EXHIBIT 3
DATE 3/15/2011
SB 185

Why Montana Needs to Replace the Death Penalty with a Sentence of Life without Parole

We cannot release an innocent person from the grave

Since 1976, nearly 140 individuals have been sent to death row and later found innocent. In a system run by humans, despite our best intentions, we make mistakes. With the death penalty, even one small mistake is deadly. Life without parole keeps society safe and does not risk executing innocent people.

The death penalty re-victimizes family members

A death sentence prolongs the pain of murder victim family members as they endure decades of appeals and media attention focused not on their loved one, but on the murderer. A sentence of life without parole starts the minute the sentence is handed down and afterwards, the perpetrator's name tends to fade into obscurity. The empty promise of an execution that may never come takes attention and resources away from the true needs of victims.

The death penalty is unfair

The race and class of the victim and perpetrator are the strongest indicators of who will receive a death sentence. Contrary to popular belief, the "worst of the worst" often receive a lesser sentence while those who lack the means to defend themselves end up on death row.

The death penalty is much more expensive than life without parole

Every major cost study ever conducted shows that the death penalty system costs taxpayers at least 2 to 3 times more than a system of life without parole. The majority of that cost is incurred during the initial trial, whether or not the defendant is sentenced to death. In addition, death sentences are often overturned or commuted. A life without parole sentence is significantly faster, cheaper and, in Montana, has never been overturned.

The death penalty is irreparably broken

The death penalty risks executing the innocent and is unfairly applied. It wastes our precious resources while forcing family members to endure decades of appeals. Every attempt we make to expedite the process increases the risk of executing an innocent person, while every hour and dollar spent going after a handful of executions means other crimes go unsolved. The death penalty is a system that is broken beyond repair.

Montanans are ready

Death sentences are at an all-time low and public support for the death penalty has dropped in favor of life without parole. The death penalty is dying. Montanans are ready to see it go.

Visit www.mtabolitionco.org or call 406-461-8176 for more information or to get involved.

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Montana's Death Penalty: Wasteful and Expensive

Many people are surprised to learn that the death penalty's complexity and finality make it much more expensive than life without parole. **Capital punishment is a bloated government program that has clogged our courts, delayed justice for victims' families, and devoured millions of crime-fighting dollars.**

How much *does* the death penalty cost?

- The most rigorous cost study in the country found that a single death sentence in Maryland costs almost $2 million more than a comparable non-death penalty case. Maryland spent $186 million extra to carry out just five executions.[i]
- More than a dozen states have found that the death penalty is up to 10 times more expensive than sentences of life or life without parole.[ii]
- The death penalty costs more than just dollars. In the time it takes to pursue one capital case, scores of non-capital cases could be solved and prosecuted. Instead, many crimes go unsolved or unprosecuted, and those responsible are free to commit more serious crimes.
- Montana has never conducted a comprehensive study of what the death penalty in totality has cost our state. However, we can give an example comparison in one cost area. A case in Gallatin County where the state was initially seeking the death penalty cost the Montana Public Defender system **$115,000**. A similar case in Lewis and Clark County where the state was not seeking the death penalty cost the Montana Public Defender system only **$3,200**.[iii]

> **"I saw how Pondera County was almost bankrupt by the cost of the death penalty"**
> - Betsy Griffing
> Former Montana Assistant Attorney General

- In most cases where the death penalty is sought, it is never imposed. And when it is imposed, it is rarely carried out. Almost half of Montana's death sentences have ended with a life sentence after taxpayers have already paid much more for death penalty proceedings. A death penalty that is so rarely used is simply another name for life without parole, at an exponentially greater cost.

Why does it cost so much?

- The death penalty process is more complicated because a life is on the line. Capital cases involve more lawyers, more witnesses, more experts, a longer jury selection process, more pre-trial motions, an entirely separate trial to determine the sentence, and countless other expenses – racking up exorbitant costs even before a single appeal is filed.
- The majority of the death penalty's costs never appear as line items in any budget. They are simply hours spent by judges, clerks, prosecutors, and other law enforcement agencies – time that could be spent investigating, prosecuting, and sentencing other cases.
- Most death penalty trials have significant flaws and must be re-tried, sometimes more than once. This only adds to the high cost of the death penalty.

- In most cases where the death penalty is sought, it is never imposed. Even when it is imposed, it is rarely carried out. Still, taxpayers are saddled with the cost even in cases where the defendant is not sentenced to death.

Who pays for the death penalty?

- A study found that the costs of the death penalty are borne primarily by increasing taxes and cutting services, with county budgets bearing the brunt of the burden.[iv]
- The death penalty diverts resources that could be used to help homicide survivors — including grief and trauma counseling, scholarships for children of homicide victims, professional leave to attend court proceedings, and financial support.
- Law enforcement officers recognize that the death penalty is a poor crime prevention tool. In a recent survey, the death penalty was considered the least efficient use of taxpayers' money. Police chiefs ranked expanded training, community policing and programs to control drug and alcohol abuse as more cost-efficient.[v]
- The burden is even higher on smaller counties. Jasper County, Texas, raised property taxes by nearly 7% just to pay for a single death penalty case. [vi]Two capital cases forced Jefferson County, Florida, to freeze employee raises and slash the library budget.[vii]

"Do we really want to squander millions of dollars defending death sentences that ultimately end up as life without parole sentences anyway? Is this really how we want to spend scarce tax dollars in a process that clogs our courts and bogs down the precious time of our law enforcement agencies?"

- Jim Oppedahl,
Former MT State Court Administrator
The Independent Record, Helena, Montana, February 2, 2009

Can we make the system cheaper?

- Many of the extra costs are legally mandated to reduce the risk of executing an innocent person. Even these safeguards are not enough. At least 139 people have been exonerated from death row after waiting years or even decades for the truth to come out. Streamlining the process would virtually guarantee the execution of an innocent person.
- In ethically questionable cases where the death penalty is used as a bargaining chip, the costs of simply preparing for a death penalty trial greatly outweigh the entire cost of pursuing a non-capital murder case through trial.[viii]
- Even states with the fewest protections and a faster process face exorbitant death penalty costs. In Texas for example, the death penalty still costs an average of three times more than 40 years in prison at maximum security facility.[ix]

We've learned a lot about the cost of the death penalty.

We can't afford to pay the price any longer.

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[i] John Roman et al, "The Cost of the Death Penalty in Maryland," Urban Institute, 2008. http://www.urban.org/url.cfm?ID=411625
[ii] For example, New York and New Jersey each spent over $200 million to execute no one; in Kansas a death case costs 70% more than a non-death penalty case; Florida spends $51 million extra per year on its death penalty, while California spends $90 million per year over and above the costs of life without parole; and North Carolina spends over $2 million per execution.
[iii] Harry Freebourn, Administrative Director, Montana Office of State Public Defender System, Letter received February 3rd, 2009
[iv] Katherine Baicker, "The Budgetary Repercussions Of Capital Convictions," Dartmouth College and the National Bureau of Economic Research, October 2002.
[v] "Smart on Crime," Death Penalty Information Center, 2009.
[vi] "Prosecuting Death-Penalty Cases Puts Huge Strain On Local Government Finances," Wall Street Journal, January 9, 2002
[vii] Jeff Scullin , "Death Penalty: Is Price Of Justice Too High? States wonder if the extreme punishment is worth the cost," The Ledger (Florida), December 14, 2003
[viii] Richard Dieter, "Testimony before the Pennsylvania Senate Government Management and Cost Study Commission" June 7,
[ix] "Executions Cost Texas Millions," Dallas Morning News, March 8, 1992

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The Death Penalty in Montana: Innocent Lives in the Balance

Since 1973, at least 138 people have walked off our nation's death rows after evidence revealed that they were sentenced to die for crimes they did not commit.[i] That's more than one innocent person exonerated for every ten who have been executed. Hundreds more have been exonerated from long prison sentences as a result of advances in DNA testing.

