

DESPITE STATE BAN, DEATH PENALTY TRIALS CONTINUE IN VERMONT

In 2005, Vermont witnessed its first death penalty trial in 43 years — despite the fact that capital punishment was effectively eliminated in Vermont in 1964, during the Hoff administration, and formally abolished by the state legislature in 1987.

The trial came after the federal government asserted jurisdiction in a kidnapping-murder case and then-U.S. Attorney General John

Ashcroft insisted a death sentence be sought.

As attorney general, Ashcroft sought to bring the death pen-

alty back to numerous “abolition” states such as Vermont. Federal statutes allow the death penalty, regardless of an individual state’s position on capital punishment.

Federal insistence on death sentences has continued, despite a turnover in administrations. In 2009, Attorney General Eric Holder approved a death sentence trial for Michael Jacques, accused of a 2008 kidnap-murder.

This insistence comes despite a growing number of states abolishing the death penalty. Illinois became the 22nd abolition state, in 2011.

Reasons cited by states for abolishing the death penalty are the same as those argued by civil libertarians and other death penalty opponents. The reasons are both principled and practical, but all point to a simple conclusion. Capital punishment is never appropriate in a civilized society.



Photo by Allen Gilbert
Vermont death penalty opponents during the 2005 Donald Fell trial in Burlington.

THE CASE AGAINST CAPITAL PUNISHMENT

The American Civil Liberties Union believes that the death penalty is the ultimate denial of civil liberties, and has long worked for its abolition through state affiliates and the national ACLU’s Capital Punishment Project.

The constitutional grounds for opposing capital punishment are several. In all circumstances, executions violate the Eighth Amendment prohibition against cruel and unusual punishment. The discriminatory manner in which death sentences are applied violates Fourteenth Amendment protections. Lack of adequate legal representation violates the Sixth Amendment.

INHERENTLY CRUEL AND UNUSUAL

The history of capital punishment is replete with examples of unjustified, and botched, executions.

No execution is painless, and all executions

REASONS TO OPPOSE THE DEATH PENALTY

- Inherently cruel and unusual
- Risk of executing the innocent
- Unequal legal representation
- Racial bias
- Geographic disparities
- Costly and ineffective

are cruel. Eyewitness accounts confirm that execution by any means is often an excruciatingly painful, and always degrading, process.

Capital punishment is a barbaric remnant of an uncivilized society. It is immoral in principle, discriminatory in practice, and assures the execution of some innocent people. No other major industrial nation in the world persists with executions.

FLAWED

“Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, and, despite the effort of the states and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake.” — *U.S. Supreme Court Justice Harry A. Blackmun, Feb. 22, 1994*

SUPREME COURT CASES THAT HIGHLIGHT DEATH PENALTY FLAWS

Cruel and Unusual (consequence) —

Kennedy v. Louisiana, 2008
Executing defendant for a crime “where the victim’s life was not taken” is “cruel and unusual punishment” under 8th Amendment.

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RISK OF EXECUTING THE INNOCENT

Since 1973, more than 130 people have been released from death rows throughout the U.S. due to evidence of wrongful convictions.

The vast majority of those exonerated were found innocent because someone came forward to confess committing the crime, key witness testimony was found to be illegitimate, or new evidence was found to support innocence. Increasingly, exonerations are based on DNA evidence.

The possibility of executing an innocent person points to a flawed system.

UNEQUAL LEGAL REPRESENTATION

Capital cases demand hundreds of hours of preparation and extensive resources. Many defendants cannot afford a lawyer, so they must rely on the state to provide one.

Few states provide adequate funds to compensate lawyers for their work or to investigate cases properly. As a result, capital defendants are frequently represented by inexperienced or over-worked lawyers.

A competent attorney can, in capital cases, literally mean the difference between life and death. Executing people because of who their attorney was, instead of what their crime was, underlines the arbitrary and discriminatory nature of the death penalty.

RACIAL BIAS

Many studies have found that, when all other variables remain constant, the one most reliable predictor of whether a defendant will be sentenced to death is the race of the victim.

A 2007 study of death sentences in Connecticut conducted by Yale University School of Law revealed that African-American defendants receive the death penalty at three times the rate of white defendants in cases where the victims are white.

Prosecutors seek the death penalty far more

frequently when the victim of a homicide is white than when the victim is African-American or of another ethnic/racial origin.

GEOGRAPHIC DISPARITIES

The imposition of a death sentence has more to do with where a crime is committed and where the capital trial takes place than with the facts of the actual case.

Of the executions performed in the U.S. since the reinstatement of the death penalty in 1976, 80 percent were carried out by 10 states (Alabama, Arkansas, Florida, Georgia, Louisiana, Missouri, Oklahoma, South Carolina, Texas, and Virginia). Texas and Virginia accounted for more than half of the executions.

The fact that who receives the punishment of death is based more on where someone lives than on what the person did demonstrates unacceptable arbitrariness.

COST AND EFFECTIVENESS

Studies consistently show that the total cost of trying and executing a defendant is higher than trying and sentencing someone to life without parole.

A 2003 legislative audit in Kansas found that the estimated cost of a death penalty case was 70 percent more than the cost of a comparable non-death penalty case, according to Amnesty International. Death penalty case costs were counted through to execution (median cost \$1.26 million). Non-death penalty case costs were counted through to the end of incarceration (median cost \$740,000).

The death penalty is also not an effective deterrent.

A September 2000 *New York Times* survey found that from 1980 to 2000, the murder rate in states with the death penalty was 48 to 101 percent higher than in states without the death penalty. That discrepancy continued through the first decade of the 2000s.

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Cruel and Unusual (age) — *Simmons v. Roper, 2005*

Executing juveniles is “cruel and unusual punishment” under 8th Amendment.

Cruel and Unusual (mental disability)

— *Atkins v. Commonwealth of Virginia, 2003*

Executing the mentally disabled is “cruel and unusual punishment” under 8th Amendment.

Racial Bias — *Batson v. Kentucky, 1986*

Excluding jurors based solely on race violates a defendant’s 6th Amendment right to a fair trial.

Due Process — *Ring v. Arizona, 2002*

The 6th Amendment trial right requires that juries, not judges, determine whether aggravating factors exist to warrant the death penalty.

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AMERICAN CIVIL LIBERTIES UNION OF VERMONT
137 ELM STREET, MONTPELIER, VT 05602