



Death Penalty De Facto Moratorium Comes to End

By Suzanne Schnittman

Two developments last fall gave the death penalty abolition movement a few months of breathing space. Now that artificial "moratorium" has ground to a halt, both in New York State and across the nation.

What are the changes?

First, in late April or early May the New York State Senate plans to bring a new death penalty bill to the floor after the Court of Appeals found capital punishment under current law unconstitutional in October 2007.

Second, the U. S. Supreme Court ruled on April 16, 2008, in the Kentucky case, *Baze v. Rees*, that lethal injection posed no risk of unnecessary pain and suffering for the more than 3,200 who still face execution. Executions, stalled since September, will now resume.

The fall actions had lulled local activists to cancel monthly vigils on the death penalty.

What's the background?

The last execution in America was on September 24, 2007, in Texas. Just one month later, on October 31, the Supreme Court granted a Mississippi death row inmate a stay. The reason was unrelated to the facts of the specific case. Rather, the majority of justices indicated they would block all executions until the court determined through a Kentucky case (*Baze v. Rees*) if lethal injection was a cruel and unusual form of punishment.

As anticipated, after the October 2007 Supreme Court move, state and lower federal courts postponed executions in their jurisdictions.

Just prior to this Supreme Court declaration, New York State's Court of Appeals presented a decision that removed the state's last inmate from death row. Standing by a 2004 (*People v. LaValle*) ruling that said the death penalty law unfairly requires judges to tell jurors that if they deadlock, the court would sentence a capital murder defendant to life in prison with the possibility of parole. That provision might have made jurors more inclined to impose a death sentence, rather than face the risk of "freeing" a convicted killer.

In New York State, the 4-3 decision in *People v. Taylor* reflected the philosophical divide on the Court over New York's death penalty law and particularly the Court's pronouncement in *People v. La Valle*, which effectively rendered the statute unconstitutional.

In an unusual turn last fall, Judge Robert S. Smith joined the majority in *Taylor*, while he had been in the dissent in *LaValle*. The Court of Appeals had heard six direct appeals for the six death row inmates since 1995. It vacated the death sentences in all six cases because of defects in the sentencing provisions or the failure of prosecutors to bring qualified capital cases. New York has launched no capital prosecutions since *La Valle*.

How do the two developments affect New Yorkers today?

Even before the Supreme Court in effect halted executions last fall, the number had dropped to the lowest level in more than a decade. In 2007 there were 42 executions in America. We have had two previous periods of no executions, one in the late 1960s and early 1970s, during which legal challenges to the basic constitutionality of capital punishment were moving toward the Supreme Court. In 1972 that Court invalidated the death penalty laws that then existed. By 1976 the Court allowed capital punishment to resume under reformulated statutes. A second hiatus occurred from early 1981 into late 1982.

Current cases do not challenge the constitutionality of capital punishment or the validity of death sentences. They are more likely to challenge the means of execution or legal procedures during the cases.

Related developments over the past seven months keep hope alive for those of us who oppose capital punishment:

- Four people have been removed from Death Row after evidence of their innocence emerged, bringing that number to at least 128.
- New Jersey has abolished the death penalty entirely.
- Nebraska has no effective death penalty after its Supreme Court ruled the electric chair unconstitutional.
- The American Bar Association has called for a nationwide moratorium on executions.

- The United Nations, reflecting evolving trends around the globe, has voted for a worldwide moratorium.
- Tennessee and California have held state hearings in order to study their respective death penalty systems.
- New Hampshire and New Mexico have raised constitutional questions about the death penalty.
- DNA lab scandals continue to bring wrongful convictions in Texas.
- Bills to abolish the death penalty were recently approved by a Colorado House committee, the Montana Senate and the New Mexico House, although none of these bills have advanced.

Back to New York and what we can do locally, The State Senate is attempting to reinstate the death penalty in New York! Two bills are set for a vote by the end of April. The Senate Codes Committee is moving S.4632 (Senator Volker's Quick Fix - a general death penalty bill) and S.6414 (Senator Golden's cop killer bill) soon, and probably without notice.

The Senate continues to ignore the state's shameful problem of wrongful convictions and reinstating the death penalty remains at the top of its agenda. New York currently ranks third (after Texas and Illinois) in DNA exonerations due to wrongful convictions.

Contact your State Senator and tell them to **VOTE NO ON THE DEATH PENALTY**.