Wrongful convictions like these mean victims' families suffer while the real killers remain at large and tax dollars are wasted. These cases represent much that is failing in our justice system.

Despite the best intentions, we can't be right 100% of the time

- The risk of executing an innocent person is not limited to those cases where lawyers fail to adequately defend their clients. Despite the very best efforts of police, prosecutors, judges, juries, witnesses, and defense attorneys, mistakes can and will happen. In a capital case, even one small mistake can be deadly.

- Contrary to popular belief, the appeals process is not designed to protect innocence; it is merely aimed at discovering procedural errors. These exonerations came only because of the extraordinary efforts of people working outside the system – pro bono lawyers, family members, even students.

- Innocent people have spent up to 33 years on death row and some have come within hours of execution. Any effort to streamline the cumbersome death penalty process or cut appeals will only increase the risk that an innocent person will be executed.

- One of most comprehensive state death penalty studies in the nation recommended 85 reforms that were essential to decrease the risk of wrongful executions.[ii] Not a single death penalty state has even a majority of those reforms in place.

> **"Our experience in Montana and the experience nationwide has shown that despite our best efforts, innocent people are and will continue to be wrongly convicted. They will continue to serve out prison terms they don't deserve, and some of them will be sentenced to death row."**
>
> - Jessie McQuillan
> Executive Director, Montana Innocence Project
> *Testimony before the House Judiciary Committee, March 25, 2009*

Montana Case In Point: Jim Bromgard

Jim Bromgard spent over 14 years in prison in Montana for allegedly attacking a young girl in Billings. He was convicted on two things: the victim's identification, even though she said she was only 65% sure, and hair evidence, largely considered to be junk science. There were no

fingerprints or other physical evidence connecting him to the crime scene. **His trial lawyer did so little work on the case that he didn't even give an opening statement.** He conducted no investigation, hired no forensics experts to debunk the hair evidence, didn't prepare a closing statement, and filed no appeal.

Jim's conviction was based almost entirely on the dubious, unscientific hair analysis of a forensic scientist by the name of Arnold Melnikoff. Melnikoff, who founded and directed the Montana state crime lab for 19 years, wrote about 300 hair analysis reports during his tenure. So far, two other convictions based on his testimony have been overturned, and countless others have yet to be examined. Melnikoff left Montana in 1989 and was eventually fired from the Washington State Patrol in 2004 for "incompetent and inaccurate" testimony.

Jim is one of the lucky ones. The Innocence Project later took his case and a group of students located new evidence to be tested. DNA tests – often not available – proved his innocence and he was released in 2002, after losing a decade and a half of his life. Jim was only 18 when he was sent to prison. The problems in his case – wrong eyewitness identification, incompetent lawyers, and faulty forensics – are common problems in the criminal justice system. **Had the young girl been murdered, Jim may well have been sentenced to die and even executed before his innocence came to light.**

DNA: How it works and what happens when it isn't available

- Hundreds of DNA exonerations have given us a window into all of the things that can go wrong in a criminal case. They offer irrefutable evidence of the system's flaws.
- These DNA exonerations have revealed that murder cases are often riddled with problems, including mistaken eyewitnesses, incompetent lawyers, shoddy forensics, unreliable jailhouse snitches, and coerced confessions.
- DNA by itself cannot solve these problems – it can only tell us just how bad they are. And DNA evidence exists in less then 10% of criminal cases – far fewer than one would think from watching TV crime shows like CSI.
- In those few cases where DNA evidence is available, access to the DNA database or to new testing can be extremely limited. Even in cases where DNA testing is available, one dishonest or incompetent individual can derail the entire justice process.

No system is error proof. It is time to replace Montana's death penalty with life without parole – a swift and severe punishment that guarantees that Montana will never risk executing an innocent person. No other reform can make that guarantee.

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[i] Innocence list maintained by the Death Penalty Information Center, www.deathpenaltyinfo.org

[ii] The Illinois Commission on Capital Punishment was a two-year study that recommended 85 reforms to the state's death penalty in 2002. Several states have compared their systems to the 85 reforms and found virtually none of those reforms were in place. http://www.idoc.state.il.us/ccp/ccp/reports/index.html

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The Death Penalty in Montana: Fails Victims' Families

To be meaningful, justice should be swift and sure. The death penalty is neither. Capital punishment prolongs pain for victims' families by dragging them through an agonizing and lengthy process that holds out the promise of an execution at the beginning but often results in a different sentence in the end. Rather than allowing victim family members to begin rebuilding their lives amidst terrible tragedy, the death penalty forces victims to remain tied to the endless legal maneuverings and media attention of their loved one's murderer. A life without parole sentence, on the other hand, begins the moment the perpetrator leaves the courtroom, relegates the perpetrator to a life of anonymity in prison forever, and stands up in court significantly more reliably and with far fewer appeals than a death sentence.

Neither swift nor sure

- In Montana, it takes an average 17 years from the time of the crime to an execution. Victims' families agonize through decades of appeals and re-trials while waiting for a resolution to the case.
- In most cases, the promised final outcome of execution never comes. Over 83% of all death penalty cases in Montana are overturned[i]. And most reversals occur after years of court appearances where the murderer is the center of court and media attention while the victim is all but forgotten. A sentence of life without parole guarantees that the perpetrator will never get out of prison. An overturned death sentence does not.
- A sentence of life without parole holds up to scrutiny much better than a death sentence. In Montana, 44 prisoners are currently serving sentences of life imprisonment without parole. None have been considered for parole, and no life without parole sentences have been commuted.[ii] A more certain punishment than life without parole does not exist.

"Nothing yesterday, today, or tomorrow will bring my father back, and I have accepted that. Taking the lives of the two youth that murdered my father would satisfy nothing...Hold them accountable with a sentence of life in prison – no pleadings, no hearings, no extensions."

- "Ziggy" Ziegler (R-Billings),
Yellowstone County Commissioner
Ziggy's father was murdered in 1978
Testimony before the Senate Judiciary Committee, February 7, 2007

The death penalty ignores the real needs of surviving families

- The death penalty's cumbersome and expensive process diverts millions of dollars and attention from the critical services that homicide survivors need, including specialized grief counseling, financial assistance, and ongoing support. In most states, the capacity to address these needs is sorely lacking.
- Murder victim family members also have many immediate needs that are left unanswered. Victims often require funds to hold a proper funeral, clean up the

crime scene, buy gas to attend hearings, and to address other vital needs that arise as the result of a homicide. Although the death penalty might give the impression that society is helping victims, in reality it not only fails to deliver even the most basic relief but further diverts funds and attention away from victims.

- The few services that are available for murder victim family members are often provided through the prosecutor's office, and when the criminal case is over, the services for the victim's family members end, too.

- For families in unsolved murders, there is the added pain of never learning what happened to their loved ones. Meanwhile, the perpetrators remain on the streets, free to kill again, while countless law enforcement hours are spent chasing a handful of executions instead of solving more cases.

The death penalty divides families when they need each other most

- The death penalty often splits families apart by forcing relatives with different perspectives on the issue to engage in a polarizing debate at the time when they need each other most. Families are sometimes asked to weigh in on the prosecutor's decision to seek the death penalty, all at a time when they are still processing the shock of the news of the murder. Families undergoing such enormous stress cannot possibly evaluate how the long process will affect them years down the road.

- When the defendant and victim are related, the death penalty tears families even further apart. In a number of cases, for example, children must first cope with the murder of one parent and then suffer re-traumatization when the other parent is executed for the crime.

