

## **Death Penalty Moratorium Needed** ***Mobile Register*, November 13, 2005**

Regardless of how Alabamians feel about the death penalty, are they willing for the state to kill people by mistake? A new study by the American Civil Liberties Union and nine other organizations shows that flaws in our capital justice system place African American, low-income and disabled Alabamians at risk of wrongful execution.

The study's review of Alabama murder, conviction and sentencing statistics by race of victim and perpetrator reveals disturbing patterns:

- Eighty percent of death row inmates were convicted of murdering people who were White, yet nearly 65 percent of Alabama murders each year involve African American victims;
- Only 6 percent of murders in the state involve African American defendants and White victims, but more than 60 percent of African American death row inmates were convicted of killing people who were White;
- The over-representation of African Americans on death row points to racial imbalance on the bench and the bar. In a state that is more than one-quarter African American, none of the 19 appellate court judges and none of the 42 elected District Attorneys are African American;
- Racial disparity on death row also reflects racism in the jury selection process. In the last 15 years, 23 capital cases were reversed in Alabama because prosecutors had illegally excluded African Americans from jury service in those cases.

Alabama discriminates against low-income people accused of a capital offense, regardless of their race, by failing to provide adequate legal representation for indigents. But this pattern, too, has racial consequences. Although Whites outnumber African Americans in Alabama by three to one, the 2000 U.S. Census reported that African Americans made up slightly more than half of the 700,000 Alabamians living in poverty. Injustices affecting poor people in our state affect African Americans disproportionately.

Unlike most states, Alabama has no statewide public defender system. In compliance with federal mandates, Alabama law requires the state to provide legal counsel to persons who challenge criminal charges but can't afford a lawyer. The state currently pays court-appointed attorneys \$60 per hour for time spent in court and \$40 per hour for out-of-court work on the case – significantly below the market rate for lawyers in private practice.

Court-appointed defense attorneys often lack the knowledge, skill, experience or inclination to handle capital cases. Such an attorney may fail to call witnesses or may fail to present important evidence that could prove a client's innocence or at least mitigate the sentence during the penalty phase of a trial. Alabama's system provides low-income people with legal representation so inadequate that it can allow innocent people to be convicted. In many cases, it's not the facts of the crime but the quality of the legal representation that determines whether the death penalty is imposed.

On the other side of the bench, Alabama is one of only a handful of states that permit “judicial override.” Roughly 22 percent of Alabama’s death-row inmates were sentenced by a jury to life without parole, only to have that decision changed to a death sentence by the judge. In Alabama, the opinion of a 12-member jury is worth less than the opinion of one elected official – often one who campaigned on a promise to “get tough on crime.”

Since 1976, Alabama has put to death 22 persons for capital crimes committed when they were juveniles. The U.S. Supreme Court ruled on March 1, 2005, that the execution of offenders who were under the age of 18 when their crimes were committed violates the Eighth and Fourteenth amendments to the Constitution. This decision, in *Roper v. Simmons*, invalidates Alabama’s age threshold of 16 years for application of the death penalty. Fourteen Alabama death row inmates were affected by the decision and should be re-sentenced.

In 2002, the U.S. Supreme Court ruled in *Atkins v. Virginia* that the execution of mentally retarded persons is cruel and unusual punishment. The decision left to the states the responsibility to define mental retardation and to establish procedures for determining whether or not a person is mentally retarded. Following *Atkins*, many states passed statutes to address these questions, but the Alabama Legislature has failed to act. Since 1976, Alabama has convicted and sentenced to death 27 defendants whose evident mental illness and/or retardation went un-presented or unexplored at trial. At least four of these persons have been executed.

Even many organizations that actively favor the death penalty acknowledge that the possibility of executing innocent persons because of racial bias, inadequate defense, judicial politics or other factors raises serious concerns. A July 2005 poll by the Capital Survey Research Center found that 57 percent of Alabamians would support a temporary halt to executions while policymakers evaluate the fairness of our system. In light of the high stakes outlined above and in the new report (available online at [www.acluAlabama.org](http://www.acluAlabama.org)), we call on the Legislature to pass a three-year moratorium on the death penalty in the next session.

*By Jim Carnes, on behalf of:*

*Alabama Arise*

*Alabama CURE*

*Alabama Committee to Abolish the Death Penalty*

*Alabama Democratic Conference*

*American Civil Liberties Union of Alabama*

*Alabama New South Coalition*

*Alabama Prison Project*

*Amnesty International*

*NAACP of Alabama*

*Project Hope to Abolish the Death Penalty*

*Restorative Justice Team, North Alabama Conference, United Methodist Church*