

Remarks before the Committee on State, Veterans and Military Affairs
Colorado Senate
April 29, 2009

Michael L. Radelet
University of Colorado
<Radelet@Colorado.edu>

Thank you. My name is Michael Radelet, and I am Chair of the Sociology Department at the University of Colorado. CU does not have a position on this legislation. Over the past thirty years I have published seven books and nearly 100 scholarly articles on various aspects of the death penalty, several of which have been cited in decisions by the U.S. Supreme Court. This semester I am teaching a seminar on Capital Punishment in the University of Colorado Law School. I have conducted major studies on death sentencing for the Florida Supreme Court, former Illinois Governor George Ryan and his Commission on Capital Cases, and, most recently, the California Commission on the Fair Administration of Justice. For the past twenty years I have also worked closely with families of homicide victims, and for several years I served on the Board of "Families of Homicide Victims and Missing Persons." Over the last seven years my students have gathered information on over 1,400 unsolved homicides in Colorado.

In 1960, 90 percent of homicides in the U.S. were solved. When Colorado instituted the death penalty in the mid-1970s, almost 80 percent of the homicides were solved. Today that figure had dropped to 61 percent. Four of every ten killers are never caught. We can, and we must, do better than that.

While the clearance rates have plummeted, since the mid-1970s we have spent tens of millions of dollars on the death penalty. While we have spent tens of millions to execute one man, my students and I have met scores of family members of homicide victims whose phone calls to police and prosecutors are often not returned. We need to listen to these people.

In Colorado we have sought the death penalty 124 times since 1980, with one execution and two on death row. The traditional justification for that expenditure was that the death penalty was supposed to deter criminal homicides. And, while the death penalty may indeed have been a better deterrent than prison sentences of 10 or 15 years that we used to have for first-degree murder, in 1988 the law was changed to ensure that everyone convicted of first-degree murder in Colorado would die in prison. The question today is not whether the death penalty deters, but whether it deters more than Life Imprisonment Without Parole.

The deterrent effect of a punishment depends on two variables: severity and certainty. The severity question has been studied for a century, and it is clear to criminologists that after awhile, increases in the severity of punishment no longer add to the deterrent effects. If one is not deterred by LWOP, he will not be deterred by the threat of death. It is like if you want to deter someone from sitting on your stove, medium heat works just as well as high heat.

The deterrent effect of a punishment is much more affected by its certainty than its severity. When we are driving and see a police officer in the rear view mirror, we do not speed, not because of the severity of the punishment but because of the certainty of apprehension. The Bill before us today is about deterring homicides. If we are serious about reducing homicides in Colorado, we will fund programs that promise to increase the chances that murderers will be apprehended.

Debating the deterrence issue today is a bit like debating what size screen to get on your new analog television. I recently completed a study that surveyed the top 100 criminologists in the United States, asking them what they thought of the research on the deterrent effect of the death penalty. Ninety percent of these experts expressed a belief that the death penalty never has

been, is not, and never can be superior to LWOP as a deterrent to homicide. That study will be published this week in one of the top criminology journals in the world.

Other well-intentioned critics of this Bill might claim that removing the death penalty will open the floodgates for those in prison to kill fellow prisoners, prison workers, or visitors. The problem is that those making such a claim do not have a speck of data to support it. Right now there are 15 states without the death penalty, and homicide rates in prison are not any higher in those states than in states with the death penalty.¹ It would be very easy for proponents of this argument to show us that prison murders are more frequent in abolitionist states than in states that retain the death penalty, but they do not, and can not, produce such data. Indeed, many studies have shown that those convicted of murder are among the best behaved in prison.

The same thing can be said to those who claim we need to death penalty to get people to plea bargain. This is nothing less than prosecutorial water boarding: I threaten to kill you so you do what I want. In my class this semester, the state's most experienced death penalty prosecutor, Bob Grant, said what many prosecutors believe: it is flat out unethical to threaten people with death so they will give up their right to a trial. In the end, such practices exponentially increase the probability that innocent people will plead guilty to crimes they did not commit, as was again revealed last year in the case of the Beatrice Six in Nebraska. Nor do any proponents of this argument have any data to show that plea bargaining is less common in states that do not have the death penalty, like Michigan, compared to states that continue to execute. Indeed, prosecutors from New Jersey recently reported that the 2007 abolition of the death penalty in that state has had absolutely no effect on plea bargaining.²

¹ Wendy Phillips Wolfson, *The Deterrent Effect of the Death Penalty upon Prison Murder*, pp. 159-72 in Hugo Adam Bedau, *THE DEATH PENALTY IN AMERICA*, third edition (1982).

² Rudy Larini, *A Year Later, State Assesses Justice Without Death Penalty*, STAR-LEDGER (Newark), Dec. 15, 2008.

And opponents of this Bill can never argue that the death penalty is reserved for the worst of the worst.³

I remember when Governor Bill Owens called a special session of the Colorado legislature in 2002 to reform death sentencing. At the time, many legislators said we needed the death penalty to help families of homicide victims. It is, of course, easy to find a family member of a murder victim in cases where the killer was sentenced to death who very much supports the death penalty. Many family members of homicide victims support the death penalty in theory, but have realized that it is a false hope for 99.9 percent of the families of Colorado murder victims. Evaluating the death penalty with the opinions of those whose loved one was killed by a man who ended up on death row is exactly like evaluating the lottery only on the experiences of those who won the jackpot. The experiences of the other 99 percent have more weight.

Things have changed considerably since that special session in 2002. Today, according to the Gallup Organization, more Americans support Life Without Parole than support the death penalty.⁴ These figures are identical to polling figures for Colorado, where polls also indicate that voters favor abolishing the death penalty to fund cold case squads by a 63-27% margin.

Voting in favor of this Bill is a chance to do something positive for families of homicide victims for a change. In this session, legislators have had to cut this, cut that, and say no, no, no. Here is a chance to do something positive and memorable and for a group of families that over

³ For example, in 2004, Ed Herrera was permitted to plead guilty to four counts of felony murder in exchange for four consecutive life sentences. In this case, all four victims were Hispanic. Howard Pankratz, *Killer Gets 4 Life Sentences, Son Receives 15-year Sentence for '03 Aggravated Robbery*, DENVER POST, Oct. 31, 2003, at C3. Similarly, Richard Paul White, who confessed to killing six people, was spared the death penalty and permitted to plead guilty in exchange for life prison sentences. Five of the victims were prostitutes. Mike McPhee, *Killer Given Two Life Terms*, DENVER POST, Nov. 30, 2004, at B1; Kirk Mitchell, *Serial Killer Given Third Life Sentence*, DENVER POST, Dec. 3, 2004, at B5. In 2005, Damian M. Arguello, a cocaine addict, was permitted to plead guilty to two counts of first-degree murder in exchange for a life sentence for killing his wife and 16-month-old son, despite the fact that Adams County District Attorney Don Quick called it "the most horrific" crime he had ever seen in his 18 years as a prosecutor. Hector Gutierrez, *Mom Tried Saving Child: Man Gets Life for Knifing Wife, Son*, ROCKY MOUNTAIN NEWS, Sept. 10, 2005, at A20. Again, the victims were Hispanic. Consistent with the argument that the status of the victim is associated with how vigorously a case is prosecuted, death was not formally pursued in any of the above cases.

⁴ 48-47. See <http://www.gallup.com/poll/23548/Support-Death-Penalty-Years-After-Supreme-Court-Ruling.aspx>

the years has been largely ignored. We need to get serious about helping families of homicide victims and get serious about doing something about crime, rather than continuing to waste the taxpayers' dollars on lawyers and their expensive experts.

Thank you.

