

July 20, 2009

Dear Senator:

I write on behalf of the American Bar Association to urge you to vote against the Sessions Amendment (No. 1615) to create a death penalty offense for what are now non-capital hate crimes. We understand that the amendment will be offered during consideration of S. 1390, Department of Defense authorization legislation.

For decades, the American Bar Association has studied the administration of the death penalty in the United States and identified serious concerns that must be addressed by all jurisdictions that seek to impose it. Among these concerns are: (1) the lack of competent counsel in capital cases; (2) the need for proper procedures for adjudicating claims in capital cases (including the availability of federal habeas corpus); and (3) racial discrimination in the administration of capital punishment. The ABA has called for reforms that are consistent with many longstanding ABA policies intended to ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and to minimize the risk that innocent persons may be executed.

The proposed Sessions Amendment to S. 1390 (“Amendment”) fails to address the profound concerns articulated by the ABA and others about the lack of fairness and due process in the federal death penalty system. To expand an already “broken system” without first addressing the serious flaws in the system would risk the execution of innocent persons and other acts of injustice.

The Amendment would also result in an unprecedented and unconstitutional expansion of the federal death penalty. Unlike every other state death penalty statute in the United States, a death sentence pursuant to this Amendment is available for an offense that did not result in the death of a victim. The United States Supreme Court has definitively ruled that a death sentence is inappropriate when the offense did not result in the death of the victim. *Kennedy v. Louisiana*, 554 US ____ (2008). The Court held that none of these laws, where the crime against an individual involved no murder, were in keeping with the national consensus restricting the death penalty to the worst offenses. The ABA is thus concerned that the proposed Amendment is not consistent with constitutional principles or Supreme Court precedent.

The ABA strongly condemns hate crimes; we adopted policy in 1987 that states that “the ABA condemns crimes of violence including those based on bias or prejudice against the victim's race, religion, sexual orientation, or minority status, and urges vigorous efforts by federal, state, and local officials to prosecute the perpetrators and to focus public

attention on this growing national problem.” Likewise, ABA supports the aggressive prosecution and deterrence of these offenses. However, in light of its experiences, studies, and policies on the death penalty, the ABA opposes an expansion of the current federal death penalty system so that these crimes would carry a potential death sentence for offenders.

The American Bar Association thus urges you to vote against this Amendment when it is considered on the Senate floor.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman