

## **The Slow and Painful Abolition of Capital Punishment in the United States**

Before I begin my comments, I would like to offer my thanks to a number of people who have invited me to be here and who have made it possible for me to attend these wonderful events. First of all, I would like to thank the Community of Sant' Egidio for arranging these events and for providing the resources for these events to occur. Their important work in this area of human rights preservation cannot be underestimated and would not occur without a tremendous commitment of time, energy and resources to make this all possible. I would also like to thank the supporters of the community: the many university and school administrators who have pledged their support and for making the issue of the death penalty an important part of their curriculum so that events like these can occur. I would like to thank the Italian officials who have supported these events- especially the mayors and legislative leaders who are in attendance. I would like to thank the religious leaders in Italy- from the Vatican to the local bishops and priests who have made themselves visible and who have spoken so fervently about their commitment to human rights protection and who have been a witness to the power of our religious institutions to step forward and to highlight the importance of recognizing and protecting the value and dignity of human life. I would like to thank my wife for being here with me here as well and for her support of my efforts to have an impact here and around the world in fighting for the lives of

those who are “the least” in our society, and for fighting to protect all of our God-given human rights. Most of all, I want to thank you for being here today and for allowing me to spend some time with you and to share with you some of what I have learned and experienced in the United States on the important issue of capital punishment and is describing the current state of affairs in our efforts to bring attention to the problematic practice of the death penalty in the United States.

Last week, as I was doing some research and preparing some notes on capital punishment for my students at my university in the United States, a student came into my office and presented me with a document: a world map- a simple diagram visualizing those countries in the world that had capital punishment and those that did not. I know that all of you know the kind of diagram that I am referring to. Usually, these maps display the countries and states that retain capital punishment in the world with a dark color, and those that are abolitionist states or countries are noted in the color white. Of course, the darker colored countries stand out on the map. But on this particular map that my student provided to me, much to my surprise, the United States was pictured in the color white, which was meant to describe that there was no death penalty in the US. Obviously, this is not true, but I think that the misinformation presented on this map points to exactly the problem of capital punishment in the United States, because the irony is that we unfortunately have states that *have* capital punishment as well as some states that

*do not have* capital punishment. In fact, there are more states that actually have capital punishment than those that do not. We are in this regard, a nation divided and the message that this division sends to the world is as confusing as the maps that show that we *have* capital punishment and those that show that we *don't have* capital punishment. It is no surprise to me that this confusion exists within the United States and that it seems to confuse those who live outside of the United States. This confusion is highlighted when we try to understand how it can be that we are a nation divided on the issue of capital punishment and as we examine the issues of retention and abolition. In this regard, it is important to note that the process of abolishing capital punishment in the United States has been very slow and painful- just as slow and painful as it is to actually carry out and to witness an execution- and, yes, we still execute people in the United States. So I come to you today to be candidly honest with you: to share with you some of the good news and some of the not so good news about what is happening with capital punishment in the US. Many observers will appropriately note that the United States has recently made some very positive movements toward abolition, but this must be tempered with the reality that we still have very deep rooted problems in those states that retain capital punishment.

Let me start by telling you some of the good things that are happening in the US. Over the last 5 years, the number of executions in the US has fallen and the

number of those sentenced to death in the US has fallen as well. In the last 6 years, 6 individual states have abolished capital punishment- the last state to abolish was the state of Maryland, which abolished earlier this year. This year, there are 4 more states that will have a bill abolishing the death penalty raised in their legislatures, and another 13 states are considering raising the issue of abolition for debate in their legislatures in the coming years- 6 of these states have already put executions in their states on hold until more evidence is gathered to determine if problems exist in the processes in administering capital punishment in their criminal justice systems. Indeed, these are all good signs, and signs for which those of us who fight for abolition can be proud. At the same time however, there are reasons to be very concerned that the death penalty may continue to operate in the US for many years to come. Economic and racial disparities in the application of capital punishment continue to be major issues of concern that are not being properly addressed. Just last week, a Texas Appeals Court refused to order a new death sentencing hearing for a black man who, in his original trial, was deemed to be a future danger to murder again only because he was black. Last year, a black man in Georgia was denied a new trial even after most of those who testified against him at his trial revealed that they had been coerced into giving false testimony and had lied under pressure. Other courts have been very slow to respond to the mounting evidence of proof of wrongful conviction- especially in

