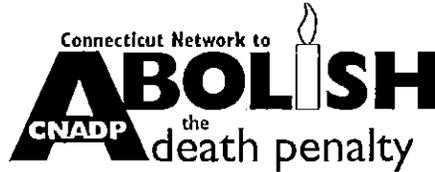


56 Arbor St.
Suite 213
Hartford, CT 06106
www.cnadp.org



Ben Jones
Executive Director
ben.jones@cnadp.org
614-390-8417

Judiciary Committee Public Hearing
Wednesday, March 14, 2012

Testimony on Behalf of the Connecticut Network to Abolish the Death Penalty

In SUPPORT of SB-280

Dear Chairman Coleman, Chairman Fox, and members of the Judiciary Committee:

My name is Ben Jones and I am the executive director of the Connecticut Network to Abolish the Death Penalty or CNADP. The CNADP is a statewide, grassroots organization committed to ending Connecticut's death penalty through public education and citizen advocacy. On behalf of the CNADP and its members across the state, I am submitting testimony in support of SB-280.

Because of the death penalty's history of flaws, the CNADP opposes the death penalty in all cases. The CNADP prefers complete repeal of the death penalty, but we still support SB-280. Though this bill only repeals the death penalty prospectively, it still makes important progress toward ending capital punishment in our state.

The CNADP has a diverse membership, which includes murder victims' family members, law enforcement officials, religious leaders, students, and educators. What unifies them is the shared belief that Connecticut's death penalty is a public policy broken beyond repair. Capital punishment has existed in Connecticut and the United States for centuries, and time and again it has proven ineffective and prone to error. For decades, courts and legislatures have tried to fix the death penalty but without success. In 1995, Connecticut legislators claimed that passage of a death penalty reform bill would render the state's death penalty "workable." Now, over 15 years later, the public is as frustrated as ever with the state's death penalty. Capital cases drag on for decades in the media and the courts, often inflicting additional pain on victims' families as they wait for the end to the legal process that never seems to come.

Legislators' and judges' inability to fix the death penalty stems from an irresolvable tension in capital punishment. On the one hand, victims' families want a system that brings finality to the legal process in a timely manner. On the other hand, because the death penalty is an irrevocable penalty, safeguards and appeals must be in place to protect the rights of the wrongfully convicted and provide them opportunities to prove their innocence. Shorten the legal process, the risk of executing the innocent goes up. Strengthen legal safeguards, victims' families face a prolonged legal process. Connecticut's commitment to the death penalty in the face of this catch-22 has resulted in a frustrating system that is neither foolproof nor swift in delivering justice.

This tension in capital punishment leads not only to a broken public policy but one immune to solutions. In short, the only way to fix the death penalty is to repeal it. As long as this failed policy remains in place, it negatively impacts society in a number of avoidable ways. Specifically, the death penalty (1) puts innocent lives at risk, (2) suffers from bias and

discrimination, (3) fails to deter crime, (4) wastes millions of dollars, (5) can inflict additional harm on victims' families, and (6) can cause secondary trauma to corrections officials. Let me address each of these issues.

(1) Innocence

Evidence uncovered in recent years has made clear that mistakes in capital cases occur at a troubling rate. Eyewitness error, junk science, snitch testimony, false confessions, and government misconduct are all factors that lead to wrongful convictions. Since 1973, 140 individuals sentenced to death row later have been exonerated due to evidence of innocence. In these cases, individuals have spent an average of 9.8 years imprisoned before their release.¹ In other cases, individuals sentenced to death were not so fortunate, as their executions went forward despite evidence of innocence. A September 2009 *New Yorker* article presented compelling evidence that Texas executed an innocent man in 2004. The man put to death, Cameron Todd Willingham, allegedly killed his three children in an arson fire. Leading arson experts now say, however, that all evidence suggests that the fire was accidental.²

The problem of wrongful convictions is not foreign to Connecticut. In recent years, DNA has helped to demonstrate the innocence of individuals convicted of rape, murder, or both – James Tillman, Miguel Roman, and Kenneth Ireland. Collectively, they spent over 55 years in prison for murders they did not commit. The case of Kenneth Ireland in particular should make us pause. Ireland, convicted of rape and murder, *would have been eligible for the death penalty* had he been two years older. What saved Ireland was being 16-years old at the time of the crime, which made him ineligible for the death penalty. In this instance, luck kept Connecticut from sending an innocent person to death row. If Connecticut holds on to the death penalty, there is no guarantee that it will be so lucky 10 or 20 years down the road.