To identify your State Senator, go to www.capwiz.com/lwvny/state/main/?state=NY and scroll down to My Elected Officials.

Please share this request with your families, friends and colleagues.

We thank you for your continued support.

We also thank those who vigil to be ready to resume our work and invite others to join us. Watch for further notices.

[Sources: New York Law Journal online (10/24/07); *New York Times* (10/31/07); *Newsday*. Com (12/12/07); National Coalition to Abolish the Death Penalty, press release, April 16, 2008.]



People Who Are Well Represented at Trial Do Not Get Death Penalty:

Legal Representation and the Death Penalty

By US Senator Russ Feingold (D-Wisconsin)

Opening remarks in the Senate's Subcommittee on the Constitution Hearing on "The Adequacy of Representation in Capital Cases"

As a result of the litigation before the Supreme Court challenging the constitutionality of lethal injection as a method of execution, there is currently a de facto moratorium on executions in this country. This presents us with an opportunity while executions are paused to take stock of one of the most serious problems still facing many state capital punishment systems: the quality of representation for capital defendants. That is the purpose of this hearing.

Specifically, today we will examine the adequacy of representation for individuals who have been charged with and convicted of capital crimes at the state level. We will discuss the unique challenges of capital litigation, and the unique resources and training capital defenders need to be fully effective.

The Supreme Court held in 1932, in *Powell v. Alabama*, that defendants have the right to counsel in capital cases. The Court explained that an execution resulting from a process pitting "the whole power of the state" against a prisoner charged with a capital offense who has no lawyer, and who may in the worst circumstances even be illiterate, "would be little short of judicial murder."

Those are strong but appropriate words. Over the following decades the Supreme Court continued to recognize the importance of the right to counsel, ultimately concluding in 1984 in *Strickland v. Washington* that the Sixth Amendment guarantees not just the appointment of counsel, but the effective assistance of counsel.

Yet as the witnesses today know from the variety of perspectives they bring to this issue,

these constitutional standards are just the beginning. The work done by a criminal defense attorney at every stage of a capital case, and the experts and resources available to that attorney, can literally mean the difference between life and death.

This is not a hypothetical. The right to effective assistance of counsel is not just a procedural right; it's not just lofty words in a Supreme Court decision. Failing to live up to that fundamental obligation can lead to innocent people being put on death row.

Just last week an inmate in North Carolina, Glen Edward Chapman, was released after nearly 14 years on death row, bringing the number of death row exonerees to 128 people. A judge threw out Mr. Chapman's conviction for several reasons, including the complete failure of his attorneys to do any investigation into one of the murders he was convicted of committing--a death that new evidence suggests may not have been a murder at all, but rather the result of a drug overdose. Local prosecutors decided not to retry Mr. Chapman, and dismissed the charges. According to North Carolina newspapers, Mr. Chapman's incompetent defense was mounted by two lawyers with a history of alcohol abuse. News reports indicate that one admitted to drinking more than a pint of 80-proof rum every evening during other death penalty trials, and the other was disciplined by the state bar for his drinking problems.

Yet despite all this, Mr. Chapman on the day of his release is quoted as saying, "I have no bitterness." This after nearly 14 mistaken years on death row.

Mr. Chapman's story is astounding, but it is not unique. The quality of representation in capital cases in this country is uneven, at best. And the story also illustrates a critical point: The right to counsel is not abstract. It absolutely affects outcomes. Supreme Court Justice Ruth Bader Ginsburg has stated it about as plainly as possible: "People who are well represented at trial do not get the death penalty."

Obviously, inadequate representation is not unique to capital cases. But the challenges presented in a death penalty case are unique, and the consequences of inadequate representation catastrophic. Capital cases tend to be the most complicated homicide trials, and the penalty phase of a capital case is like nothing else in the criminal justice system. To do these cases right, at the trial,

penalty, appellate, and state post-conviction stages, requires vast resources and proper training--not only for the defense attorneys who need to put in hundreds of hours of work, but also investigators, forensic professionals, mitigation specialists and other experts.

Yet those resources are not available in all too many cases. We will hear more about that from our witnesses today. These realities have led people of all political stripes--both supporters and opponents of the death penalty--to raise grave concerns about the state of capital punishment today. Judge William Sessions, the former FBI Director appointed by President Reagan, was unable to join us in person today, but he submitted written testimony, which without objection I will place in the record. In it he notes that while he supports capital punishment, "[w]hen a criminal defendant is forced to pay with his life for his lawyer's errors, the effectiveness of the criminal justice system as a whole is undermined."

Unlike Judge Sessions, I oppose the death penalty. But as long as we have a death penalty, we owe it to those who are charged with capital crimes, we owe it to our criminal justice system, and we owe it to the principles of equal justice on which this nation was founded, to make sure they have good lawyers who have the resources they need to mount an effective defense.

This is not just the right thing to do. It is not just a high aspiration we should try to achieve at some point in the distant future. It is a moral imperative. And it is one that this country has failed to live up to, for far too long.



JPC Open House: *A Big Success!*

By Mary Boite

On April 4th, a gathering of over 100 friends converged on our new offices to celebrate the new digs, honor Lois Davis as one of the co-founders of our organization and remember Clare Regan, another "mother" of JPC. Of course, they all ate, drank and talked... and talked, as old and new friends met with Board, Staff and many customers.

They came from a diverse group of organizations in our community with one thing in common – the belief that The Judicial Process Commission has been and continues to be a force for justice and compassion in our area.



Founders Lois & Bill Davis, our honorees.

At 4PM, we joined to listen as Sue Porter paused in her facilities tours to welcome everyone to the new facilities, with special thanks to everyone who helped organize the event. These included Board, Staff and some very special customers, who showed their belief in the value of the support they have

received by supporting us – cleaning, moving heavy furniture, greeting guests. A special message from Congresswoman Louise Slaughter, a friend to all but also Clare Regan’s very close friend and neighbor, was delivered by Sister Beth LeValley.

I was then very honored to be able to dedicate the new library to Clare Regan, whose spirit is very definitely there, in the *Justicia* issues she wrote and edited and in the books she donated to us. It was finally my special delight to talk about the guest of honor – Lois Davis, who co-founded JPC with the late Rev. Virginia Mackey, with whom she shared a spirit of compassion and belief that we must serve justice for all. Lois, her wonderful husband Bill and their sons Lynn and Ralph were there to receive our thanks as well as lots of flowers – from JPC and other friends. Margaret Corbin had already donated chairs to our new place; she brought a bouquet for Lois and one for Sue! The Lois Davis Welcome Room was officially dedicated, to much applause. JPC was literally and figuratively blooming that day.

Lois tells me that it was great to be there and see old and new friends. She was “amazed at how many people were there” and she really enjoyed talking to people she hadn’t seen in years. Lois was impressed by the new space, as was everyone else! Supporters emphasized that they loved having the chance to see their donations at work. Many of Lois’ peers are not longer with us, so it was wonderful for us to be able to share the event with her.

We hope to welcome even more people as the time goes by – you are certainly all invited to come and see us. Of course if you volunteer your time, we would appreciate that as well! All my thanks go to Suzanne Schnittman and Gail Mott of the Fundraising Committee, to the JPC staff and to Henry Halmond, who spent so much time washing dishes and finally Leroy Brown, our greeter. Sue Mihalyi (Eclectic Café) worked her usual magic with the food and the beautiful cakes. We were a great team and the results were fun

and moving at the same time. The passion we all share for the organization and the work that takes place there, was evident. We know how important it is to keep on supporting JPC, and we value all our friends and supporters.

FUNDRAISING CAMPAIGN UNDERWAY

By Mary Boite, Chair, Fundraising Committee

As you know, the JPC recently re-located from the Downtown United Presbyterian Church to its new offices on Ormond St. It is proving to be a success, with more space and more privacy as we work with some of the over 2,500 ex-offenders who arrive yearly in Monroe County from federal, state and county prisons and jails. We also serve people who’ve not been incarcerated but have been involved in the criminal justice system and need help and hope.

As a unique, privately funded not-for-profit helping people recast their lives in a more positive way, we help them re-establish their identity, enlist for job training, learn how to write a resume, clean up their RAP sheets ... in other words, take the first steps to become productive citizens. Like all of us, our customers want to be able to work and support their children.

You help us to do that with your generosity. Now we are asking you not only to continue that giving, but to pledge for the next three years – however much you think you can, and then more.