death penalty cases. A recent report on wrongful conviction released earlier this year in the US has shown that there is clear evidence that wrongful conviction occurs more frequently than we would like to admit and that there are many factors which we can't control and which steer our system to findings of guilt when individuals are in fact innocent. The evidence is clear- since the year 1990, there have been over 2,000 cases of wrongful conviction overturned in our nations courts- half of those homicides, and as of today, there have been 143 people since 1973 who were on death row have had their convictions overturned and they have been set free. These are not statistics to be proud of- these are some of the reasons why we should turn away from capital punishment and to never put ourselves in the position of killing a potentially innocent human being. There are other issues that need attention our as well. Our appeals courts have been faced with many challenges in death penalty cases from many states on many issues- some of those issues, the courts have properly responded to: for example, the execution of the mentally retarded is prohibited, and the execution of juveniles under the age of 18 is prohibited as well. But there are as many other issues that the courts have still not intervened on that remain seriously problematic: just last week, an appeals court in Missouri refused to stop an execution in which the lethal chemical that was to be used to kill a man had been obtained from a pharmaceutical company in violation of federal law. It seems that every other month, a case arises where a

death row inmate is denied a new hearing even when evidence is provided that seriously questions their guilt- and the courts refuse to intervene. And it is still a current practice that in 3 states, judges are allowed to overrule a jury recommendation to spare the life of someone found guilty of murder when the jury had recommended a sentence of life in prison- but the judge overrules that they should die. So it is sad for me to say, that in the US, we have not overcome many of the major problems that plague the process of sentencing individuals to death. There is much more work that needs to be done.

So where are we headed with all of this news, some of which is good, and some that is not so good? I believe that, even with some of the problematic things that I have mentioned, that there is still reason to be hopeful. The reason for that hope is because of the tireless work of all of us who have been working toward abolition of the death penalty for many, many years. We have built for ourselves a solid foundation and we have created strong momentum for the future. This momentum started over 40 years ago when one of our United States Supreme Court Justices, Thurgood Marshall, stated in a death penalty case heard by the Court, that he believed that if people know the truth about capital punishment, they could never support it. He was concerned that public opinion in the US was an uninformed public opinion, and that if people were given the truth about how individuals are unfairly selected for capital punishment based on race and economic

circumstances, the truth about how the process is flawed, and the truth surrounding the real risk of executing an innocent person were made known, that the public would recoil in fear and change their minds dramatically about the fairness of capital punishment. Today, as we examine some of the recent data that we have gathered on public opinion, it appears that Justice Marshall was correct. In a recent public opinion poll released earlier this month, support for capital punishment in the US is now at its lowest point in 41 years- it is now down to 60%- down over 20% from a high of 80% 20 years ago. Even better than that, when those who were questioned were provided with an alternative sentence of *life without parole* (LWOP), support for the DP dropped even lower, to fewer than 50%. We can say now that there are more people in the US who would prefer a sentence of LWOP than the death penalty when asked to choose between the two. Another indication of the lessening of support for capital punishment can be seen by the results of a voter referendum held in the state of California last year. California has traditionally been a state that has very strongly supported capital punishment over many years- but when they were given a chance to publicly vote on a bill which would have eliminated capital punishment in their state, the vote lost by only 2 percentage points. Why is this important? How can this be seen as a victory? What happened in California was that there was an intense educational campaign which informed the voters about the truth on issues surrounding capital

punishment- how it was improperly imposed, how innocent people were convicted and the incredible financial burden that it placed on its citizens- it was these truths that informed the California voters. Even though the effort to abolish failed in the referendum, there is little doubt that it will pass in the near future. In fact, a new bill recently proposed that would have actually sped up the process of executions in California that was introduced earlier this year, it failed to pass the first vote in legislative committee. California is now much more informed about the truth about capital punishment. Our hope is that other states will soon follow.

So there is indeed hope for the future. We have witnessed abolition of the death penalty in states across the US in recent years, and we have learned some important things. But what are we doing to continue to implement changes to the system and to abolish capital punishment? There is much that we can take away from the tireless efforts of the many groups that have helped to organize state coalitions to fight against capital punishment. Groups like Equal Justice USA, the Innocence Project, and Witness to Innocence, Amnesty International, the ACLU, the NAACP and the National Coalition to Abolish the Death Penalty all of whom have offered their professional services to help states to strengthen their efforts toward abolition in those states trying to abolish capital punishment.

There are some important themes that have developed in these efforts and important stakeholders that have stepped forward to highlight the need for reform.

The most notable among these stakeholders are:

1) The surviving family members of those who have been murdered. Many of these groups are represented here in Rome this week, and have been part of the abolition movement for many years, for example Murder Victims for Reconciliation and Murder Victims for Human Rights. If it weren't for the courage of the surviving members of those murdered who have stepped forward and demanded that justice not include a capital sentence, I would not be here today. The informed public opinion that Justice Thurgood Marshall spoke about 40 years ago is no more evident than in the voices of these warriors who have shouted from the rooftops that there is no justice without life and that the death penalty does nothing to help them in their struggle to deal with the pain of the loss of their loved ones. In every state that has achieved abolition in recent years, the surviving family members of murder have been the consistent voice that legislators have been made to hear and have been forced to respond to. Abolition would have never occurred and will not occur without their strong voices.

