Rosalynn Carter Addresses Pro Bono Luncheon

Former First Lady Rosalynn Carter spoke during the ABA Pro Bono Publico Awards Luncheon in Washington, D.C. on August 12, 2002. Carter is vice chair of the Carter Center, a non-profit institution dedicated to protecting human rights, building democracy and expanding access to health care. She co-founded the Carter Center with her husband, former President Jimmy Carter, in 1982. The following is a transcript of her speech.

I am pleased to be with you today, and I want to add my congratulations to those who received the Pro Bono Publico Awards. I have great admiration for them and for all those who volunteer to provide legal services for the poor and safeguard our rights and liberties.

The death penalty is an issue about which I feel strongly, and one that has bothered me for a very long time. At the Carter Center we see it as an obvious violation of human rights. We have many meetings about the issue. I have talked with our governor; called on the chief justice of the Georgia Supreme Court and spoken to the speaker of the Georgia House of Representatives. I write to governors all the time about people in their states on death row and before many executions. I worry about the issue. And I have just become an advisor to the Georgia Indigent Defense Council.

Capital punishment in the spotlight

I'm pleased that the death penalty is getting so much attention these days, with stories in the media about high profile cases, the way the death penalty is carried out, racial discrimination and poor legal representation, and the killing of mentally ill people. (We're thankful about the recent Supreme Court ruling against killing mentally retarded people.)

And we even hear stories of the execution of juveniles. There were two scheduled this summer - both this month and both in Texas: one last week (August 8) and another on August 28.

Hopefully, this attention is having some impact on people so that they can see how unfair and discriminatory our system of capital punishment is. Since 1973, 101 people have been released from death row after their wrongful convictions were overturned. Twelve were found innocent through DNA tests.

A recent study done by law professors at Columbia University in New York found that nationally, 68 percent of all capital cases resulting in a death sentence contained serious, reversible errors. This is appalling. The study found the system is "riddled with unfairness and incompetence, with serious errors erupting with alarming frequency at every stage of the process."
Today, I want to talk about some of this unfairness and incompetence that concerns me; and about children, mental illness, race, and the lack of competent counsel. They are all interconnected, because these issues affect some of the most vulnerable populations among us - the ones most in need of competent legal assistance and who often don't get it.

**Execution of juveniles**

It should be an embarrassment to every American that we execute children. The United States is the only country in the industrialized world that still executes anyone. We have refused to ratify the International Convention on the Rights of the Child. Why? One reason is because we want to continue to execute juveniles.

Many children who commit serious crimes come from severely abusive homes, and those of us in the mental health field know that children who are victims of child abuse or neglect consistently show a high incidence of mental disorders, serious brain injuries, substance abuse and learning disabilities, and this can predispose them to aggressive or violent behavior. The sad thing is that these juveniles rarely receive the help they need that could lead them to mental health treatment facilities instead of death row. We don't take care of children in our country as we should and then when they get in trouble, we punish them severely.

Today, about 80 offenders who were under 18 at the time of their crimes are on death row - the highest figure since the reinstatement of capital punishment.

Yet, our policy makers are abandoning any notion of rehabilitation for juveniles and pushing for harsher punishments. Since 1992, almost every state has made it easier to try juveniles as adults, which means many are serving long-term sentences in adult facilities, or are being sentenced to death. Just in the last day or two, we've been reading about Florida trying to decide whether or not to prosecute an 11- or 12-year-old as a child or adult.

Currently, about 20 percent of youth in the juvenile justice system have a diagnosable mental health disorder. I have seen this first hand over the last couple of years, as our mental health program at the Carter Center has been working with the juvenile justice system in Georgia.

**Tragic fate for mentally ill**

The execution of people suffering from mental illness is tragic. There are examples of prisoners who, because of their mental disorder, cannot comprehend the meaning or finality of the death sentence being imposed upon them. Often evidence of a defendant's psychiatric history, family issues and mental capacity is not presented at the time of the trial or sentencing. As a result, individuals with mental illness are executed without the criminal justice system being aware of the illness.
Some states even force mentally ill prisoners to take medicine and receive psychological treatment so they are mentally healthy enough to be able to stand trial and be executed. Executing mentally ill people does not make sense as a deterrent and undermines the integrity and fairness of our system of justice.

We recently had a victory in Georgia when a death sentence was overturned. The defendant was 17 when he committed his crime, a juvenile; he was seriously mentally ill; he was African American; his original lawyer was incompetent; and he still came close to being executed.

Mental illness should be taken into account during all phases of a potential death penalty case. Qualified professionals should perform the assessment of competency to stand trial as well as competency to be executed.