We recently sent out a Fundraising Appeal to some of our regular donors – for you, this is a reminder to dig it out and write that check, that check that will help us to be able to serve our customers in this new space. If you did not get the letter, please consider writing a check anyway, just indicating that you are willing to pledge the amount for the next three years. We know that these days, times are tough for everyone, but they are much, much tougher for someone just returning from prison.

If you can possibly give, we ask you to think of us; if not now, perhaps later this year.

Just think – maybe that rebate check sent to you, will mean that an ex-offender will receive a rebate too – one that will help her or him find a job, buy clothes and food for his children, pay taxes and give back to you (the community). Maybe it can be used to help make our streets safer.

JPC has received a gift from a wonderful friend of two month's rent - \$4,000. Just \$200 from 100 people could mean that every other penny could be used for direct service to our customers. We thank you for all your support over the years.



Board member Gail Mott at the Open House.

The West Memphis 3: Miscarriage of Justice

By Joel Freedman

On the evening of May 5, 1993, in the rural community of West Memphis, Arkansas, three eight-year-old boys – Stevie Branch, Christopher Byers and Michael Moore – disappeared. The next afternoon, their naked bodies were discovered in a nearby stream. The boys had been severely beaten, possibly sodomized, bound from ankle to wrist with their

own shoelaces. Christopher had been castrated.

A week and a half after the murders, West Memphis police were advised that four days after the boys' bodies were found, two young Memphis, Tennessee men, Chris Morgan and Brian Holland, had abruptly moved to Oceanside, California. A police check revealed that Morgan's parents and former girlfriend lived near where the victims lived, and that Morgan once had an ice cream route in the victims' neighborhood. Oceanside police complied with the request of Arkansas detectives to question Morgan and Holland. On May 17, both men failed polygraph examinations about their possible involvement in the murders. Under interrogation, Morgan blurted out that he had been hospitalized for substance abuse problems and that he might have committed the murders. Morgan then recanted his statement.

The Oceanside police sent blood and urine samples from Morgan and Holland to the West Memphis police, who did not investigate the two or request their extradition. The case file offered no explanation as to why such an apparently serious lead had been virtually ignored.

The stepfather of one of the victims, John Mark Byers, told police that on the day the boys disappeared he was at a clinic in Memphis being treated for drugs. When he returned, he claimed he spotted Christopher belly-down on his skateboard, on the street. He said he drove the boy home and whipped him with a strap. Byers told police he left Christopher in the house and when he returned, Christopher was gone. That night, Byers reported to the police that Christopher was missing and that he began searching in the woods for him about 8:30 p.m. Detectives did not question Byers' implausible statement that he had driven across the river to midtown Memphis and back, at the height of rush hour, in just an hour and ten minutes. Why didn't police press for more details about the times Byers had been alone in the vicinity of where the bodies were discovered? Shouldn't the

police have been more curious as to why Byers had entered the woods in the dark to search without a flashlight? And why didn't police question Byers about major discrepancies between his account and the account of Byers' other stepsons as to what happened the day of the disappearance?

Shortly after the boys' bodies were found, a woman told police she had attended a parent-teacher event in the school auditorium prior to the murders. While there, she said, she had overheard the school's principal discussing Christopher's behavioral problems with John Byers and the boy's mother, Melissa Byers. When the principal left, the woman said she heard the couple talking about how they needed to "get rid of Chris." Another person called on May 8 to report "something about drugs" relating to John Mark Byers. When a detective contacted the source, the detective was told that "Byers is in drug rehab in Memphis and on methadone" and may have a "brain tumor".

During the course of the investigation, Detective Bill Durham would polygraph 41 persons, but he never polygraphed Byers, and was apparently not interested in the fact that Morgan and Holland, when polygraphed in California, were found to be deceptive in their answers to questions about the murders. There was also little apparent interest in investigating whether Byers was acquainted with Morgan and Holland.

When on May 22 detectives questioned Melissa Byers, some of what she said contradicted what her husband had told police. Nor was the interest of West Memphis detectives in Byers heightened when Arkansas State Police reported conclusive evidence that Byers had lied about his claim of innocence in a criminal fraud case.

Byers' chumminess with some members of the local police would be explained when, several months after the murder of these youngsters, it was learned that Byers had worked as an undercover informant. A year before the murders, the record of Byers' felony conviction for terroristic threatening was

formally expunged, even though Byers had not fulfilled the terms of his probation, which required him to keep up his child support payments and to remain gainfully employed. The circuit judge who on May 5, 1992, signed an order absolving Byers of all legal consequences arising from the assault and death threat on his ex-wife is David Burnett. It was Burnett who presided over the trials of the three teenagers – Jessie Misskelley, Damien Echols, and Jason Baldwin – who were arrested a month after the murders.

