

# ABA Says Death Penalty System 'Broken' in U.S.

by Marianna Wertz

The American Bar Association, the world's largest legal group, with 400,000 members, on Aug. 3 urged the U.S. Congress to stop Federal executions until it has enacted laws to ensure fairness in application of the death penalty. Speaking just prior to the ABA's annual convention in Chicago, outgoing president Martha Barnett said that the ABA is neither for nor against the death penalty, "but we now have empirical data that show, in fact, this system is broken."

In fact, many of the ABA's members oppose the death penalty on principle and are active in anti-capital punishment organizations. The ABA is on record opposing the death penalty for anyone under 18 at the time of the crime, and for the mentally retarded.

In 1997, the ABA's policymaking body voted to support a moratorium on the death penalty, and last year, the group wrote to President Clinton to ask for a suspension of the death penalty on the Federal level. In this latest initiative, Barnett asked the Senate and House Judiciary committees to support the National Death Penalty Moratorium Act and the Innocence Protection Act, two pieces of legislation before the U.S. Congress, which aim at minimizing the risk of executing innocent people.

At her press conference, Barnett noted that, in the last 18 months alone, 11 defendants on Death Row have been exonerated, bringing the national total to 90 since capital punishment was reinstated in 1976.

## Four Cases

Proof that the system is indeed "broken" is glaringly evident in four recent developments:

- The decision on Aug. 15, by the Texas Court of Criminal Appeals, to stay the execution of Napoleon Beazley, who was 17 when he committed the murder for which he received a death sentence;
- The refusal of a Philadelphia Federal judge, in the case of Mumia Abu-Jamal, to admit as evidence a signed confession to the crime by a mafia hitman, which would prove Mumia's innocence;
- The U.S. Court of Appeals ruling Aug. 13, in the case of Texas inmate Calvin Burdine, that Burdine's Sixth Amendment right to counsel was violated when his attorney slept through parts of his trial; and
- The overturning, also Aug. 13, in Oklahoma Federal court, of Alfred Brian Mitchell's death sentence, on grounds

of false and misleading testimony given at his trial by a police chemist, and because the prosecution withheld exculpatory evidence from the defense and deliberately misled jurors.

## Stay for Beazley

Napoleon Beazley's case involves the fundamental moral issue of executing minors (in which the U.S. stands alone among "civilized" nations). It grabbed headlines internationally in mid-August, when, less than four hours before he was to be executed, the Texas Court of Criminal Appeals granted a stay, based on an appeal from Beazley's lawyers. The court offered no reason for the stay, which remains in place until the court takes further action. The case is also before the U.S. Supreme Court, on the question of the constitutionality of executing minors.

Beazley, an African-American, now 25, was 17 when he murdered John Luttig, the father of J. Michael Luttig, a Federal judge with ties to Supreme Court Justices Antonin Scalia, Clarence Thomas, and David Souter. In fact, these three justices recused themselves from voting when Beazley's request for a reprieve came before the court, leaving a 3-3 split vote, which, according to court regulations, meant no reprieve. Beazley's age, his clean record before the murder (he was president of his high school senior class), and possible undue influence by the victim's influential son, have prompted protests internationally against the planned execution.

The European Union protested in an Aug. 14 letter to the chairman of the Texas Board of Pardons and Paroles, saying, "The death penalty should not be imposed on persons under 18 years of age at the time of the crime, in the spirit of Article 6 of the International Covenant on Civil and Political Rights."

Despite international law, the U.S. Supreme Court, in a 1989 ruling, found death sentences for defendants as young as 16 to be Constitutional, and that ruling stands as American law.

Beazley's attorney, Walter Long, said Aug. 16 that he will again ask the Texas Board of Pardons and Paroles to commute the sentence to life in prison, and will include in his request, a letter from the presiding judge in the case, who recommends commuting Beazley's death sentence.

Beazley would be the 19th U.S. prisoner to die since 1976 for a murder committed when the killer was younger than 18.

## Mumia Another Herrera?

The case of Mumia Abu-Jamal, who has been in Pennsylvania prisons and Death Row for 20 years, has become a *cause célèbre* among death penalty opponents and the left internationally. A journalist and former Black Panther, Abu-Jamal was sentenced to death for the 1981 shooting death of Philadelphia police officer Daniel Faulkner, a crime which Abu-Jamal has denied from the beginning.

