

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).



## The Death Penalty In The United States

**WHEREAS** recent empirical research reviewing all death penalty cases in the United States concluded that two thirds of the death penalty cases from 1973 to 1995 were overturned on appeal with the most common reasons cited as incompetent counsel, inadequate investigative services, or the police and prosecutors withholding exculpatory evidence. (Liebman, Fagan, & West, 2000); and

**WHEREAS** the recent application of DNA technology has resulted in, as of June 2000, 62 post-conviction determinations of actual innocence, with eight of these having been for persons sentenced to death at trial (Scheck, Neufeld, Weyer, 2000; Wells, Malpass, Lindsay, Fisher, Turtle, & Fulero, 2000); and

**WHEREAS** research on the process of qualifying jurors for service on death penalty cases shows that jurors who survive the qualification process ("death-qualified jurors") are more conviction-prone than jurors who have reservations about the death penalty and are therefore disqualified from service. (Bersoff, 1987; Cowan, Thompson and Ellsworth, 1984; Ellsworth, 1988; Bersoff & Ogden, 1987; Haney, 1984); and

**WHEREAS** recent social science research reveals strong inconsistencies in prosecutors' decisions to seek the death penalty in particular cases, based on factors other than the severity of the crime. The "prosecutor is more likely to ask for a death sentence when the victim is European-American, of high social status, a stranger to the offender, and when counsel is appointed" (Beck & Shumsky, 1997, p. 534); and

**WHEREAS** race and ethnicity have been shown to affect the likelihood of being charged with a capital crime by prosecutors (e.g., Beck & Shumsky, 1997; Bowers, 1983; Paternoster, 1991; Paternoster & Kazyaka, 1988; Sorensen & Wallace, 1995) and therefore of being sentenced to die by the jury. Those who kill European-American victims are more likely to receive the death penalty, even after differences such as the heinousness of the crime, prior convictions, and the relationship between the victim and the perpetrator are considered. This is especially true for African-Americans (e.g., Keil & Vito, 1995; Thomson, 1997) and Hispanic-Americans who kill European-Americans (Thomson, 1997); and

**WHEREAS** psychological research consistently demonstrates that juries often misunderstand the concept of mitigation and its intended application (e.g., Haney & Lynch, 1994, 1997; Wiener, Pritchard, & Weston, 1995; Wiener, Hurt, Thomas, Sadler, Bauer & Sargent, 1998), so that mitigation factors, e.g., the defendant's previous life circumstances, mental and emotional difficulties and age, have little or no relation to penalty phase verdicts (Beck & Shumsky, 1997; Costanzo & Costanzo, 1994); and

**WHEREAS** death penalty prosecutions may involve persons with serious mental illness or mental retardation. Procedural problems, such as assessing competency, take on particular importance in cases where the death penalty is applied to such

<http://www.apa.org/pi/deathpenalty.html>

105

ASSEMBLY JUDICIARY

DATE: 3/27/03 ROOM: 3176 EXHIBIT 6

SUBMITTED BY: MICHELLE CARP

populations (Skeem, Golding, Berge & Cohn, 1998; Rosenfeld & Wall, 1988; Hoge, Poythress, Bonnie, Monahan, Eisenberg & Feucht-Haviar, 1997; Cooper & Grisso, 1997); and

**WHEREAS** death penalty prosecutions may involve persons under 18 (sometimes as young as 14). Procedural problems, such as assessing competency, take on particular importance in cases where the death penalty is applied to juveniles (Grisso & Schwartz, 2000; Lewis et al., 1988); and

**WHEREAS** capital punishment appears statistically neither to exert a deterrent effect (e.g., Bailey, 1983; 1990; Bailey & Peterson, 1994; Cheatwood, 1993; Costanzo, 1997; Decker & Kohfeld, 1984; Radelet & Akers, 1996; Stack, 1993) nor save a significant number of lives through the prevention of repeat offenses (Vito, Koester, & Wilson, 1991; Vito, Wilson, & Latessa, 1991); Further, research shows that the murder rate increases just after state-sanctioned executions (Bowers, 1988; Costanzo, 1998; Phillips, 1983; Phillips & Hensley, 1984);

**THEREFORE**, BE IT RESOLVED, that the American Psychological Association:

Calls upon each jurisdiction in the United States that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that can be shown through psychological and other social science research to ameliorate the deficiencies identified above.