Detectives attributed the arrests to what they claimed was the confession of Misskelley, 17, a former special education student. Misskelley was given a polygraph test, was told that he failed it and, after eight hours of interrogation, reportedly implicated himself, Echols and Baldwin in the murders. Within hours, Misskelley recanted his confession. He said it was coerced and false. The jury was not permitted to hear the testimony of polygraph expert Warren Holmes whose review of Misskelley's polygraph charts actually indicated that he was not knowledgeable about the murders.

In the spring of 1994, Misskelley and Baldwin were sentenced to life imprisonment. Echols was sentenced to die by lethal injection. With no physical evidence connecting any of these young men to the crime, prosecutors contended that the defendants had links to "the occult" and possessed a "state of mind" that pointed to them as the killers.

In two separate opinions, the Arkansas Supreme Court affirmed the jury verdict. Outside Arkansas, however, questions were asked, particularly after an HBO documentary in 1996 raised serious doubts about the fairness of the trials and suggested that "the West Memphis three" were miscarriage-of-justice victims. A website founded by writer Burk Sauls, graphic artist Kathy Bakken and photographer Grove Ashley – wm3.org – quickly became a clearinghouse for information and opinion on the case. An ever-growing list of celebrity [wm3](http://wm3.org) supporters includes Henry Rollins, Johnny Depp, Eddie Vedder, Jello

Biafra, Winona Ryder, Jack Black, Steve Earle, Trey Parker and Metallica. Their fund raising efforts include concerts, art benefits and compilation CDs.

In court papers filed last year, attorneys for Echols stated that even with recent DNA testing unavailable in 1993, they have uncovered no forensic evidence tying Echols, Misskelley and Baldwin to the murders. No hairs, no fibers, and not a shred of DNA. But two hairs found at the crime scene are consistent with the DNA of Terry Hobbs, who is the father of Stevie Branch, and with the DNA of David Jacoby, who was a friend of Hobbs. Jacoby was at Hobbs' home shortly before the murders. According to Hobbs' attorney, if his client's hair was found at the crime scene, "it was naturally transferred by a child that lived with him."

Dennis Riordan, attorney for Echols, said "there is no credible evidence that links any of these defendants to the crime". A team of seven forensic scientists, who have studied the autopsy results, photographs and trial testimony, have concluded there was no evidence of sexual abuse or any type of satanic killing, and that the injuries to the boys' bodies – which prosecutors called mutilation – actually were caused by animals after the boys were killed. At their trials, prosecutors had claimed the murders were occult killings including sexual abuse and mutilation.

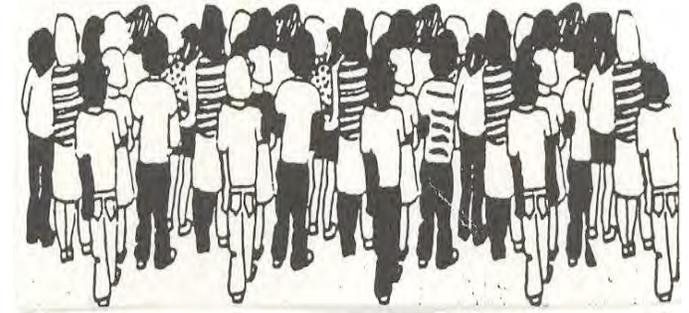
"While the state will look at the new allegations and evidence objectively, it stands behind the conviction of Mr. Echols and that of his codefendants and does not anticipate a reversal of the juries' verdicts," according to the Arkansas Attorney General.

Not long ago, Dixie Chicks singer Natalie Maines addressed about 200 supporters of the three defendants at the Arkansas Capitol building. "It's not a debate about opinion. It's science and it's overwhelming," Maines said about the new evidence.

But when asked if he were considering clemency or a pardon for Echols, Misskelley or Baldwin, Arkansas Governor Mike Beebe told

reporters, "No. Absolutely not."

So who killed Stevie Branch, Christopher Byers and Michael Moore? I hope Arkansas officials will make a conscientious effort to re-investigate this case, because it is highly unlikely that Echols, Misskelley or Baldwin are the murderers.