- Less than 1% of death-eligible offenses are pursued as capital cases. The ways in which the 1% of cases are chosen are often unclear, and murder victim family members are left with the impression that their loved ones were not "good enough" or did not die badly enough for the perpetrator to get the death penalty. Capital punishment sends the mistaken message that certain victims are more valuable than others.

"Stop turning these killers into celebrities by making them the center of death penalty cases for decades. Stop talking about when and if an execution should occur. Let's spend energy and resources helping the victims instead. Let's teach our communities that it's the victims we want to talk about, not the killers."

- Carolyn Madplume
Resident of Heart Butte, Montana
Carolyn's 20 year-old daughter, Catherine, was murdered in 2005
Testimony before the House Judiciary Committee, March 25, 2009

Can we make the system faster?

- The death penalty is the nation's only irreversible punishment. The process is longer because a life is on the line. Many of the extra procedures are legally mandated to reduce the risk of executing an innocent person.

- Even these safeguards are not enough – at least 138 people have been exonerated from death row after waiting years or decades for the truth to come out. Streamlining the process would virtually guarantee the execution of an innocent person.

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[i] Liebman, James. A Broken System: Error Rate in Capital Cases. Columbia Law School, 2000.

[ii] Cox, J., Records Manager, Montaa State Prison, February 9, 2009.

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Montana's Death Penalty: Fails to Keep Us Safe

Law enforcement officials have criticized capital punishment for wasting scarce crime prevention resources. The time spent chasing a handful of executions means countless other crimes go unsolved while the criminals who committed them remain free. Because the death penalty does not deter irrational acts of violence, many law enforcement officials find it a distraction from their goal of public safety.

The death penalty diverts scarce resources from crime prevention

- 'Spending all this money on the death penalty might be worth it - if it actually made our communities safer. But it doesn't... Our communities would be exponentially better off by reinvesting the time, money and resources we spend on trying to get a few people executed into crime prevention measures that work.'[i]

  – *Norm Stamper, Former Seattle Police Chief*

- "The state can protect many more officers at a fraction of the cost by adding police, providing the best protective equipment available, and implementing effective policing programs known to reduce crime. The death penalty is simply a distraction from the real issues surrounding public safety."[ii]

  – *Patrick Murphy, Former New York City Police Commissioner*

Funds that could have gone for law enforcement to provide public safety instead go to the cost of death penalty prosecutions, determination of penalty, and appeals, and appeals, and appeals. When law enforcement, social services, and mental health have adequate funds...that assists in the prevention of capital crimes as well as provides for the safety of our Montana citizens.

Tom Biglen
Former Sweetgrass County Attorney
Testimony before the MT House Judiciary Committee, March 25, 2009.

What Police Chiefs Say

In 2008, a scientific poll of 500 randomly-selected police chiefs found that:

- The death penalty was ranked last when the police chiefs were asked to name one area as "most important for reducing violent crime," with only 1% listing it as the best way to reduce violence.
- The police chiefs ranked the death penalty as the least efficient use of taxpayers' money. They rated expanded training and more equipment for police officers, hiring more police officers, community policing, more programs to control drug and alcohol abuse, and neighborhood watch programs as more efficient uses of taxpayer dollars.
- Almost 6 in 10 police chiefs (57%) agreed that the death penalty does little to prevent violent crimes because perpetrators rarely consider the consequences when engaged in violence.

Executions keep murder rates...high?

- Regions with the most executions also have highest murder rates. Even though the South has over 80% of the United States' executions, the region's murder rate is the highest in the nation. The South also accounts for more law enforcement officers killed than any other region in the last ten years.[iii]
- A simple comparison reveals that states without the death penalty actually have lower murder rates than those with the death penalty. Moreover, the states without the death penalty have done better than death penalty states in reducing their murder rates.[iv]

- The experience of individual states confirms the research. During New York's ten-year experiment with the death penalty, the murder rate in Manhattan dropped steadily even though the District Attorney there never sought the death penalty. During much of that time, murder rates increased upstate in Rochester – where the prosecutor sought the death penalty more than most.

Deterrence is a myth – and people know it

- No credible study has found that the death penalty deters crime. This is not surprising; to the extent someone with a deadly weapon in a rage is going to be deterred from anything, the prospect of spending a lifetime in prison is at least as persuasive as the small chance of getting executed.
- The same researchers were quoted by two opposing Supreme Court Justices to both establish and deny a deterrent effect of the death penalty. These researchers recently clarified their study by explaining that "the best reading of the accumulated data is that they do not establish a deterrent effect of the death penalty."[v]
- A 2009 study published in the Journal of Criminal Law and Criminology concluded that "there is overwhelming consensus among America's top criminologists that the empirical research conducted on the deterrence question fails to support the threat or use of the death penalty."[vi]

Corrections personnel see the death penalty's other flaws up close

- Law enforcement officials see first-hand the wide range of things that go wrong in capital cases. Even when operating under the best intentions, police officers, lab technicians, prosecutors, judges, and witnesses can make mistakes or errors in judgment. When a life is on the line, one mistake is one too many – and more and more law enforcement officials are saying that has changed their minds about the death penalty.
- Corrections officials who have carried out executions have found the experience takes a toll. Executioners and wardens from Texas to Mississippi to New York have experienced mental health problems, alcohol abuse, and have even committed suicide from the stress of the death penalty.

"Everyone who works in a prison is affected when an execution takes place. It is an enormously stressful job to participate in an execution and to work at a place where an execution takes place. I have seen staff quit as an execution got close because they felt they couldn't work for an agency that killed people...I have come to the conclusion that executions have a harmful effect on corrections and others who work in the prison system."

- Sandy Heaton,
Mental health therapist at the MT State Prison, 1973- 2003

The death penalty is not an effective law enforcement tool; in fact, it hinders the fight against crime. More and more law enforcement and corrections personnel now favor the severe alternative of life in prison without the possibility of parole.

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[i] Norm Stamper, "Death penalty wastes money, while failing to reduce crime," San Jose Mercury News, November 19, 2007.
[ii] Patrick Murphy, "Defending Leonard Hamm, opposing the death penalty," Baltimore Examiner, March 30, 2007.
[iii] Murder rates based on the years 2001 to 2006. FBI's 2006 Uniform Crime Report, cited by the Death Penalty Information Center. Law enforcement murder rates based on the years 1996 to 2006. FBI's 2006 Uniform Crime Report - Law Enforcement Officers Feloniously Killed, Table 1.
[iv] Death Penalty Information Center.
[v] Cass R. Sunstein and Justin Wolfers, "A Death Penalty Puzzle: The Murky Evidence for and against Deterrence," Washington Post, June 30, 2008.
[vi] M. Radelet & T. Lacock, "Do Executions Lower Homicide Rates? The Views of Leading Criminologists," Journal of Criminal Law & Crimonology 489, Northwestern University, 2009

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The Death Penalty in Montana: Unfair and Unequal

The United States Constitution guarantees fairness and equity before the law, yet one of the death penalty's fatal flaws is the unequal application to people of color and those in poverty. Numerous studies have shown that racial, economic, political, and gender biases lead to inequalities in sentencing.

Racial and economic biases permeate our legal system.

The U.S. General Accounting Office reported that evidence indicates racial disparities in the charging, sentencing, and imposition of the death penalty. The race of the victim influences all stages of the criminal justice system. [i]

In 1972, the death penalty was declared unconstitutional by the U.S. Supreme Court in Furman v. Georgia. Evidence of its discriminatory use by the states led the court to call the death penalty "harsh, freakish, and arbitrary." When the courts reinstated the practice in 1976, the problems of fairness continued despite new trial and sentencing requirements.

Racial minorities are more likely to receive the death penalty.