2) Those exonerated of murder and other violent offenses- those individuals who were not responsible for committing crimes for which they spent cumulatively hundreds of years in prison and on death row waiting for justice in their cases.

How powerful it is to witness the strength of people like Shujja Graham, Curtis McCarty, Randy Seidel, Fernando Bermudez, and Kirk Bloodsworth standing strong as the voices of how terribly our justice system has failed them- and all of us- in the fight to eliminate wrongful conviction and capital punishment. States can no longer stand silent as their voices cry out for a justice system that feels the pain of those wrongfully convicted.

3) Faith communities- those from every denomination that have made the courageous decision to come forward and proclaim freedom for the captives and to fight for life for even those who are guilty of committing horrible crimes- those who proclaim that no life is to be wasted- and in the words of Sr. Helen Prejean- to accept that every man is more than the worst thing that he has ever done in his life. Crusaders like Sr. Helen Prejean and Dale Recinella who have taken on and confronted the established churches and demanded that the truth of the value of life- all lives- be affirmed. Our faith communities from all over the world have taken the important step to the forefront of the abolition movement and called all of us to accountability regarding our flawed traditional beliefs and to bring clarity to the sacredness of life. More than that, religions from all over the world have united together in this movement to present a unified front which silences the false belief that we need death to preserve life.

4) The Law Enforcement community- which I proudly represent- who in many states has taken the unpopular stand to challenge a long held false belief that having a death penalty is necessary to protect the lives of innocent people as well as to protect the law enforcement community. Police executive from all over the US have confirmed over and over again in recent studies that the death penalty is not an effective tool to fight crime and they have placed the DP last- at the very bottom- in the list of tools to effectively fight crime and to protect lives. Our job in law enforcement is not only to arrest those guilty of committing crimes, but to insure that we don't arrest those who are innocent of crimes. We have made some terrible mistakes over the years and, worse, have in some cases intentionally arrested innocent people and charged them with capital crimes. Many law enforcement executives are now calling for an end to the death penalty and, if it were abolished, we would be able to divert the monetary cost savings we would realize toward promoting better law enforcement initiatives and toward providing better services for those who are victims of violent crimes so they can put their lives back together more quickly. The research that I am conducting now is helping to dispel the myth that having a death penalty protects the lives of law enforcement officers. My data is revealing that murders of law enforcement officers actually occur more often in states that have a death penalty than those

that don't have the death penalty. I hope to be releasing the results of that study shortly.

5) There is also now, a new group of citizens who have stepped forward recently and who are having a large impact in the abolition movement. Traditional Conservative groups, who have regularly favored the death penalty, are now speaking out against capital punishment on a number of issues that are of concern to them. They are concerned about the risk of executing an innocent person, as well as the exorbitant costs associated with having a death penalty – especially in these unstable financial times that we are now experiencing. Conservatives are now becoming convinced that the death penalty is not a deterrent to future violent crime, that it is not fairly and equitably distributed and is has failed the victim's family members and not produced the closure and peace that many who support it claim that it does.

As we continue to move forward, we are learning more and more about the collateral damage that is caused by having a death penalty. Everyone involved in the process of capital punishment is directly, negatively affected. My good friend Robert Bohm who has written many books on capital punishment has recently authored a new book called *Collateral Consequences of the Death Penalty*. In this book, he systematically details how the capital punishment process destroys everyone in its wake- from police, to prosecutors, the jury, the victims' family, the

offenders' family, corrections officers, the death team, appeals judges, governors and clemency boards. No one is left unmarked by the flawed and painful process of death. We must stop this slow and painful journey into death for everyone's sake.

I believe that someday, the death penalty will come to an end in the US. But the lingering question of exactly how the death penalty will come to end in the US remains to be answered. I'm not sure, but it seems to me that it will take some time before we can expect our Supreme Court to take the giant step forward and abolish capital punishment for all states once and for all. Our Courts' recent decisions seem to indicate that they will continue to defer to the individual states to make their own collective decisions concerning capital punishment, and to *not* make the decision for all states in one single case. Perhaps someday, maybe the day when most states have come to abolish the death penalty- perhaps then, the United States Supreme Court will take that drastic step to end capital punishment in one case decision, once and for all.

In the meantime, we must all continue to move forward- in the US and in the world- to become more fully informed about the truth about capital punishment and if it is indeed necessary to maintain social control and to achieve true justice. We cannot wait for someone else to act- we must continue to be diligent in moving

forward, step by step, day by day, state by state and country by country- in seeing to it that the worldwide death penalty will someday vanish completely.

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