#### References

- Bailey, W. C. (1990). Murder, capital punishment, and television execution publicity and homicide rates. *American Sociological Review*, 55, 628-633.
- Bailey, W. C. (1983). Disaggregation in deterrence and death penalty research: The case of murder in Chicago. *The Journal of Criminal Law and Criminology*, 74(3), 827-859.
- Bailey, W. C., & Peterson, R.D. (1994). Murder, capital punishment and deterrence: A review of the evidence and an examination of police killings. *Journal of Social Issues*, 50, 53-74.
- Beck, J. C. & Shumsky, R. (1997). A comparison of retained and appointed counsel in cases of capital murder. *Law and Human Behavior*, 21(5), 525-538.
- Bersoff, D.N. (1987). Social science data and the Supreme Court: Lockhart as a case in point. *American Psychologist*, 42(1), 52-58.
- Bersoff, D.N. & Ogden, D.W. (1987). In the Supreme Court of the United States Lockhart v. McCree: amicus curiae brief for the American Psychological Association. *American Psychologist*, 42 (1), 59-68.
- Bowers, W. J. (1983). The pervasiveness of arbitrariness and discrimination under post-Furman capital statutes. *Journal of Criminal Law and Criminology*, 74(2), 1067-1100.

Bowers, W.J. (1988). The effect of execution is brutalization, not deterrence. In K.C. Haas and J.A. Inciardi (Eds.). *Challenging capital punishment: Legal and social science approaches* (49-90). Newbury Park, CA: Sage.

Cheatwood, D. (1993). Capital punishment and the deterrence of violent crime in comparable counties. *Criminal Justice Review*, 18(2), 165-181. Cooper, D. & Grisso, T. (1997). Five-year research update (1991-1995): Evaluations for competence to stand trial. *Behavioral Sciences & the Law*, 15(3), 347-364.

Costanzo, M. (1997). *Just revenge: Costs and consequences of the death penalty*. New York: St. Martins Press.

Costanzo, S., & Costanzo, M. (1994). Life or death decisions: An analysis of capital jury decision-making under the special issues framework. *Law and Human Behavior*, 18, 151-170.

Cowan, C.L. & Thompson, W. & Ellsworth, P. C. (1984). The effects of death qualification on jurors' predisposition to convict and on the quality of deliberation. *Law and Human Behavior*, 8, 53-80.

Decker, S. H. & Kohfeld, C. W. (1984). A deterrence study of the death penalty in Illinois, 1933-1980. *Journal of Criminal Justice*, 12, 367-377.

Ellsworth, P.C. (1988). Unpleasant facts: The Supreme Court's response to empirical research on capital punishment. In K.C. Haas and J.A. Inciardi (Eds.). *Challenging capital punishment: Legal and social science approaches* (177-211). Newbury Park, CA: Sage.

Grisso, T. & Schwartz, R. G. (Eds.). (2000). *Youth on Trial: A Developmental Perspective on Juvenile Justice*. Chicago: University of Chicago Press.

Haney, C. (Ed.). (1984). Death qualification [Special issue]. *Law and Human Behavior*, 8 (1&2).

Haney, C. & Lynch, M. (1997). Clarifying life and death matters: An analysis of instructional comprehension and penalty phase closing arguments, *Law and Human Behavior*, 21(6), 575-595.

Haney, C. & Lynch, M. (1994). Comprehending life and death matters: A preliminary study of California's capital penalty instructions, *Law and Human Behavior*, 18, 411-436.

Hoge, S. K., Poythress, N., Bonnie, R. J., Monahan, J., Eisenberg, M. & Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: Diagnosis, psychopathology, and competence-related abilities. *Behavioral Sciences & the Law*, 15(3), 329-345.