- African Americans make up only 13% the nation's population but represent a disproportionate 42% of those on Death Row.
- According to Amnesty International, more than 20% of black defendants who have been executed were convicted by all-white juries.
- Even though black and white people are murder victims in nearly equal numbers, 80% of those executed were convicted of murdering white victims.
- According to a recent landmark study regarding race and the death penalty, a black defendant who kills a white victim is up to 30 times more likely to be sentenced to death than a white defendant who kills a black victim.

People in Poverty are More Likely to Receive a Death Sentence.

- According to recent findings, 95% of defendants charged with capital crimes are impoverished and cannot afford their own attorney to represent them.

"Money buys good attorneys. Lack of money means you get whoever the state assigns to you."

- Hon. William O. Douglas
U.S. Supreme Court Justice
Furman V. Georgia

The Death Penalty Disproportionately Affects American Indians

- A study in 2003 by the Capital Punishment Research Project found that 19 percent of the 340 men and women executed prior to 1994 were American Indians. Americans Indians make up less than 1 percent of the general population.

- Montana has sentenced 13 men to death since 1976 when the death penalty was "reinstated" in the U.S. Of the 13, one was African American and two were American Indian. American Indians make up about 6% of Montana's population and yet make up 15% of those who were sentenced to death in Montana.

- The incarceration rate of Native Americans is 38% higher than the overall national rate.[ii]

- On average, American Indians receive and serve longer sentences than non-Indians for crimes.

- Since 1961, 15 American Indians have been executed nationally. Thirteen Indian prisoners were executed for killing white people and two were executed for killing other American Indians. [iii]

- Between 1979-1999, white perpetrators killed 32% of the 2,469 Indians murdered, whereas American Indians killed 1% of the 164,377 whites murdered.

American Indian Communities Traditionally Oppose the Death Penalty

- In 2009, the American Indian Caucus of the Montana Legislature adopted a formal position in support of a bill to replace Montana's death penalty with a sentence of life without the possibility of parole.

- The American Indian Tribes in the United States have an option to "opt-in" to the federal death penalty, which applies to crimes by American Indian people against American Indian people on Reservation land. None of Montana's Tribal communities have opted-in. In fact, only one Tribe in the entire nation has chosen to retain the Federal death penalty.

> **"The history of the death sentence in the U.S. is rooted in colonialism, racism, and marginalization of American Indians."**
>
> - The American Indian Caucus, Montana Legislature 2009

- Linwood Tall Bull, a cultural consultant for the Northern Cheyenne tribe, said that the Northern Cheyenne traditionally had no kind of capital punishment.

- Sam Windy Boy, Jr., a cultural consultant for the Chippewa-Cree tribe, said the spiritual laws of the tribe uphold human life as a core belief. He said that the most severe punishment meted by the Chippewa-Cree was banishment and was reserved for murderers.

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[i] U.S. General Accounting Office, Death Penalty Sentencing (1990)
[ii] C. Mann, Unequal justice: A question of color, Indiana University Press (1993)
[iii] David V. Baker "American Indian Executions in Historical Context," Criminal Justice Studies, (2007)

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Executions and Prison Safety: A Distraction from Real Solutions

It sounds like a logical argument – once someone has a life sentence, they have nothing left to lose by killing in prison, right? Wrong. In reality, lifers have to make prison their homes for life, so they must preserve every tiny privilege they have. That is why studies and the real-life experience of wardens and corrections officers have found that lifers are the least likely to commit murder in prison.

Keeping prisons safe: voices from the front lines

- "A well-managed prison with proper classification and staffing can create incentives for lifers to behave while segregating and punishing those who are a threat before violence ever occurs. Our prison system already knows how to do this. **The reality is that the death penalty is not, and never has been, a deterrent. Prison safety depends on proper staffing, equipment, resources and training.** Certainly the money spent on trying to put someone to death for over 20 years could find better use in addressing those practical needs of our correctional system."
  - *John Connor, former chief special prosecutor for the state of Montana for 21 years, prosecuting five death penalty cases involving prison homicides.*

- "I've been in this system for over 40 years. I've been held hostage and been through multiple prison riots. **If someone told me that the death penalty would protect me as a corrections officer, I would be offended.** Safety inside prisons depends on proper staffing, programming, and effective reintegration of inmates back into society. The death penalty does not safeguard anybody."
  - *Calvin Lightfoot, former Maryland Secretary of Public Safety and Correctional Services*

- "The very notion that we need the death penalty to keep prisons safe is both professionally and personally offensive. **I don't believe there is a single qualified prison warden in this country that wouldn't trade the death penalty for more resources to keep his or her facility safe.** The death penalty system is just a drain on those resources, and it serves no purpose in the safety of the public or prisons."
  - *Ron McAndrew, former Warden, Florida State Prison, who presided over eight executions*

What incentive do lifers have to keep from killing again in prison?

- Life without parole can be "bad, horrible, or extremely horrible," as one warden put it. For those few who do cause trouble, they can be controlled and punished in long-term custodial segregation in a tiny cell where even meals are eaten alone and just feet from the toilet. The bleak and harsh reality of life under custodial segregation offers great incentive to lifers to avoid that fate.

- Lifers must make prison their homes for life. They will never again have the thousands freedoms many of us take for granted – an extra hour in the sun, decent food, the touch of another human being. The miserable environment of prison means lifers have to preserve even the tiniest privileges they can get.

- If lifers had "nothing left to lose" by killing in prison, the same thing would be true for those on death row – they can't be executed twice. Yet thousands of death row inmates live in prison for years and even decades without committing another murder in prison.

- The death penalty is no more of a deterrent for prison murder than it is for murder outside prison. If it were, one would expect more prison murders in non-death penalty states. Yet 98% of prison murders occurred in jurisdictions that have the death penalty during the last year that data was available.

Even prisoners can be executed for crimes they did not commit

- The same problems that plague all death penalty cases are exacerbated by the fishbowl environment of prison. Prisoners may be more easily persuaded to give false testimony in exchange for better treatment, increasing the risk of wrongful convictions.

Case in Point

Joe Amrine is the 111th person in the country sentenced to death and later exonerated. Amrine was serving a short sentence for check kiting in Missouri when he was convicted of a prison stabbing. His trial attorney conducted no investigation. The three inmates who testified against him said later that prison officials pressured them to finger Amrine. A prison guard consistently said he saw one of the three prison "witnesses" fleeing the crime scene. Amrine spent 17 years on death row before state courts concluded he was actually innocent.

The use of resources: preventing prison murder

- The death penalty is shown to cost millions more than a system of life in prison. Those resources would be better spent preventing prison murders at a fraction of the cost.

- One California prison lowered fatal stabbings by 94% simply by removing the sheet metal shop from its prison industry. Other prisons have removed blind spots, increased security in high-risk areas, and placed dangerous inmates in special units to maximize staff protection

How often do lifers kill in prison, anyway?

- Prisoners serving life without parole are often much less likely than the average inmate to break prison rules. Virtually all studies and accounts of lifers by correctional workers confirm this.

- Prison murder overall is extremely rare. The murder of a corrections officer is even more rare. Many states haven't had a single corrections officer killed in the last 30 years. Prison staff are 82 times less likely to be murdered by an inmate than the average person outside.

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The Plea Bargain Myth: Securing Life with Death

Some say we need the death penalty to secure confessions and plea deals to get life without parole. While this may seem to make sense, it isn't necessarily so. States without the death penalty have some of the highest rates of inmates serving life without parole, without ever having to use execution as a bargaining chip. Most prosecutors consider such use of the death penalty unethical anyway, and for good reason – it's just one more cause of wrongful convictions.

