



30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

**Testimony of Sherwood Anderson, Member and Past Chair
Human Rights and Responsibilities Section
Connecticut Bar Association**

In SUPPORT of

**SB 280 AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES
Judiciary Committee
March 14, 2012**

The Connecticut Bar Association has authorized its Human Rights and Responsibilities (HRR) Section to take the following position in connection with all bills before the General Assembly concerning the death penalty. It should be noted that the Connecticut Bar Association as a whole has not taken a position on these bills.

The position is the following: "To support abolition of the death penalty in Connecticut for those presently awaiting execution and those who are presently charged or in the future may be charged with capital felonies; and to support a maximum penalty for capital felonies in all cases to be life imprisonment or confinement without the possibility of release."

The Section strongly supports S. B. No. 280, as it eliminates the death penalty and replaces a punishment of "life imprisonment without the possibility of release for certain murders committed on or after the effective date of this act." It is assumed that this bill would apply to all murders presently classified as capital crimes and allowing the death penalty as the ultimate punishment.

HRR supports this bill to abolish the death penalty because execution is irreversible and it is always possible that an innocent defendant will be put to death by this state. Since 1973, about 139 people in the United States have been released from death row with evidence of their innocence. In Connecticut, in 2009 and 2010 alone, DNA evidence helped four prisoners previously convicted of murder to be released; these prisoners spent a total of over 70 years in prison for murders they did not commit.

The HRR Section and other opponents of the death penalty have long argued that the application of the death penalty in this state is arbitrary, random, and discriminatory. Proponents of the death penalty argue that only the most shocking and heinous crimes result in the death penalty. This argument has now been completely refuted.

Professor John Donohue of Stanford Law School recently conducted a detailed study of all 4,686 murders in Connecticut from 1973 to 2007. Of these, 205 were eligible for the death penalty but only two-thirds of these were actually prosecuted as capital crimes. Only 66 were convicted of capital murder and of these 29 were presented for the death

penalty. Nine of the 29 received death sentences and only one person has been executed. Professor Donohue then rated all 205 death-eligible cases for "egregiousness," that is, for factors such as number of victims, victim suffering, victim characteristics (like age, vulnerability), and defendant's culpability (motive, premeditation, intoxication). After an exhaustive study, the level of egregiousness was found to bear little or no relationship to the cases selected for prosecution as death-eligible, and also was found to bear no relationship to the cases where the death penalty was imposed (versus those given life imprisonment or a lesser sentence). In fact, in the 32 most "egregious" cases found in the study, only one received the death sentence. Professor Donohue concluded that our justice system operates with "arbitrariness and discrimination."

Recent studies show that the death penalty is not a deterrent to homicide. While the South has by far the highest number of executions, it also has the highest rates of murder in the United States. The Northeast has by far the lowest rate of executions but also has the lowest murder rate of any area in the country.

At a recent press conference in the State Capitol on February 29, a large number of family members of murder victims testified that the use of the death penalty caused untold additional anguish to them by greatly increasing the length of judicial proceedings and requiring numerous appearances. Many defendants would plead guilty if they were assured of a life sentence, even one without possibility of release. Also, some family members testified that the stated policy of only seeking the death penalty in the most heinous cases resulted in some families being told that their relative's murder was not heinous enough; this comparison of evil of the defendant and relative worth of the victim caused additional anguish. They also made clear that "closure" after a murder never occurs, regardless of the outcome of the criminal trial.

Connecticut and New Hampshire are now the only states in New England that allow the death penalty. Maine, Vermont, Massachusetts, and Rhode Island have abolished the death penalty. In recent years, New York, New Jersey, Illinois, and New Mexico have also abolished the death penalty.

The costs of capital felony murder cases are significantly higher than the costs of non-capital felony murder cases. According to the General Assembly Office of Fiscal Analysis in 2009, the cost of the death penalty in Connecticut is \$4,000,000 annually. The annual cost per inmate on death row is about \$100,000 compared to \$44,000 for those not on death row. Estimates for the eventual cost of the Steven Hayes case with many years of appeals range up to \$8,000,000.

The death penalty disproportionately affects the poor and minorities. Those wealthy enough to afford private defense attorneys rarely are sentenced to death. In Connecticut, Professor Donohue found that seven of the eleven on death row are minorities. He also found that minority defendants with white victims are far more likely to receive the death penalty than minority or white defendants with minority victims. In 96% of the states where race and the death penalty have been studied, there was a pattern of race-of-victim or race-of-defendant discrimination, or both.

For all of the above reasons, the HRR Section respectfully requests that the Judiciary Committee act favorably on S. B. No. 280 prospectively to eliminate the death penalty with a replacement of life imprisonment or confinement without the possibility of release for capital crimes.