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Introduction: The Death Penalty: Race, Poverty and Justice

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SYMPOSIUM

INTRODUCTION

THE DEATH PENALTY: RACE, POVERTY AND JUSTICE A SYMPOSIUM

This edition of the law review records a Death Penalty symposium sponsored and held at Santa Clara University in October, 1994. The symposium was designed to re-focus the debate on how the legal system has responded to questions about who will live and who will die.

The current debate on the death penalty no longer addresses the fundamental legal, ethical and moral issues involved in state-sanctioned killing. The debate now focuses on how to kill, not whether to kill; the right to counsel is discussed in terms of money instead of quality; and the "war on crime" has removed any concern for preserving our fundamental rights.

The stark reality is that in this country the penalty of death is being imposed against the poorest and most powerless people in our society. The public, as well as the courts, are caught up in the politics and passions of the moment and either ignore or reject many of the basic constitutional protections in the name of political expediency. Something is wrong with a system that continually asks how to make executions occur more quickly rather than asking whether the process is fair and just. In this atmosphere, it is no surprise that the infliction of the ultimate penalty of death is one that raises many questions, concerns, and problems. The symposium identified and raised some of these issues.

Although this symposium was an important discussion of some of the problems that surround the imposition of the sentence of death, unfortunately, the "machinery of death" continues to grind out injustice. Since the symposium, the state of Texas executed Jessie Dewayne Jacobs with full knowledge that he was not guilty of the crime for which he was put to

death and the state of Illinois executed Girvies L. Davis in the midst of tremendous controversy over his guilt.

The highlight of the program was the keynote address by Rubin "Hurricane" Carter. Mr. Carter was imprisoned for over twenty years for a crime he did not commit and is a living testament to the importance of preserving the Great Writ of Habeas Corpus. Without this basic protection, Mr. Carter would still be in prison today. His words speak powerfully about the influence of race and politics in our system of justice. A transcript of those remarks are reproduced in this issue.

The message from the symposium was stated best by Mr. Carter who urged the audience to "get outraged", to "wear your outrage proudly," and to never be silenced.

The remainder of the program consisted of three panels, members of which presented papers or remarks. These included:

PANEL I: The Impact and Effect of Trauma and Violence on Young Children

This panel addressed issues concerning the impact of trauma and violence in young children and how this affects their conduct when they become adults. Any cursory review of persons on death row reveals numerous individuals who have suffered severe emotional and physical abuse as children. This abuse is often on a scale that is almost inconceivable to many of us. Participants on this panel included:

PROFESSOR CRAIG HANEY is chair of the program in legal studies and Professor of Psychology at University of California at Santa Cruz. He received his J.D., Masters and Ph.D. from Stanford University.

Professor Haney has written extensively on issues relating to capital punishment including extensive analyses of the jurisprudence of capital litigation and social issues relating to the death penalty. Professor Haney has conducted extensive studies on jury selection in capital cases. Since 1982, Professor Haney has been involved in conducting evaluations and testifying about the impact of confinement in various institutions. A nationally recognized "mitigation specialist" in capital cases, Professor Haney has taught and lectured extensively on investigating and preparing the penalty phase of a capital trial.

MICHAEL LAWRENCE is presently a staff attorney at the California Appellate Project in San Francisco, as well as the Director of the Death Penalty Project for the American Civil Liberties Union of Northern California.

Mr. Lawrence received his J.D. from the University of California at Davis and was Editor-in-Chief of the U.C. Davis Law Review and Editor of a U.C. Davis Death Penalty Symposium. He has written extensively on social issues in the criminal justice system, as well as in the area of the Death Penalty. He has been extensively involved in death penalty litigation, including representing Robert Harris in post-conviction proceedings. Mr. Lawrence was also counsel in the recent successful challenge to the use of gas as a method of execution.

KATHY WAYLAND earned her Ph.D. in clinical psychology from Duke University. She is on the faculty at the Duke University Medical Center in the Department of Psychiatry, Division of Child and Adolescent Psychiatry. She is currently working as a consultant to the California Appellate Project examining mitigation issues in capital cases.

She has conducted extensive research on adults and children with histories of physical and sexual abuse, as well as studies of children with histories as victims of aggression. She has lectured extensively and written on the impact of interpersonal violence in developmental psychology and adult adaptation. As a nationally recognized expert, Dr. Wayland has lectured and taught around the country.

PANEL II: Standards for Counsel and Funding in Capital Cases

The second panel presented issues involved in the funding of capital cases and the standards set for counsel in the representation of persons charged with capital crimes. This panel included:

ELLEN KREITZBERG is presently a professor at Santa Clara University School of Law and the Director for the Center on Trial and Appellate Advocacy. She teaches criminal law and advocacy courses. Professor Kreitzberg helped to create and now is the Director of the Bryan Shechmeister Death Penalty College, a six day residential program which trains defense attorneys assigned to capital cases.

Professor Kreitzberg received her J.D. from George Washington University and was a Public Defender for the District of Columbia for ten years. She has been involved in pro bono representation of persons on death row.