States don't need the threat of death to get life

- States without the death penalty have some of the highest rates of prisoners serving life without parole in the country – proving that we don't need the death penalty to get a life without parole sentence. Massachusetts, which has no death penalty, has one of the highest percentages of prisoners serving life without parole sentences in the nation. Indeed, three of the top five states in the nation are states without the death penalty.

- Prosecutors in New Jersey say that abolition of the death penalty there in 2007 has made no difference in their ability to secure guilty pleas.

- During the ten years New York had a death penalty, prosecutors secured plea bargains at a higher rate in second-degree murder cases than in first-degree murder cases. If the death penalty played a key role in securing pleas, the opposite would be true, since death was always an option in first-degree murder cases.

> **"We have not viewed [abolition] as an impediment in the disposition of murder cases... As a practical matter, we have really seen no difference in the way we conduct our business in prosecuting murder cases."**
>
> – Edward Defazio,
> Prosecutor, Hudson County, New Jersey

- In Alaska, plea bargaining was abolished completely in 1975. A 1980 study by the National Institute of Justice found that since the end of plea bargaining, "guilty pleas continued to flow in at nearly undiminished rates. Most defendants pled guilty even when the state offered them nothing in exchange for their cooperation."

Threatening death risks convicting innocent people

- Many people sentenced to life and later found to be innocent were originally threatened with the death penalty and accepted a guilty plea and a life sentence in order to avoid execution. These men are the walking evidence that plea bargaining with the death penalty is not only unethical, it is downright dangerous.

- It's hard to imagine that an innocent person would confess to crimes they did not commit. But false confessions occur more often than we realize, especially when a suspect is under duress or trying to avoid a harsher punishment like death.

Case in Point

- After the 1985 rape and murder of Helen Wilson in Beatrice, Nebraska, six people were threatened with the death penalty. ***Five pled guilty and four of them confessed in order to avoid execution.*** The "Beatrice 6" spent over two decades behind bars for a crime they did not commit. The Governor and Attorney General of Nebraska finally granted them pardons in 2009, after DNA tests proved they were innocent.

- ***Chris Ochoa*** was sentenced to life for the 1988 rape and murder of Nancy DePriest in Austin, Texas. He was threatened with the death penalty. On the advice of his attorney, he pled guilty to the murder and fingered his friend, Richard Danziger, for the rape. In 2001, DNA testing revealed that both Ochoa and Danziger were innocent. They were exonerated and released from prison, but Danziger never really got his life back – he was severely beaten in prison and remains brain damaged to this day, in the care of his sister.

- In 1991, the state of Maryland threatened ***Anthony Gray*** with the death penalty for a murder in Calvert County. He confessed to the crime to avoid execution and was sentenced to life, even though neither DNA nor fingerprints matched him or his co-defendants. Gray spent eight years in prison – including a year and a half after the real killer had been found and convicted – before he was exonerated and freed.

> **"Plea-bargaining is not gamesmanship. Making threats of death as punishment to get a plea is, frankly, morally repugnant, and it does not serve the highest standards of prosecutorial conduct that every attorney, every judge, and every law enforcement person should strive for. What threatening the death penalty does is risk the integrity and reliability of our judicial process."**
>
> **– Tom Biglen,**
> Former District Attorney of Sweetgrass County, Montana
> *Testimony before the Montana House Judiciary Committee, March, 2009*

Life and death are just too important to be used as a bargaining chip. The death penalty's many flaws do not go away when the aim is to secure a life sentence. The risks and possibilities for mistakes only increase when innocent people are coerced to confess in order to spare their own lives.

THE MELLMAN Group RESEARCH BASED STRATEGY

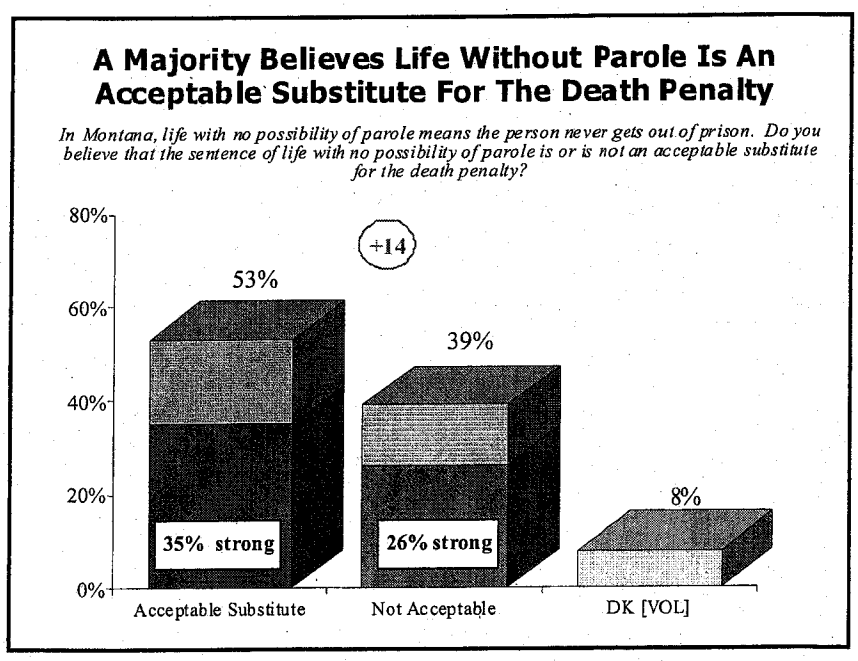
TO: The Montana Abolition Coalition
FROM: Michael Bloomfield And Dave Tollaksen
RE: Attitudes Towards The Death Penalty In Montana
DATE: February 13, 2009

The Mellman Group conducted a statewide survey of 400 likely 2010 voters in Montana. The poll was conducted by telephone February 9-12,2009 using random digit dialing. The margin of error for this survey is +/-4.9% statewide at the 95% level of confidence. The margin of error is larger for subgroups.

Our recently completed survey shows a majority of Montanans believe there are acceptable substitutes for the death penalty. Over half (53%) believe that a life sentence without the possibility of parole is an acceptable substitute, and a plurality supports a sentence other than death over capital punishment for convicted murderers. Additionally, few voters feel strongly about keeping the death penalty, and even fewer feel strongly enough to oppose a state legislator on that issue alone.

Life Without Parole Is An Acceptable Substitute To The Death Penalty

When asked if the sentence of life with no possibility of parole is an acceptable substitute for the death penalty, a majority (53%) agreed that it is an acceptable substitute, with only 39% disagreeing. Just over a quarter of Montanans (26%) feel strongly that it is not an acceptable substitute, compared to more than a third (35%) who feel strongly the other way.



This preference for a life sentence without parole over the death penalty extends across the state through every major media market. Majorities in the Missoula (61% acceptable), Billings (51%) and Great Falls (50%) media markets, and a plurality in the Butte-Bozeman market (46% acceptable, 42% not acceptable) believe that life without parole is acceptable. Even Republicans (46% acceptable, 48% not acceptable) and conservatives (43% acceptable, 49% not acceptable) are essentially divided on the idea.

