cursive style with a large, sweeping initial "B".

Barry C. Scheck  
Co-Director

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<sup>2</sup> The enclosed article, *Evaluation of Rarity of Fingerprints in Forensics*, represents this burgeoning area of research. Benjamin N. Cardozo School of Law, Yeshiva University