

# The Atlantic Center for Capital Representation

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## STATEMENT OF THE ATLANTIC CENTER FOR CAPITAL REPRESENTATION REGARDING THE DEATH PENALTY IN PENNSYLVANIA

Marc Bookman, Director.

The Atlantic Center for Capital Representation (ACCR) welcomes this opportunity to testify about the death penalty in Pennsylvania. ACCR is a non-profit organization that provides consultation with defense teams in Pennsylvania, conducts conferences and trainings to improve the quality of defense counsel, and does systemic and individual litigation to address unfairness in the delegation of time or resources for death penalty defense. ACCR has been in existence since July 1, 2010.

We believe it is relevant, and of use to the House Judiciary Committee, to provide facts and documented cases that may help the Committee in its effort to assess the success or failure of capital punishment in Pennsylvania. Initially, it must be noted that our state has not carried out an involuntary execution since 1962, nor has there been an execution of any sort this century. Since the inception of the current death penalty statute in 1979, over 250 death sentences have been reversed; and these reversals have occurred in the state Court of Common Pleas, the Pennsylvania Supreme Court, the federal district courts, and the Third Circuit. Contrary to statements made by various prosecutors and pro-death penalty advocates about the “activist” federal courts, the state courts have reversed far more death sentences than the federal courts. We think it is reasonable to conclude that a death penalty system that has not executed anyone involuntarily in more than 50 years, and has seen virtually every death sentence reversed since 1979, is not fair to any of the parties involved – the victim’s family must endure additional hearings and often re-sentencings, the courts are tied up with time-consuming appeals, the defendants suffer through constitutionally inadequate capital trials, and the government must bear the costs.

The Terry Williams case, which was the focus of Governor Wolf’s reprieve in February, is a prime example of the failings of the current capital system. Williams’ lawyer, who was subsequently disbarred, met his client the day before his trial. The prosecutor withheld evidence indicating that the victim had sexually abused young boys, including Terry Williams. The victim’s spouse has been very clear in her feelings that she does not want to see Williams, who was barely 18 years old at the time of the crime, executed. And Williams has been on death row almost 29 years.

Indeed, due to the startling reversal rate for Pennsylvania’s death sentences, 44 inmates have been on death row for 25 years or more, 34 for 20 to 24 years, 34 for 15 to 19 years, and 26 for 10 to 14 years. Thus, 73% of Pennsylvania’s death row has spent

Indeed, due to the startling reversal rate for Pennsylvania's death sentences, 44 inmates have been on death row for 25 years or more, 34 for 20 to 24 years, 34 for 15 to 19 years, and 26 for 10 to 14 years. Thus, 73% of Pennsylvania's death row has spent ten years or more on death row, a row that costs the taxpayers an additional \$10,000 per inmate per year. See [http://articles.philly.com/2011-08-01/news/29838827\\_1\\_death-row-inmates-death-row-prisoner-death-row](http://articles.philly.com/2011-08-01/news/29838827_1_death-row-inmates-death-row-prisoner-death-row). There is no simple answer to shortening the time inmates spend on death row, however. A further limiting of appeals only makes it more likely that an innocent person, or a person who should never have received a death sentence in the first place, would be executed. A jurisprudence as fraught with errors as ours cannot be fixed by taking more rights away from defendants.

Though there are many causes for Pennsylvania's failed system, the single most pervasive is the refusal of the state to properly train and resource defense attorneys to handle these most complex and serious of our criminal cases. There are hundreds of examples of incompetent lawyering that has brought Pennsylvania to the far side of 250 reversals. One lawyer spent two years "preparing" a capital case without realizing that his client had been under 18 at the time of the crime and thus ineligible for the death penalty. Another wrote a letter to a judge claiming that a continuance in a capital case would cause him "financial distress." A third argued to a jury that "an eye for an eye" only applied when a pregnant woman was killed, apparently forgetting that it was that exact crime for which his client had been convicted. There are *many* more examples of sub-par lawyering that could be added to this list.

The problem of bad lawyering is not a controversial one. The Chief Justice of the Pennsylvania Supreme Court, Thomas G. Saylor, has written extensively on this subject, in a series of appellate opinions and in the law review article *Death-Penalty Stewardship And The State Of Pennsylvania Capital Jurisprudence*, 23 Widener L.J. 1 (2013) ("I have been very disappointed, and frankly disheartened, with the quality of the representation accorded to indigent capital defendants in far too many of these cases."). Indeed, even the prosecution often concedes defense attorney ineffectiveness. In litigation before the Pennsylvania Supreme Court, ACCR presented evidence indicating that the Philadelphia District Attorney's Office *did not contest* 15 of the past 25 death sentences that were reversed in their jurisdiction, an astonishing 60%.

Such poor lawyering does a disservice to all concerned. Given the state's failure to appropriate any funding at all for capital defense, this deficiency is unlikely to be remedied. Other well-documented problems - such as race discrimination in the charging and the decision-making around the death penalty, improper removal of people of color from capital juries, or prosecutorial misconduct - can't even be addressed until we ensure that competent counsel and adequate resources are present in all capital cases. ACCR is very grateful to have been given this opportunity to address this important Committee.