On Aug. 17, about 1,000 supporters protested in the streets of Philadelphia as Abu-Jamal's attorneys pursued a last-gasp state appeal on his behalf. The attorneys argued that new



*A rally opposing the execution of Mumia Abu-Jamal. A Philadelphia Federal judge refused to admit as evidence a signed confession to a murder by a mafia hitman, which would prove Mumia's innocence.*

evidence—a signed affidavit from a mob hit-man, stating that he had been hired by the mob to kill Faulkner—should clear Abu-Jamal and set him free. Judge Pamela Dembe barred Abu-Jamal from the hearing and directed lawyers for both sides to file briefs on whether she should have jurisdiction over his petition for a new trial, refusing to immediately schedule oral arguments.

In July, Federal Judge William H. Yohn, Jr. refused to allow the hit-man, Arnold Beverly, to testify in court, saying the confession was “time barred.” Yohn cited the notorious 1992 Supreme Court decision in the case of Leonel Herrera, a Texas Death Row inmate. In that case, the Supreme Court ruled that it *is Constitutional* to execute a person who has been convicted of murder, but who is actually innocent, if the time limit for his appeals has run out!

Beverly made his confession, not just lately, but to Mumia’s original attorneys in the case, who said it was not credible and refused to pursue it. But Beverly has passed a lie detector test on his confession. His affidavit, according to [www.mumia2000.org](http://www.mumia2000.org), said he was hired and paid to shoot and kill Faulkner by the mob and corrupt elements in the Philadelphia police force, because Faulkner “interfered with graft and payoffs. . . .”

Mumia’s attorneys asked Judge Yohn, “In what case, in what court, anywhere in this country, has any jury ever convicted a defendant of a crime after the true perpetrator voluntarily came into court and testified under oath that he, rather than the defendant, was the guilty party?”

### **Sleeping Lawyer Case**

The Burdine case is “classic Texas,” George W. Bush’s home state. According to The Justice Project, on Aug. 13, the U.S. Court of Appeals for the Fifth Circuit ruled that Texas

Death Row inmate Calvin Burdine’s Sixth Amendment right to counsel was violated when his attorney slept through parts of the trial. The full court’s decision reversed an earlier ruling by a three-judge panel of the same court, which had said that Burdine’s conviction could stand because his lawyer, Joe Cannon (now deceased), did not sleep through “crucial” parts of the trial and because Burdine did not, on his own accord, make a record of Cannon’s sleeping! The State of Texas has 90 days to decide if it will appeal the decision to the U.S. Supreme Court.

Burdine’s current attorney, Robert McGlasson, told The Justice Project, “The court’s opinion establishes the simple truth that the right to counsel surely must mean an attorney who not only stays awake, but indeed provides vigorous advocacy throughout all phases of the criminal proceeding, and especially during the trial.”

Burdine was the secondary actor in the 1993 murder of W.T. Wise. The primary perpetrator, Douglas McCreight, served eight years in prison after pleading guilty to murder, and is now free on parole. Burdine was not allowed to make a plea bargain and went to trial, only to have his attorney sleep for prolonged periods during the relatively short trial. During the state’s entire cross-examination of Burdine (the transcript was 80 pages long), his attorney said absolutely nothing.

The Innocence Protection Act, which the ABA endorsed in its call for a moratorium on executions, would institute basic and enforceable standards for court-appointed counsel, and includes reasonable measures encouraging states to provide qualified and experienced lawyers to all defendants facing the death penalty.

### **Prosecutorial Misconduct**

The Innocence Protection Act would also institute safeguards against prosecutorial misconduct, another of the “broken” aspects of the death penalty system in the United States.

According to the Death Penalty Information Center, on Aug. 13, a Federal court overturned the sentence of Oklahoma Death Row inmate Alfred Brian Mitchell, because of the false, and misleading testimony by Oklahoma City police chemist Joyce Gilchrist at trial. The court said that Gilchrist, who is currently suspended while state and local agencies review cases in which she testified, knew her testimony was false, because of other evidence that was withheld from the defense. The judges also denounced prosecutors for withholding exculpatory evidence from the defense and for deliberately misleading jurors, stating that such conduct “strikes a heavy blow to the public’s trust” of prosecutors. The prosecutor’s duty is not to win cases, said the court; it is to see “that justice is done.”

If the United States is not yet prepared to join the rest of the “civilized” world, in renouncing the death penalty, it should at least do as the ABA has proposed, and impose an indefinite moratorium on executions, while the “broken” aspects of the system are fixed.