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To: Nevada Assembly Judiciary Committee
From: JoNell Thomas
Date: February 10, 2002
Re: AB 17

I write in support of AB 17. I also urge you to amend this bill by changing the hourly rate for appointed counsel in capital cases from \$75 to \$125 per hour.

My understanding is that the \$75 rate was established in 1987. In today's dollars, that \$75 is now worth \$47.36. To keep pace with inflation, defense counsel should be compensated at least \$118.

If defendants in capital cases are to receive competent counsel and fair trials, their counsel must be fairly compensated and they must be given access to investigators and experts who can assist with their defense. The stakes of the death penalty mandate that experienced, educated and dedicated attorneys be appointed to these cases. Despite the fact that capital cases are the most demanding and warrant the most attention in our court system, defense counsel are paid at such a low rate that many cannot continue their representation of capital clients and the most talented attorneys in the community are not encouraged to take these cases.

At first glance, \$75 per hour may seem to be fair compensation. It's not. This fee must pay for not only the attorney's salary, but also the salary of a secretary and other staff, office rent, office supplies, computer equipment, business licenses, employee benefits, taxes, and a number of other expenses that are not incurred by public defender or district attorney offices. In addition, defense counsel often incur expenses for which they are not reimbursed - such as travel time to and from Ely and clothing for clients to wear at trial.

In comparison, many assistant public defenders and assistant district attorneys earn well over \$100,000 a year. Top attorneys in civil cases often charge over \$300 per hour. Counties and other government agencies contract with civil attorneys at a rate far in excess of \$75 per hour for cases where the consequences are far less severe than a sentence of death. For example, as set forth in the attached article, the Clark County School District has incurred a legal bill in excess of \$1 million in a case involving an alleged retaliation against an employee.

As a matter of fairness and a matter of public policy, defense counsel in capital cases must be fairly compensated. I urge you to change the hourly rate for counsel in capital cases to \$125 per hour.

Finally, support for the proposed amendment is found in a recent proposal by the American Bar Association. The policy-making board will consider a recommendation this week to bolster defense teams in capital cases by always providing for two attorneys, an investigator, a background specialist, and in some cases an expert to help with jury selection. An article addressing the ABA's recommendations is attached for your consideration.

I appreciate your consideration of this bill and my proposed amendment. If I can be of any assistance, please contact me at 702-471-6565, jonell@lvcn.com or 616 South 8th Street, Las Vegas, NV 89101.

ASSEMBLY JUDICIARY
DATE: 2/10/03 ROOM: 3127 EXHIBIT F193
SUBMITTED BY: JONELL THOMAS

AUTHOR: Gina Holland

SOURCE: Associated Press

LOCATION: Associated Press Web Site: <http://www.ap.org>

[ORIGINAL]:

DATE: February 9, 2003

INFO:

Seattle, WA - Six years after urging a halt to executions, the American Bar Association is ready to issue states another challenge: fix shoddy defense systems for accused killers.

The nation's largest lawyers' group is overhauling 14-year-old standards for capital defense lawyers in the face of criticism from Supreme Court justices and others about the quality of legal representation.

The ABA's policy-making board will vote early this week on a plan encouraging states, and in some places counties, that pay for the defenses of poor defendants to update their standards. Some governments follow the 1989 guidelines. Many others have no standards.

"In a lot of states all you need is a bar card," said Lawrence Marshall, a Northwestern University law professor who spoke Saturday at the ABA's winter meeting in Seattle about "horror stories" of inept lawyers, including some who slept through parts of capital trials.

Among the recommendations are bolstering defense teams to include two lawyers, an investigator, a background specialist, and in some cases an expert to help with jury selection.

Supporters contend that changes will help defense teams compete against often better-paid and equipped prosecutors.

Critics say cash-strapped states cannot afford to do more.

Kent Scheidegger of the pro-death penalty Criminal Justice Legal Foundation said the ABA is pushing extravagant and unnecessary expenses.

"They want to say that if you don't provide the gold standard in defense, then you can't have the death penalty. And that is the real agenda," he said.

The ABA has been criticized by some as being too liberal for taking stands such as its February 1997 recommendation that states put a moratorium on executions because of concerns the punishment was not fair.

In 2000, Illinois Gov. George Ryan halted executions in the state and last month, before leaving office, commuted 167 death sentences. Ryan cited concerns about trials, sentencing, the appeals process and what he called the state's "spectacular failure" to reform the system.

New Gov. Rod Blagojevich has said he will continue the freeze, but he has no plans to commute

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more sentences.

In Maryland, Gov. Parris Glendening last year stopped executions to give lawmakers the chance to analyze the results of a two-year University of Maryland study on the use of the state's death penalty.

That recent study found that race and jurisdiction play significant roles in whether a criminal is sentenced to death in Maryland. Glendening's successor, Robert Ehrlich, has said he will not continue the freeze on the death penalty. The state's attorney general, J. Joseph Curran Jr., last month said Maryland should abolish capital punishment, noting systemic flaws and the possibility innocent people could be put to death.

Supreme Court Justices Sandra Day O'Connor and Ruth Bader Ginsburg publicly questioned the quality of death penalty lawyers in 2001, and the court will hear arguments in March in a bad lawyering case.

The justices will consider whether the appointed lawyers of a Maryland man did enough to collect sympathetic evidence for jurors considering his fate. The case turns on the man's rights under the Constitution's Sixth Amendment, which guarantees defendants a lawyer.

The ABA has filed a brief in that case, supporting the death row inmate. In the meantime, the 400,000-member association is hoping states will be willing to voluntarily make changes, some potentially costly and others not. The group has not estimated the cost.

When the ABA wrote the last guidelines in 1989, about 2,000 people were on death row. Now there are nearly 3,700.

"It's clearly a bigger crisis," said New York lawyer Ron Tabak, an architect of the proposed changes. "Everybody, from the Supreme Court on down, has said everything should be done to get things right."

The previous guidelines recommended two defense lawyers, but not "defense teams." They also did not address specific standards for good lawyers.

The ABA wants better investigations and records of complaints about inadequate lawyers and definitions for the needed skills for death penalty counsel. Lawyers would be instructed to thoroughly look into defendants' backgrounds and screen them for mental illness.

The guidelines should apply to federal trials, including tribunals, the ABA contends.

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