(2) Fairness

Throughout the death penalty's history in the US, racial discrimination and other forms of bias have plagued its application. Before a nationwide moratorium of the death penalty in 1972, the majority of individuals executed were minorities. Racial bias in the system was impossible to deny. For example, of the 455 men executed for rape between 1930 and 1967, 90% were African-American.³ The biased and arbitrary application of capital punishment led the Supreme Court to declare it unconstitutional in *Furman v. Georgia*. In response, states rewrote their death penalty statutes with the aim of providing more guidance and consistency to sentencing in capital cases. Despite these attempts to eliminate bias from the death penalty, it continues. After the *Gregg v. Georgia* decision brought the death penalty back in 1976, we find that the race of the victim significantly impacts who receives the death penalty. Nationally, 50% of murder victims

¹ Death Penalty Information Center (hereafter DPIC), <<http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row>>.

² David Grann, "Trial by Fire: Did Texas execute an innocent man?" *The New Yorker*, September 7, 2009, <http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann>.

³ David Oshinsky, *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America* (Lawrence: University of Kansas Press, 2010).

are white. In death penalty cases, however, the murder victim is white 76% of the time.⁴ Clearly, prosecutors are more likely to seek the death penalty when the victim is white.

To claim that Connecticut's death penalty is free from bias ignores compelling evidence to the contrary. Seven of the 11 individuals on death row are minorities. A study by former Yale Law Professor John Donohue found that, as in other states, the race of the victim significantly impacts sentencing patterns in capital cases in Connecticut. Beyond race, geography plays a critical role in who receives the death penalty.⁵

(3) *Deterrence*

The issue of deterrence has long been part of debates on the death penalty. Most econometric studies fail to find that the death penalty has a deterrent effect. Every so often a study finds a deterrent effect and it receives a great deal of attention, until the study's results fail to hold up to peer review. Professors John Donohue and Justin Wolfers sum up the body of research on deterrence: "The view that the death penalty deters is still the product of belief, not evidence.... The data are simply too noisy, and the conclusions from any study too fragile. On balance, the evidence suggests that the death penalty may increase the murder rate.... In light of this evidence, is it wise to spend millions on a process with no demonstrated value that creates at least some risk of executing innocents when other proven crime-fighting measures exist?"⁶ A simple comparison between states supports Donohue's and Wolfers's point: the murder rate in states with the death penalty (5.0 per 100,000 people) is actually higher than the rate in states without the death penalty (4.0 per 100,000 people).⁷

Criminologists, police chiefs, and the general public all agree – the death penalty fails as a deterrent. A 2009 study found that 88% of the nation's top criminologists believe the death penalty is not a deterrent.⁸ This is not surprising: to the extent that someone with a deadly weapon in a rage is going to be deterred from anything, the real prospect of spending a lifetime in prison is at least as persuasive as the small chance of being executed. Hart Research Polls from 1995 and 2009 found that police chiefs ranked the death penalty *last* among effective ways to reduce violent crime. A full 99% said that other measures such as reducing drug abuse or improving the economy were more important than expanding the death penalty in reducing violent crime.⁹ A 2011 Gallup poll showed that 64% of Americans believe the death penalty has no deterrent effect. This number has risen steadily since the 1980s.¹⁰

⁴ DPIC, <<http://www.deathpenaltyinfo.org/arbitrariness>>.

⁵ John Donohue, *Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation From 4686 Murders to One Execution*, 2011, <http://works.bepress.com/john_donohue/87/>.

⁶ John Donohue and Justin Wolfers, "The Death Penalty: No Evidence for Deterrence," *The Economists' Voice*, April 2006, <[http://bpp.wharton.upenn.edu/jwolfers/Press/DeathPenalty\(BEPress\).pdf](http://bpp.wharton.upenn.edu/jwolfers/Press/DeathPenalty(BEPress).pdf)>.

⁷ DPIC, "Murder Rates Nationally and by State," <<http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state>>.

⁸ Michael Radelet and Traci Lacock, "Do Executions Lower Murder Rates?: The Views of Leading Criminologists," *The Journal of Criminal Law and Criminology* 99 (2009): 489-508.

⁹ DPIC, "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis," October 20, 2009, <<http://www.deathpenaltyinfo.org/documents/CostsRptFinal.pdf>>.

¹⁰ Gallup Polling, <<http://www.gallup.com/poll/1606/death-penalty.aspx>>.

(4) Cost

Because of the additional resources and preparation required in death penalty cases, the separate sentencing phase, post-conviction appeals, and the added costs of death row facilities, studies over the past 25 years consistently have found the death penalty to be more costly to implement than life in prison without release. An Urban Institute study estimated that it costs Maryland taxpayers \$1.9 million more on average in cases where prosecutors seek the death penalty.¹¹ The death penalty costs California taxpayers over \$125 million a year.¹² The state of New Jersey spent over \$250 million on a death penalty despite never carrying out an execution.¹³ The Office of Fiscal Analysis estimates that *Connecticut's death penalty costs the state \$4 million annually*.¹⁴ In a time of budget shortfall with so many pressing needs, it is difficult to justify spending millions of dollars on a death penalty that fails to keep us any safer.