More Montanans preferred other sentencing options to the death penalty even for people convicted of murder. Nearly half (47%) preferred either life in prison without parole (31%) or some

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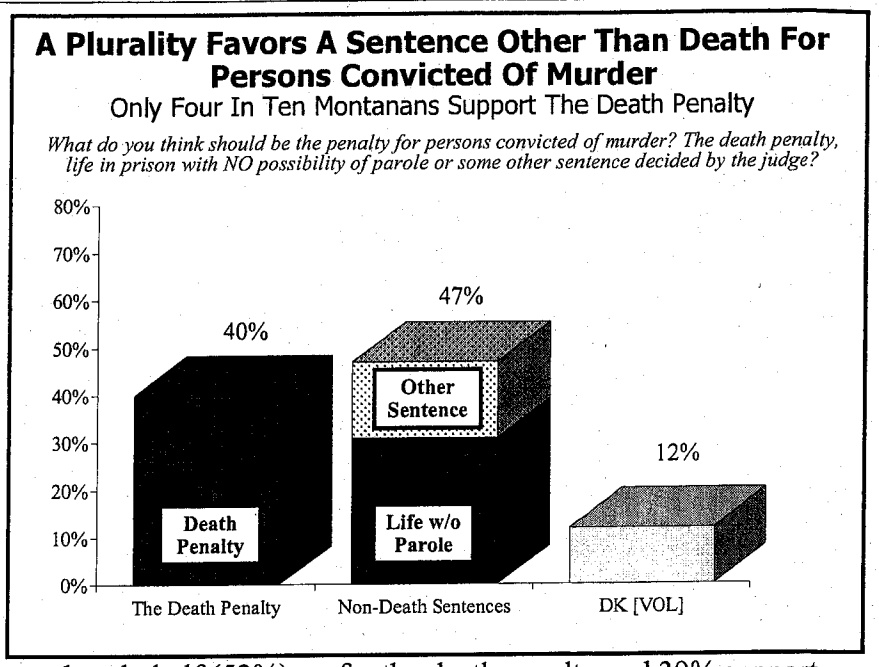
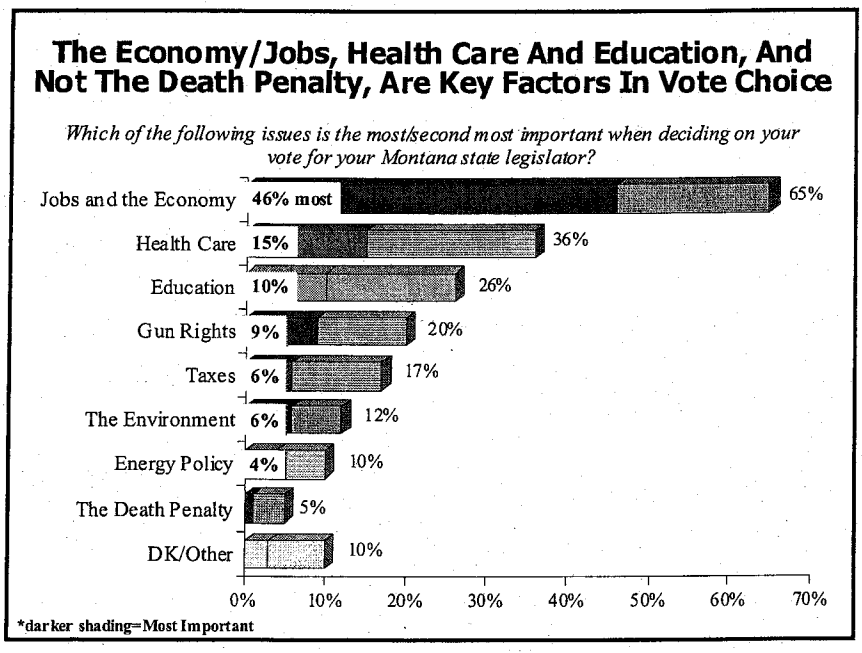
other sentence for those convicted of murder (16%), compared to four in ten (40%) preferring the death penalty. More than one in ten (12%) did not feel strongly enough to have an opinion.



In every major media market, there was only limited support for the death penalty ranging from 33% in the Missoula media market to 43% in Billings. Majorities of Democrats (59% non-death penalty), liberals (56%) and moderates (50%) support non-death punishments over the death penalty, as do younger voters 18-39 (51%) and college graduates (53%). Again, even among Republicans, barely half (52%) prefer the death penalty and 39% support some other option.

A Candidate's Position On The Death Penalty Is Not A Defining Issue For Voters



Few Montanans see keeping the death penalty as a priority. When asked which issues are most important in their vote choice for state legislature, jobs and the economy was by far the most important issue, with nearly two-thirds (65%) saying it is the first or second most important issue deciding their vote, and 46% saying it is the *most* important issue. Health Care (36% overall, 15% most) education (26% overall, 10% most) and gun rights were the next priorities. The death penalty, however, barely registers, with only 5% saying it is the most or second most important issue when they are deciding how to vote, and only 1% said it was the *most* important issue.

Few Montanans feel strongly enough about keeping the death penalty to vote against a legislator on that issue alone. Voters were asked how likely they would be to support a candidate of their party who agreed with them on most issues, but disagreed with them on the death penalty. Nearly three quarters (72%) said they were likely to vote for the candidate despite disagreeing with them on the death penalty. Supporters of replacing the death penalty were more likely to let this issue decide their vote than supporters of the death penalty. Over one in ten (11%) of Montanans feel strongly enough about replacing the death penalty to let it decide their vote. Only 8% feel strongly enough about keeping the death penalty to vote against a candidate because of this issue. Across the political spectrum there are not more than 10% of conservatives or liberals -- or Democrats or Republicans -- who will oppose a legislator because they vote to replace the death penalty.

Conservatives

Concerned about the Death Penalty

"My fundamental problems with the death penalty began as a result of my personal concern, echoed by many on all sides of the political spectrum, that it was inconsistent for one to be 'pro-life' on the one hand and condone government execution on the other. Pope John Paul II weighed in and cleared up the issue for me a bit, but dare I say, I still had my doubts...Then came the talk of margin of error; the fact that in the course of business, the government had sentenced innocent people to death based on either just plain poor legal representation or discoveries obtained through advanced DNA technology...The time has come for us to get beyond government executions."

— **Christian Josi**, Executive Director of the **American Conservative Union** and consultant on the campaign of former Vice President Dan Quayle[1]

"My own view on capital punishment is that it is morally justified, but that the government is often so inept and corrupt that innocent people might die as a result. Thus, I personally oppose capital punishment."

— **Edward H. Crane**, founder and president of the **CATO Institute**[2]

"I'm opposed to the death penalty not because I think it's unconstitutional per se—although I think it's been applied in ways that are unconstitutional—but it really is a moral view, and that is that the taking of life is not the way to handle even the most significant of crimes...Who amongst anyone is not above redemption? I think we have to be careful in executing final judgment. The one thing my faith teaches me—I don't get to play God. I think you are shortcutting the whole process of redemption...I don't want to be the person that stops that process from taking place."

— **Jay Sekulow**, Chief Counsel for the **American Center for Law and Justice (ACLJ)**[3]

"Conservatives have every reason to believe the death penalty system is no different from any politicized, costly, inefficient, bureaucratic, government-run operation, which we conservatives know are rife with injustice. But here the end result is the end of someone's life. In other words, it's a government system that kills people."

— **Richard Viguerie**, known as one of the "creators of the modern conservative movement"[4]

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[1] CACP News Notes, November 26, 2001

[2] Edward Crane, "Politics: The Cato Institute." http://www.cato.org/pub_display.php?pub_id=4085 (visited June 7, 2010): citing article appearing on washingtonpost.com, August 25, 2003.

[3] January, 2010 interview with Barry Lynn.

[4] Richard Viguerie, "When Governments Kill: A conservative argues for abolishing the death penalty," Sojourners Magazine.

> [O]nce you kill the accused, you can't really turn back the clock. If the system turns out to be wrong, as it does on occasion, saying you are sorry doesn't do much good.

— **John Feehery**, Republican strategist and pundit, who used to support the death penalty[5]

> If use of the death penalty is contrary to promoting a culture of life, we need to have a national dialogue and hear both sides of the issue... All life is sacred, and our use of the death penalty in the American justice system must recognize this central truth.