It's Not About the Truth: Untold Story of Duke Lacrosse Case, Shattered Lives

By Don Yeager with Mike Pressler
A Review by Joel Freedman

What began as an off-campus team party with two hired black female strippers accelerated into indictments accusing three white Duke University lacrosse players of raping one of the strippers at the party. The accusations of Crystal Gail Mangum were instantly believed by many university officials and professors, and by feminist and civil rights leaders. William Chafe, a history professor and former dean of Arts and Sciences at Duke, authored an article comparing the alleged rape to the torture and murder of Emmett Till by white racists in Mississippi in the 1950s. Rev. Jesse Jackson promised to pay Mangum's tuition at North Carolina Central University, regardless of the outcome of the case. The New Black Panther Party demonstrated on Duke's campus by waving signs emblazoned with "confess," and by demanding the castration of the accused athletes.

Michael Nifong, nearing the end of his term as Durham's interim district attorney and aspiring to be elected DA on his own, addressed the press about the alleged gang rape by Duke lacrosse team members: "The contempt that was shown for the victim, based on her race, was totally abhorrent. It adds another layer of reprehensibility to a crime that is already reprehensible." Even after the second stripper, Kim Roberts, admitted the charges were a "crock," and DNA testing revealed that all 46 members of the lacrosse team were ruled out as possible matches to Mangum's rape kit containing the DNA of at least four males who had sexual relations with Mangum, Nifong continued to persecute the three accused athletes.

In 1994 Nifong prosecuted a rape case which, like the Duke case, was replete with evidence that a rape did not occur. The defendant in this case was Timothy Malloy, who admitted to propositioning and having consensual sex with the alleged victim. The accuser claimed Malloy pulled a gun from his waistband and held the gun to her head while he raped her both vaginally and anally. Defense attorneys demonstrated there was no physical evidence consistent with someone who had been anally raped. Malloy could not have carried a gun in the flimsy waistband of the sweat pants he was wearing. The gun allegedly used by Malloy could not be found by the police. A newspaper deliveryman testified he saw the accuser and Malloy talking, and he thought they were good friends. After allegedly being raped, the accuser invited Malloy to come see her at the topless bar where she served drinks. After the jury acquitted him, Malloy told the press, "I guess once Nifong sets his mind that he's going to prosecute, there's nothing you can really do."

But indicted lacrosse players Reade Seligmann, Collin Finnerty and David Evans were exonerated prior to going to trial. Defense motions revealed Mangum repeatedly had changed her story about when the alleged rape occurred, how it occurred, and who attacked her, and that DNA testing had found genetic material from several males in the accuser's body and in her underwear, but none were from any Duke lacrosse player. Nifong had withheld this information from the defense. North Carolina's attorney general took over the case, and proclaimed the lacrosse players innocent. The state bar association accused Nifong of unethical conduct, including withholding DNA evidence and then lying to the judge about doing

so. Several members of Congress, including U.S. Senator and presidential candidate Barack Obama, have asked for a U.S. Justice Department investigation of Nifong's work on the case.

Nifong was elected Durham County DA in November 2006. Since then, Nifong has been disgraced, discredited and disbarred, and was sentenced to one day in jail after a judge determined Nifong had provided defense lawyers with a DNA report he knew to be incomplete. The omitted data contained results showing that DNA of multiple men, none of whom were lacrosse players, was on the accuser.

Mike Pressler was the head coach of the Duke lacrosse team. Under Pressler's leadership, the team won three Atlantic Coast Conference Championships, ten NCAA tournament berths, and made an appearance in the 2005 Division I men's lacrosse championship game. Pressler was fired shortly after the arrests of the lacrosse players. He now coaches the lacrosse team at Bryant College in Rhode Island. Pressler handed his daily diary about what transpired to Don Yaeger, a former associate editor for "Sports Illustrated," who authored with Pressler *It's Not About The Truth: The Untold Story of the Duke Lacrosse Case and the Lives It Shattered*.

When Dan Okrent, a former "New York Times" ombudsman, learned about this case in March 2006, he said that this story "had everything that would excite the right-thinking New York journalist: It was white over black, it was male over female, it was jocks over a nonstudent, it was rich over poor". Under the headline "Rape Allegation Against Athletes Is Roiling Duke," the "New York Times" initiated an international media frenzy.