Keil, T. J. & Vito, G. F. (1995). Race and the death penalty in Kentucky murder trials: 1976-1991. *American Journal of Criminal Justice*, 20(1), 17-36.

Lewis, D.O., Pincus, J.H., Bard B., Richardson, E. , Princher, L.S., Feldman, M. & Yeager, C. (1988). Neuropsychiatric, psychoeducational, and family characteristics of 14 juveniles condemned to death in the United States. *American Journal of Psychiatry*, 145(5), 584-589.

Liebman, J. S., Fagan, J., & West, V. (2000). A broken system: Error rates in capital cases, 1973-1995. [On-line]. Available: [www.TheJusticeProject.org](http://www.TheJusticeProject.org)

Paternoster, R. & Kazyaka, A. (1988). Racial considerations in capital punishment: The failure of evenhanded justice. In K. C. Haas & J. A. Inciardi (Eds.), *Challenging capital punishment: Legal and social science approaches* (pp. 113-148). Newbury Park, CA: Sage.

Paternoster, R. (1991). Prosecutorial discretion and capital sentencing in North and South Carolina. In R. M. Bohm (Ed.), *The death penalty in America: Current research* (pp. 39-52). Cincinnati, OH: Anderson.

Phillips, D.P. (1983). The impact of mass media violence in U.S. homicides. *American Sociological Review*, 48, 560-568.

Phillips, D.P. & Hensley, J.E. (1984). When violence is rewarded or punished: The impact of mass media stories on homicide. *Journal of Communication*, 34, 101-116.

Radelet, M. L. & Akers, R. L. (1996). Deterrence and the death penalty: The views of the experts. *Journal of Criminal Law and Criminology*, 87, 1-16.

Rosenfeld, B. & Wall, A. (1998). Psychopathology and competence to stand trial. *Criminal Justice & Behavior*, 25(4), 443-462.

Scheck, B., Neufeld, P., & Dwyer, W. (2000). *Actual innocence*. New York: Harper.

Skeem, J. L., Golding, S. L., Berge, G., & Cohn, N. B. (1998). Logic and reliability of evaluations of competence to stand trial. *Law & Human Behavior*, 22(5), 519-547.

Sorensen, J.R. & Wallace, D.H. (1995). Capital punishment in Missouri: Examining the issue of racial disparity. *Behavioral Sciences and the Law*, 13(1), 61-81.

Stack, S. (1993). Execution publicity and homicide in Georgia. *American Journal of Criminal Justice*, 18(1), 25-39.

Thomson, E. (1997). Research note: Discrimination and the death penalty in Arizona. *Criminal Justice Review*, 22(1), 65-76.

Vito, G. F., Koester, P., & Wilson, D. G. (1991). Return of the dead: An update of the status of Furman-commuted death row inmates. In R. M. Bohm (Ed.), *The death penalty in America: Current research* (pp. 89-99). Cincinnati, OH: Anderson.

Vito, G. F., Wilson, D. G., & Latessa, E. J. (1991). Comparison of the dead: Attributes and outcomes of Furman-commuted death row inmates in Kentucky and Ohio. In R. M. Bohm (Ed.), *The death penalty in America: Current research* (pp. 101-111). Cincinnati, OH: Anderson.

Wells, G., Malpass, R., Lindsay, R., Fisher, R., Turtle, J., & Fulero, S. (2000). From the lab to the police station: A successful application of eyewitness research. *American Psychologist*, 55, 581-594.

Wiener, R., Hurt, L., Thomas, S., Sadler, M., Bauer, C., & Sarget, T. (1998). The role of declarative and procedural knowledge in capital murder cases. *Journal of Applied*

Social Psychology, 28, 124-144.

Wiener, R., Pritchard, C., & Weston, M. (1995). Comprehensibility of approved jury instructions in capital cases. *Journal of Applied Psychology*, 80, 455-467

August 2001

---

About Public Interest   Conferences   Executive Director Messages  
Public Interest Home Page  
Program Areas   Publications   Student Information

American Psychological Association  
Public Interest Directorate  
750 First Street, NE  
Washington, DC 20002

PsychNET®  
© 2003 American Psychological Association