— **Senator Sam Brownback** (R-KS), speaking at a Judiciary Committee hearing

> Then there is another issue I find troubling among my fellow conservatives – that is capital punishment. How is it that conservatives generally believe in 'life,' but are very willing to allow a corrupt and hugely flawed court system to condemn someone to death?

— **Larry Klayman**, former prosecutor and founder of the conservative foundation, **Judicial Watch**[6]

> We've had the death penalty since 1994, and we continue to pay for the process with little results... But we continue to cut the programs that could prevent these types of crimes.

— Kansas **State Senator Carolyn McGinn**, (R-Sedgwick), Chair of Natural Resources Committee and Joint Committee on Energy and Environmental Policy [7]

> For those who believe in the virtue of limited government and criticize roundly when government does not work well, capital punishment does not meet fundamental conservative standards. Not only is it applied arbitrarily, but our judicial system cannot even figure out how to examine it properly.

— **Marshall Hurley**, Republican attorney who has been general counsel to the NC Republican Party and a delegate to the Republican National Convention[8]

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[5] John Feehery, "Is the death penalty defensible?" The Hill, September 1, 2009.
[6] Larry Klayman, "Confusion among conservatives," WorldNet Daily.
[7] Ron Sylvester, "From a budget standpoint, is death row worth it?" *The Witchita Eagle.* October 20, 2009
[8] *Grennsboro News & Record*, July 27, 2003

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Viguerie and Bozell: Support Is Waning for Death Penalty

By RICHARD A. VIGUERIE AND L. BRENT BOZELL III

WASHINGTON We lifelong conservatives and Tea Party supporters recently urged the death sentence for Teresa Lewis in Virginia be commuted to life in prison without parole instead.

We are among a growing number of conservatives who have questions and reservations about the death penalty, believe it is no longer a necessary form of punishment based on either Lockean or biblical principles, or oppose it outright.

Around the country death sentences are dropping, and support for the death penalty is waning. This trend is not limited to bleeding-heart liberals and criminal coddlers.

We urge our fellow conservatives to at least consider some issues when contemplating the death penalty.

The Old Testament required the death penalty for certain sins and a litany of offenses. In John 8 of the New Testament, the Pharisees confronted Jesus about a woman ready to be stoned for adultery. Jesus, sensing a trap they laid on a conflict between the Old Testament and Roman law, said: Let him who is without sin cast the first stone.

We believe John 8 of the New Testament shows that Jesus did not consider the death penalty mandatory punishment for sins, and certainly not unless the process complied with God's law. Deuteronomy 17:6 requires more than one witness to convict.

We also believe conservative Lockean principles do not compel the death penalty.

John Locke's Second Treatise on Government offers a justification of the State's taking the life of someone who is guilty of a heinous crime. Locke, on whose principles conservatism is built, believed the death penalty was a justifiable punishment for two reasons: protecting society (self-preservation) and deterrence.

Locke described the social compact of society as much like the notion: Do unto others as you'd have done to you. Some people commit acts so despicable they no longer merit the protections of that social compact. They

may be so dangerous that they are a threat to us.

Therefore, like we may kill a wild animal that threatens us, the death penalty was an acceptable form of punishment even under Locke's view of limited government power.

We now, however, have maximum security prisons that were incapable of being built in Locke's time. Society may protect itself without putting a human to death as it would a wild animal. Since we believe each person has a soul, and is capable of achieving salvation, life in prison is now an alternative to the death penalty.

Under Locke's other reason, deterrence, punishment should be severe enough to discourage criminal acts. We certainly agree. However, some data show the death penalty does not act as deterrence.

In fact, the data seem to indicate murder and other heinous crimes may be lower in jurisdictions that do not have the death penalty. That's not proof, of course, but we believe death penalty proponents bear the burden of proof that the ultimate punishment is in fact a deterrence.

From our conservative perspective, there are other reasons we oppose the death penalty. It is an expensive government program with the power to kill people. Conservatives don't trust the government is always capable, competent, or fair with far lighter tasks.

When it comes to life and death, mistakes are made, or perhaps worse, bad decisions are made. States have wrongly convicted people based on false confessions and inaccurate eyewitness identification. In some of these cases, the real perpetrator was identified decades after the crime occurred. Since DNA evidence is not available in the majority of murder cases, other wrongful convictions based on similar types of evidence may never come to light.

We know our opinion is not held by all conservatives. Surely, however, there are many questions about the death penalty's accuracy, fairness, and financial efficiency that should be addressed.

We urge those who ascribe to the Old Testament to consider whether the Virginia death penalty system reflects God's law. We also ask Christians to contemplate the meaning of John 8.

Richard A. Viguerie is chairman of ConservativeHQ.com; contact him at ravata@aol.com. Brent Bozell is founder and president of the Media Research Center, and may be contacted at bbozell@mediaresearch.org .

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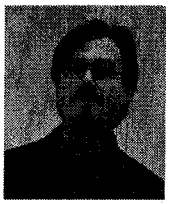
The Bible and the Death Penalty

An address originally given at the Annual Conference of the National Coalition to Abolish the Death Penalty in Louisville, KY on January 15, 2010.

by Matt Randles



I'm opposed to the death penalty, but I didn't always think this way. I come from a fairly conservative evangelical background. I grew up in a home where the rules were clear—and the consequences just as clear. The rules were reasonable and the consequences were fair. This, and my own temperament tending toward "rule-following" almost certainly contributed to my thinking, *"An eye for an eye, and life for a life"—that simply makes sense.* It's logical. And it seems tidy enough.

Of course, it's easy to glibly say, "Yeah, if someone kills they deserve to die." It's another thing to think about how this system isn't tidy. But I didn't give much thought to the injustices in the system: bias in the court, racism, or prosecutors looking to make a big splash. I didn't really even think about the possibility for mistakes: the reality that innocent people will be wrongly convicted—and wrongly sentenced to death.

But in time, my thinking did change, although there was no one thing that changed my perspective. There wasn't any *aha* moment; it was a lot of things—and a lot of thought. It was like falling snow... and the final snowflake that causes the avalanche. As a Christian, what was decisive was the biblical perspective on the death penalty. Arguments from reason, from experience, and from precedent are useful, but not final. What the Bible has to say is fundamental.

And on its face, the evidence is compelling: God has given us his law—and it calls for capital punishment in not a few cases "You are to take life for life" (Exodus 21:23). Ah—but it's not that simple. Much of the New Testament treats how to handle the Law of the Old Testament—the Law that no one can uphold perfectly (no one, that is, except Jesus). And again and again in the New Testament we see that we cannot keep the Law (and we're deluded if we think our hope is in the Law).

Now, this is a complex issue: what we are to do with the Old Testament Law. But here's what we cannot do—we cannot just pull out those laws we like and enforce those to the letter while ignoring the others. We want the death penalty for murderers and we want to look to the Bible for support? We quote Exodus 21:23—"Life for life." But what about Exodus 21:17, a mere six verses before? It says, "Anyone who curses their father or mother is to be put to death." Or Exodus 22:20: "Whoever sacrifices to any god other than the LORD must be destroyed." Those would be a harder sell in our legal system!

So, already the issue of how to be biblical in our application of the death penalty is problematic. We are not the nation of Israel. We aren't a theocracy. We can't enforce the worship of God. We can't *demand* that people honor their father and mother... and execute those who don't.

And then there's Jesus. He talked about "eye for an eye"—and he said "turn the other cheek." He addressed the issue of murder—and turned the conversation to the hard-heartedness of the self-righteous. And we even get to see how Jesus responded to an actual situation. Maybe you know the story: a woman caught in adultery is brought before him. She's guilty; there's no doubt. And the law is clear—adultery is punishable by death (Leviticus 20:10). And this is Israel—a theocracy, governed by the Mosaic law. The people call for her death—and Jesus *doesn't* go along with it. Rather, he calls for the one who is without sin to cast the first stone.

