

**Testimony before the Joint Committee on the Judiciary  
on House Bills 884, 3834, 987 and 988 Related to Reinstating the Death Penalty**

**Presented by Edward P. Leibensperger, President-Elect, Boston Bar Association  
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- Good afternoon, Chairman Creedon and Chairman O’Flaherty, and members of the committee. My name is Ned Leibensperger, President-Elect of the Boston Bar Association, and I appear before you today on behalf of the almost 10,000 members of the BBA. The BBA has long been and continues to be strongly opposed to institution of the death penalty in the Commonwealth. We urge you to reject any bill which would reinstate capital punishment in Massachusetts.
  
- The Association’s opposition to the death penalty is founded on several important factors.
  
- **First**, we know that mistakes are inherent not only in justice system, but in our forensics laboratories as well. In fact, Governor Romney acknowledged that our State Police Crime Lab and medical examiner’s office lack the resources to properly handle and analyze evidence when he proposed increases in their budgets for this fiscal year. Science is not capable of eliminating human judgment and human error from the operation of the justice system. Therefore, we all must acknowledge that *any* system of capital punishment has the potential to allow for the mistaken conviction and execution of innocent people.
  
- Thus, it should be no surprise that national data compiled by the Death Penalty Information Center, a think tank based in Washington D.C., reveals that between 1973 and 2004, 119 death row inmates were released from prison based upon evidence of their innocence. Since 1998, Massachusetts has witnessed the exoneration of 9 wrongfully convicted citizens based on DNA evidence, and more than a dozen other wrongful convictions have been documented based on other types of evidence.

- **Second**, trying cases is an art, not a science. Trial lawyers know that if they try the same case twice before two different juries and two different judges, the results will not necessarily be the same. If the same lawyer trying the same case twice cannot guarantee the same result, the implications for capital punishment are bone chilling.
- **Third**, as lawyers, we value the high quality of adjudication produced by the Massachusetts courts, and are acutely aware of the opportunities for and actual occurrence of error in this system. Corruption and incompetence in forensic laboratories, and poorly compensated and incompetent defense attorneys are responsible for errors. Today, the potential for mistakes is even greater given the current crisis our courts are facing due to the shortage of qualified attorneys to represent criminal defendants whose liberty is at stake.
- The Governor's notion of a 'fail-safe death penalty' strikes me as the ultimate contradiction. As we know, the Governor's bill includes a definition of scientific evidence that includes types of evidence that are less reliable than DNA evidence, such as photographs. The fact that these less reliable types of evidence are included in the Governor's definition, has the potential to negatively influence jurors.
- **Fourth**, racial disparities in the administration of capital punishment are significant, and must cause every honest American to pause for thought. According to the Death Penalty Information Center, minorities are disproportionately represented in the ranks of federal death row inmates. Minorities make up more than half of that population, raising unavoidably a question of whether the system does not harbor some racial biases, particularly against black men.
- Additionally, a September 2000 U.S. Justice Department survey, 80% of the cases for which *federal* prosecutors sought the death penalty between 1995 and 2000 involved racial minorities. Also, whereas nearly half of the white defendants successfully negotiated plea bargains, only a quarter of the minority defendants received plea bargains in capital cases.

- These statistics suggest that our judicial system is subject to the same racial tension that continues to afflict our society as a whole. Given the likelihood that this tension contaminates some capital cases, we cannot in good conscience allow persons convicted to be put to death.
- **Finally**, capital punishment does not deter violent crime. Relying upon data from the United States Department of Justice's Bureau of Justice Statistics, the Death Penalty Information Center examined various regions of the country, and found that Southern states, which together constitute the region with the highest murder rate, carry out 80% of all executions in the United States. By contrast, the Northeast accounts for fewer than 1% of executions carried out in the U.S., and yet that region has the lowest murder rate in the nation. Additionally, a study conducted in 2000 by the New York Times confirmed that non-death penalty states actually have lower homicide rates than death penalty states.
- We cannot claim to be a civilized and humane society, yet implement a system which results in the killing of innocent people. Just as you will not teach a child that hitting is wrong by hitting him, you will betray the principle that killing is wrong by hiring an executioner with taxpayer dollars, and killing in the name of the citizens of the Commonwealth. We are able to punish, deter, and protect ourselves through the imposition of appropriate prison sentences.
- The only thing that reinstating the death penalty will accomplish is to distract leaders and defer progress on constructive policies that improve our overall justice system. Focusing on different priorities, rather than “tinkering with the machinery of death”, will produce a legacy of justice and equal opportunity worthy of democratic ideals.
- On behalf of the Boston Bar Association, I thank you again and urge you to give an unfavorable report to each death penalty bill before you.