NORMAN LEFSTEIN is Dean and Professor of Law at Indiana University School of Law—Indianapolis, specializing in criminal law and trial advocacy. Professor Lefstein received his L.L.B. from the University of Illinois College of Law and his L.L.M. from Georgetown University Law Center in Washington, D. C. He was Deputy Director and the Director of the Public Defender Service for the District of Columbia.

Professor Lefstein has written and spoken extensively on issues relating to criminal law and the delivery of criminal services to the poor. He has testified as an expert witness on issues of competence of counsel. In his role as Chairperson of the Indiana Public Defender Commission, he was responsible for assuring defense attorneys in capital cases better pay and more access to resources in the preparation of their cases.

ROBERT WEISBERG is currently a Professor of Law at Stanford University Law School, where he teaches criminal law and procedure. He received a Ph.D. in English from Harvard University and his J.D. from Stanford Law School.

Professor Weisberg has written and spoken extensively on issues of criminal law, social policy and the Death Penalty. He is the co-editor of a Criminal Law textbook. Professor Weisberg represents persons sentenced to death in their post-conviction proceedings.

PANEL III: Race and the Death Penalty

The third panel confronted the interrelationship between race and the death penalty. Any review of history evidences the continual influence of race on the severity of the punishment imposed. The infliction of the death penalty is no different and every study has confirmed the dramatic racial disparities in the imposition of death sentences.

In *McClesky v. Kemp*, when dramatic statistical evidence demonstrated the impact of race on the selection of who was sentenced to death, Justice Powell wrote that, "[t]aken to its logical conclusion, [these studies] throw into serious question the principles that underlie our entire system of justice." Justice Powell cast the fifth vote in rejecting these studies and upholding McClesky's sentence of death. Ironically,

when Justice Powell was asked upon retirement whether there was ever any case where he wished he had voted differently he replied, "Yes, *McClesky v. Kemp*". A change of mind that, of course, came too late.

This panel included:

STEPHEN B. BRIGHT is the Director of the Southern Center for Human Rights in Atlanta, a public interest legal project which provides representation to those facing the death penalty and to prisoners challenging unconstitutional conditions in prisons and jails throughout the South. He has been its director since 1982. He was J. Skelly Wright Fellow at Yale Law School during 1993 and 1994, where he taught a course on capital punishment. He will be teaching courses on capital punishment at Harvard Law School in the fall of 1994 and at Yale Law School in the spring of 1995. He previously taught a course on race and the death penalty at Florida State University College of Law. He has represented persons facing the death penalty at trial, on appeal and in post-conviction proceedings throughout the South since 1979. He argued *Amadeo v. Zant* before the U.S. Supreme Court in 1988, in which the death sentence was set aside because of racial discrimination. He served on an American Bar Association Task Force that studied capital punishment issues. He has testified on death penalty issues before Committees of both the U.S. Senate and House of Representatives.

He was awarded the Kutak-Dodds Prize in 1993 by the National Legal Aid & Defender Association, for "extraordinary vision and inspiring leadership in the struggle against capital punishment; for his powerful advocacy on behalf of death row inmates throughout the South; and his unwavering conviction that those who face the worst penalty have a right to the best lawyers." He has also received the Roger Baldwin Medal of Liberty, presented by the American Civil Liberties Union, for "extraordinary contributions to civil liberties in the United States," and the John Minor Wisdom Professionalism and Public Service Award, presented by the American Bar Association's Section on Litigation for "high standards of professionalism and outstanding contribution in promoting an open profession and an open system of justice."

ERWIN CHEMEKINSKY is a Legion Lex Professor of Law at the University of Southern California Law Center. Professor Chemerinsky received his B.S. from Northwestern University

and his J.D. from Harvard University. Professor Chemerinsky has authored *INTERPRETING THE CONSTITUTION* (Praeger, 1987), *FEDERAL JURISDICTION* (Little, Brown, 1989, 2d ed., 1994) and numerous articles about constitutional law and federal court jurisdiction that have appeared in law reviews such as, *HARVARD LAW REVIEW*, *MICHIGAN LAW REVIEW*, *TEXAS LAW REVIEW*, *UCLA LAW REVIEW*, and *YALE LAW JOURNAL*.

BRYAN A. STEVENSON is the Executive Director of the Alabama Capital Representation Resource Center in Montgomery, Alabama. He earned his J.D. from Harvard Law School and was awarded the Harvard Fellowship in Public Interest Law. He simultaneously earned a degree in Public Policy from the Harvard School of Government where he was awarded the Kennedy Fellowship in Criminal Justice. Since then he has been a civil rights attorney in the deep South advocating for the rights of poor people and minorities through his representation of death row prisoners. He has written several manuals on death penalty litigation, and has lectured across the country on race, poverty issues and the criminal justice system. He has received numerous honors for his work including the 1989 Reebok Human Rights Award, the 1990 ABA Wisdom Award for Public Service and the 1991 National Medal of Liberty from the American Civil Liberties Union. In 1995, Mr. Stevenson received one of the McArthur awards recognizing the unique nature of his contributions.

In addition to the tremendous amount of thanks and recognition that must go to the speakers for giving their time and energy to making this program a success, special thanks must go to the Santa Clara University School of Law and the University for their support of this important issue.

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