The 1986 Supreme Court case, *Ford v. Wainwright*, prohibits execution of the mentally incompetent - but not the mentally ill. Because of outdated legal definitions, a person might be medically insane (a terrible way to describe them) but still "legally competent" to stand trial and receive the death penalty. As a result, seriously mentally ill people have been executed and many more remain on death row.

The same rationale recently cited by the Supreme Court in *Atkins* when it found the execution of people who are mentally retarded unconstitutional applies equally to mentally ill people and to juveniles. Like those who are mentally retarded, children and mentally ill individuals cannot fully participate in their defense or understand the nature and consequences of the legal proceedings. They also make poor witnesses at trials, leading the jury to sometimes misunderstand and punish the behavior they observe during trial.

The question of fairness is one that is particularly acute when it comes to the racial disparity in those that are sentenced to death and executed. Blacks who kill whites are sentenced to death at nearly 22 times the rate of blacks who kill blacks and more than seven times the rate of whites who kill blacks.

We know an African American woman who is our family's helper and close companion, Mary Prince. When she was a teenager, she was falsely accused of murder. A court-appointed attorney, whom she saw once, advised her to plead guilty and promised that he would get her off light. She pled guilty and got life imprisonment. She worked for us at the governor's mansion as a trusty from the prison. She served her term until eligible for parole, and then she came to the White House and helped us there. She has been with us ever since. After we were home, her trial proceedings were reexamined, and she received a full pardon.

Mary was fortunate. She just as easily could have been sentenced to death and executed. If the person killed in the incident had been white, we would never have known Mary. As you well know, minority defendants, who are often indigent, do not have access to the same quality of representation as wealthier defendants.
Inadequate defense at heart of unfairness

It should be obvious from my remarks that at the heart of all of these problems are serious deficiencies in our public defender systems. Those who most need help are often least likely to afford it and all too often are provided with less-than-competent counsel.

One remedy is the public defenders' offices, which, if adequately funded, could provide competent counsel. Many or most public defenders often have unmanageable caseloads and are denied the resources necessary to conduct a thorough investigation or to retain necessary expert witnesses. And they are paid far less than they could earn doing any other legal work - sometimes less than minimum wage.

I have been appalled to learn how many cases are tried by attorneys who are incompetent or uninterested, even who were drunk in the courtroom, or slept through the whole proceeding, or where (as with Mary) there was no trial at all. As Steve Bright of the Southern Center for Human Rights says, "it is not the worst who get the death penalty, it is those with the worst lawyers."

No one knows how many mentally ill and mentally retarded people, minorities, and penniless citizens are executed in our country because of inadequate defense, ignorance of the law, or racial discrimination.

Moratorium needed

All these problems and disparities point to the need for a moratorium on executions, so we can step back and look at the issues and make changes necessary so that innocent people are no longer put to death. I commend Illinois Governor George Ryan and Maryland Governor Parris Glendening for having the courage to declare a moratorium in their states and appoint a commission to review the use of capital punishment. And I commend and support The American Bar Association in calling for a moratorium.

Meanwhile, on Capital Hill, there is promising legislation pending in both chambers that could reduce the risk of executing innocent people: Senator Russell Feingold has introduced a bill (SB 233), which would place a moratorium on all federal executions while a national commission studies fairness issues.

And the Innocence Protection Act (HB 912) would provide funding for DNA testing and to states to provide effective legal services to indigent defendants and those on death row. We have our job cut out for us in working to help get these bills passed.

I'm very pleased to be with you today and to have had this chance to talk about these things that are so disturbing to me. Again I want to commend those of you who volunteer to represent a condemned person. I understand that over 80 law firms have volunteered, which is great. We need more.
I will do all I can to spread the message about this important need. One thing Jimmy and I have learned when we do things that might be helpful, but that sometimes we really don't want to do: it never turns out to be a burden. It always turns out to be a blessing.

Those who have volunteered to help have discovered the same thing. They often remark that representing someone on death row has been the most important and rewarding experience they have ever had as a lawyer.

Maybe all of us working together can have some impact on public defender programs around the country - maybe we can make a difference.

Endnotes


2 A Broken System, Part II: Why There is So Much Error in Capital Cases, and What Can be Done About It, James S. Liebman, Columbia Law School, February 11, 2002. The study found that state and federal courts reversed 68 percent of all capital verdicts imposed and fully reviewed between 1973 and 1995. The article is online at www.law.columbia.edu/brokensystem

3 477 U.S. 399, 106 S.Ct . 2595