(5) Victims' Families

Like the general public, victims' families have different opinions on the death penalty and no one can speak for all of them. It is important, then, to look at the death penalty system and evaluate its overall effects. Given the prolonged trials, lengthy appeals, and reversals common in capital cases, many victims' families, victims' advocates, and trauma experts are concluding that the death penalty harms surviving family members.

The legal process in all murder cases, with its focus on the offender, is especially trying on surviving family members. But the media attention and endless legal process in capital cases exacerbates the trauma families suffer. Dr. Gail Canzano, a clinical psychologist whose brother-in-law was murdered, speaks to this problem: "I have many years of experience treating individuals suffering from the effects of trauma. *From a professional standpoint, there is simply no doubt that the death penalty is injurious to the family members of murder victims.* It forces people to continually re-live the murder of their loved one for years. In keeping the traumatic event 'front and center' the judicial system re-traumatizes and re-victimizes the very people it seeks to assist."¹⁵

Due to the death penalty's harmful effects on victims' families, many have spoken out in favor of its repeal. *A group of 179 Connecticut murder victims' families joined a letter urging the General Assembly to end the death penalty*, which they presented at a press conference on February 29, 2012. In the letter they made clear that the death penalty fails them: "In Connecticut, the death penalty is a false promise that goes unfulfilled, leaving victims' families frustrated and angry after years of fighting the legal system."

¹¹ John Roman et al., *The Cost of the Death Penalty in Maryland*, Urban Institute, 2008, <<http://www.urban.org/url.cfm?ID=411625>>.

¹² The California Commission on the Fair Administration of Justice, *Fair Administration of the Death Penalty*, June 30, 2008, <<http://www.ccfaj.org/tr-dp-official.html>>.

¹³ Mary E. Forsberg, *Money for Nothing? The Financial Cost of New Jersey's Death Penalty*, 2005, <<http://www.njadp.org/forms/cost/MoneyforNothingNovember18.html>>.

¹⁴ Connecticut General Assembly's Office of Fiscal Analysis (CGA's OFA), "Fiscal Note for HB-6578," <<http://www.cga.ct.gov/2009/FN/2009HB-06578-R000726-FN.htm>>.

¹⁵ Gail Canzano, *Voices: Connecticut Murder Victims' Families Speak Out Against the Death Penalty*, Murder Victims' Families for Reconciliation, February 2011, p. 6.

(6) Secondary Trauma

Abstract debates about capital punishment can sometimes lose sight of the sobering reality of an execution. If the state chooses to have the death penalty, it also must train individuals to plan and carry out the execution of another human being. It is a task that can inflict stress and lasting trauma on corrections officials. Despite attempts to make executions more humane, the reality is that they remain incredibly stressful events that can go horribly awry. Corrections officials who used to be silent about executions' effects are now sharing the pain that has stayed with them. Jim Willet, who oversaw 89 executions in Texas, described what he endured: "Sometimes I wonder whether people really understand what goes on down here and the effect it has on us. *Killing people, even people you know are heinous criminals, is a gruesome business, and it takes a harsh toll...* I have no doubt it's disturbing for all of us. You don't ever get used to it."¹⁶

The harms inflicted by the death penalty are real – and also avoidable. The power to execute, we have discovered, is a power beyond the proper scope of government, given the inevitability of error and abuse in any human system. An irrevocable punishment such as the death penalty demands perfection, which is simply too much to ask.

In closing, I wish to draw your attention to comments made by former Supreme Court Justice John Paul Stevens. Upon retiring, Stevens said that one vote he particularly regretted was his 1976 vote in favor of keeping the death penalty in *Gregg v. Georgia*.¹⁷ He was not alone. Two other justices in the majority, Harry Blackmun and Lewis Powell, also regretted their votes to reinstate the death penalty. Had the justices voted according to the positions at which they ultimately arrived, they would have reaffirmed abolition of the death penalty. And, in all likelihood, we would not be having this debate today in Connecticut about the death penalty.

But we are here today having this debate. This committee and the broader General Assembly have before them the unique opportunity to end the state's penalty. I urge you to seize this opportunity. The evidence is clear that the death penalty does not work. If we opt for reform, as in 1995, in 15 years we again will be frustrated and regret the reforms implemented. True reform of the death penalty means one thing – ending it. Other states are recognizing this point. In the past decade, New York, New Jersey, New Mexico, and Illinois have repealed the death penalty. It is Connecticut's turn to join their ranks. The death penalty has failed the state for too long, caused too much pain, to let it continue. *Now is the time to repeal Connecticut's death penalty.*

Respectfully submitted,



Ben Jones
CNADP Executive Director

¹⁶ Jim Willet, "Eighty-Nine Executions," *Washington Post*, May 13, 2001, <http://www.washingtonpost.com/wp-srv/articles/o_warden_512.htm>.

¹⁷ Nina Totenberg, "Justice Stevens: An Open Mind on a Changed Court," NPR, October 4, 2010, <<http://www.npr.org/templates/story/story.php?storyId=130198344>>.