All of a sudden the biblical case isn't so clear-cut. Jesus—the Son of God, God incarnate—brings a new perspective to the Law. Jesus, who interprets the Law with authority, takes on the conventional wisdom. And Jesus, rather than pronouncing and enforcing judgment, takes that judgment on himself in his own death.

Let me tell you what Christianity is all about. At the heart of Christianity is an execution—and an unjust one, at that—the death of Jesus. I worship a Savior who lived "turn the other cheek" to the fullest extent. So how do Christians get from Jesus' redemptive death: death for our sins, my sins—a death where he pays the price for what I've done, a death which means that I have the hope of forgiveness now and life eternal—how do we get from there to demanding the death of criminals? How do we get from experiencing forgiveness for all that we've done wrong to vindictively demanding the most severe retribution possible?

Our greatest theologian was the Apostle Paul, who wrote half the New Testament. How does he describe himself? As "a persecutor and a violent man"—the "worst of sinners" (1 Timothy 1:12-16). And this isn't just rhetoric! He truly knows that in his heart he has violated everyone of God's commands, that he needs forgiveness and grace.

Before he became a follower of Jesus, Paul tracked down and arrested Christians. And on one occasion, he

stood by, carrying the cloaks of those who lynched a Christian named Stephen—he abetted the crime, you could say. He may not have cast the stone, but he later would acknowledge his responsibility in Stephen's death (see Acts 22:19-20).

Or go back further. Who was the greatest man among the people of Israel? How about Moses? One day he took it upon himself to kill an Egyptian who was whipping a Hebrew slave. Maybe the Egyptian slave-driver got what he deserved, but it was vigilante justice at best. And even the Hebrews were scared of him then. And so Moses fled into the wilderness where he stayed for years.

Or how about David, Israel's greatest king? He seduced another man's wife and got her pregnant—a capital crime in Israel. But that's not all. To cover it up, he engineered her husband's death. And this same David is called a man after God's own heart (Acts 13:22)!

These stories aren't just incidental to the Christian faith. They're at the core. Again and again, God uses deeply flawed people—which is a nice way of saying scoundrels, murderers, thieves, and adulterers. The whole point of the gospel is that no one is beyond God's help and forgiveness. And God explicitly chooses to redeem the worst of people so that they may go on to do great things. Moses rescued his people from oppression. David ruled with wisdom and united a divided people and set the standard for good leadership. Paul articulated more clearly than anyone else before or since how God loves us and how God's grace overcomes our sins and gives us the hope for peace between people, and peace with God.

At the heart of Christianity is the death of Jesus—an unjust death, an execution engineered by corrupt priests and callous politicians. At the heart of Christianity is the principal that those whom have received mercy are to *be* merciful. And at the heart of Christianity is the renunciation of vengeance, is giving up retribution.

Now, this doesn't mean that we abandon the rule of law. This doesn't mean that there is no place for punishment. But consider: we will never have perfect justice; mistakes *will* be made. Innocent people have been, and will continue to be, convicted and sentenced. While we must always work to improve our justice system and appeals process, it will never be perfect. Never. But executing a person will always be final.

People say that we need the death penalty to deter crime. That we need it to help families of victims gain closure. That we need it because certain crimes are so bad, so heinous, that nothing short of execution will bring justice. All of these claims are dubious at best. In my conversations with people in favor of the death penalty, I have not often seen a measured, rational, desire for justice. I've seen a desire for vengeance. I've actually someone say to me, "If someone raped my daughter, I'd want to kill him with my bare hands." I've heard comments about how certain criminals don't deserve to live. And I'm sad to say that some of the harshest things I've heard have been said by Christians.

I believe we are designed for justice. We rightly want to see criminals punished. People throughout the world and throughout history have cried out to God for justice. And the promise to us is that ultimately God will deliver perfect justice. In the meantime, we need to order society the best we can and administer justice the best we can. But it will never be absolutely perfect. And therefore we should not employ an absolute and irreversible punishment.

Not only is the death penalty absolute and irreversible, it's not really even about justice—it's about *vengeance*. We simply don't have an "eye for an eye" justice system. We don't torture those who tortured or rape those who raped or burn the homes of arsonists. Then why do we think we need to kill people who killed? Justice doesn't require it; *vengeance* does.

Okay, some will say, but why fight for this? As I've talked to people about this issue, I've been challenged: *Why fight for criminals? Aren't there more important things we can do, more important causes—poverty, homelessness, world hunger? Why fight for this?*

Well, who—and what—did Jesus stand up for? Pretty much always the unpopular people and unpopular causes. He stood up for second-class people. The corrupt. The prostitutes. The "sinners". And who did he criticize? The self-righteous. The judgmental. Those interested in maintaining the status quo. So, in speaking up for those that society disdains and in speaking against a corrupt system, we are speaking the language of Jesus. Jesus' own death was unjust—and so as I see it, Christians, of all people, ought to be opposed to a system that is impossibly flawed. This is why I stand against the death penalty.

***Matt Randles** is the pastor of Headwaters Covenant Church in Helena, MT (www.helenaheadwaters.org). The vision of the church is to have "a faith that's more than words." On the last Sunday of the month, instead of having a worship service, they gather for an all-church service project in the community. Originally from the Seattle area, Matt and his family came to Helena in 2003. He studied music composition at Central Washington University and received a Master of Divinity from Fuller Theological Seminary. Prior to establishing Headwaters, Matt was the Associate Pastor at the Evangelical Covenant Church in Helena.*

"Let us love not with words or tongue but with actions and in truth." (1 John 3:18)

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MONTANA AMERICAN INDIAN CAUCUS

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February 2, 2011

Montana State Senate
Judiciary Committee
PO Box 200500
Helena, MT 59620-0500

Montana State House of Representatives
Judiciary Committee
PO Box 200400
Helena, MT 59620-0400

Dear Members of the Judiciary Committee,

On behalf of the Montana American Indian Caucus of the 62st Legislature, we voice our support for replacing the death penalty in Montana with life without the possibility of parole.

The U.S. Constitution guarantees fairness and equity before the law and yet one of the death penalty's fatal flaws is the unequal application to people of color and those in poverty. Numerous governmental and non-governmental studies have shown that racial biases permeate our legal system and lead to inequalities in sentencing.

The death penalty disproportionately affects American Indians. A study in 2003 found that a disproportionate 19% of those executed prior to 1994 were American Indians. American Indians make up about 6.5% of Montana's population and yet make up 15% of those who have been sentenced to death in Montana.

The death penalty is also disproportionately applied to low-income people, many of whom are people of color. Defendants who are poor and represented by court-appointed lawyers are more likely to get the death penalty than those who can afford their own expensive legal representation. Such skewed application of justice is part of the reason that 138 Death Row inmates have been found innocent or exonerated since the 1970s.

In addition, the death penalty is much more expensive than life without parole. Every major cost study ever conducted shows that the death penalty system costs taxpayers at least 2 to 3 times more than a system of life without parole. The majority of that cost is incurred during the initial trial, whether or not the defendant is sentenced to death.

Finally, the death penalty prolongs pain for victims' families, dragging them through an agonizing and lengthy process that holds out the promise of an execution at the beginning but often results in a different sentence in the end. A life without parole sentence, on the other hand, begins as soon as victims' families leave the courtroom and is served anonymously, outside the spotlight of the media cameras.

The American Indian Caucus asks the Judiciary Committee to strongly consider supporting the bill replacing the death penalty in Montana with life without the possibility of parole.

Sincerely,

Frank Smith
Tony Belcourt
Carolyn Pease-Lopez
Sharon Stewart Peregoy
Rep Lila Evans