

WHY SHOULD YOU OPPOSE THE DEATH PENALTY?



By Larry A. Hammond

When two executions were scheduled within a week of each other, Arizona was poised to set yet another embarrassing record—the state most likely to put people to death, despite revelations that show the system is faulty when it comes to the imposition of life-and-death! One execution was carried out. One was not, but the

question remains whether our justice system will be shown yet again to be unworthy of the name “justice.”

Let's hope not. I think most who favor the death penalty would agree:

- (1) The death penalty should be reserved for “the worst of the worst”; and
- (2) Those facing the death penalty must have competent lawyers adequately funded.

Three Justices of the U.S. Supreme Court – Justices Harry Blackmun, Lewis Powell and, most recently, John Paul Stevens – each came to the conclusion that the death penalty was not only wrong, but probably unconstitutional. Each gave up on the death penalty because it could not be meted out with the precision necessary when deciding who should live and who should die.

Surveys show that most think that the death penalty should be imposed only in the worst cases; yet no state has yet developed a system to accurately achieve this goal. And no state will, not as long as we have elected prosecutors and elected sheriffs. Passion, politics and and publicity play a part in the way that we go about deciding whether to seek the death penalty. Many lawyers and many judges and legislators think that, in theory, it can be done, but it cannot. One need only look at the wild swings in charging the death penalty from county to county in Arizona and from county attorney to county attorney in Maricopa County.

There is no rational explanation for the fact that the death penalty has been charged in this county at a rate grotesquely in excess of the rate at which it has been charged in recent years in Pima County. At one point,

there were 145 pending death penalty cases in Maricopa County and 10 in Pima County. There is not a single population or demographic factor that explained this wild difference. The only explanation was elected officials' appetites for the death penalty. The dramatic drop in the numbers of death penalty charging decisions in the last 1½ years in Maricopa County is also dramatic proof that we do not have a non-political system designed to distinguish the worst cases.

Equally troubling is the fact that we simply are not prepared to provide the defense that anyone facing this ultimate penalty should have. Despite efforts by many to improve the system, at the end of the day, in Arizona and everywhere else where the death penalty is still employed, we find ineffective lawyers hobbled by inadequate resources. It is not a coincidence that the reversal rate in death penalty cases is always so much higher than the reversal rate in other criminal cases. Nor is it a surprise that so many of our most talented criminal defense lawyers refuse to do death penalty work.

Make no mistake about it. Death penalty defense is indigent defense. Well in excess of 95 percent of all death penalty cases are handled by lawyers paid by the state.

Advances in science – most particularly DNA – have shown that our criminal justice system errs. We now know that sometimes innocent people are convicted of crimes they did not commit. Nobody believes that an innocent person should be executed. If we as a society are not prepared to execute innocent people, we need to make sure that the defense has experts properly trained in forensics, experts who can help understand not only the question whether a defendant committed the crime, but also why he might have done it.

If we had a system that unerringly figured out who the worst of the worst are, and if we were willing to pay for the defense of those people, we might then be able to debate the larger moral issues. Until we get to that point, there is no need to talk about the ultimate right and wrong of state killing.

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