CNN's Nancy Grace called the lacrosse players "rapists" on her show. On March 31, 2006, when Grace learned the team had played two games since the night in question, she said, "I'm so glad they didn't miss a lacrosse game over a little thing like gang rape". In that same broadcast, Grace predicted the forthcoming DNA evidence would prove the athletes' guilt. When on April 10 it was announced that the DNA samples taken from each of the 46 lacrosse players were exculpatory, Grace suggested the players must have worn condoms, even though the alleged victim had told police her alleged attackers had not worn them. Grace continued to establish a pattern of provocative and unsubstantiated statements to support her beliefs in the players' guilt. When a tide

of undeniable facts proved otherwise, Grace offered no apologies for her earlier attacks on the players.

While Ruth Sheehan, a columnist for the Raleigh News & Observer is no Nancy Grace, Sheehan wrote a column under the headline, "Team's Silence Is Sickening," which condemned the lacrosse team for failing to cooperate with police, when, in fact, the team had cooperated fully with the police investigation. Sheehan wrote: "Members of the Duke men's lacrosse team: You know. We know you know. Whatever happened in the bathroom at the stripper party gone terribly, terribly bad, you know who was involved. Every one of you does. And one of you needs to come forward and tell the police----Until the team members come forward with that information, forfeiting games isn't enough. Shut down the team." Sheehan simply assumed that all the stories coming from Nifong and from the Durham police department must be true.

On April 11, 2006, Nifong introduced himself to a boisterous, mostly black crowd at North Carolina Central University. "Good morning, I am Mike Nifong. I am the district attorney for Durham. I am somebody who probably most of you didn't know before a few weeks ago and now everywhere I go I have newspaper men following me around and television cameras." Even though defense attorneys had by then revealed that there was no match of the DNA taken from the 46 players, Nifong received a thundering round of applause when he announced, "A lot has been said in the press, particularly by some attorneys yesterday, about this case should go away. I hope you will understand by the fact that I am here this morning that my presence here means that this case is not going away." Afterwards, Nifong, who was campaigning to be elected district attorney, told his campaign manager that "this is like a million dollars' worth of free advertisement."

Greta Van Susteren, who hosts "On The Record" for Fox News Channel, hopes the shameful and shoddy journalism that initially characterized the coverage of the Duke case will help change journalistic practices. "The media had the opportunity to expose a prosecutor who was very irresponsible with his power. Maybe now others will put on the brakes when they see people who are accused might be innocent."

There was a time in North Carolina that a black woman could be raped with impunity.

Whether the rapist was white or black, particularly if he was white, he could rest assured he would not be held accountable for his actions. In the Duke case, the pendulum had swung to an opposite extreme, in which many people, both black and white, were clamoring to prosecute several young white men despite serious doubts that they could have raped Mangum. The Duke case certainly challenges us to move beyond racial divisions to strive for justice based on truth, and not based on the race of either the accused or accuser.

It's Not About The Truth is a book that is well-written, easy to read, and intriguing. As Robert Tanenbaum, a former homicide bureau chief for the Manhattan District Attorney's office, observed about this book, "I thought I knew this story---of a failed system---of a headlong rush to judgements...of a university embracing academic McCarthyism rather than the inherent right of innocent until proven guilty. But I didn't. This is the chilling story of what could happen to you."

(*It's Not About The Truth* is published by Simon & Schuster, New York, 2007. ISBN – 1-4165-5146-8)

Nozzolio's "Lock 'Em Up, Throw Away The Key" Approach Wrong

By Joel Freedman

State Senator Michael Nozzolio, who chairs the Crime Victims, Crime and Corrections Committee, has been complaining that the Spitzer administration has been granting too many paroles to convicted felons.

At a legislative hearing earlier this year, it was learned that parole boards last year interviewed 1,249 "A-1" felons – those convicted of murder, attempted murder, kidnapping or arson in the first degree – and paroled 225, or 18 percent. During the last two years of the Pataki Administration, 5 to 6 percent of A-1 felons were granted parole.

"Because each of the cases is decided on its own merit, I cannot answer your question as to why there has been an increase in the number of A-1 felons released on parole during the past two years," Denise O'Donnell, Gov. Spitzer's criminal

justice commissioner, told Nozzolio's committee.

When O'Donnell testified that most of these parolees had not committed new crimes, Nozzolio interrupted her. "The recidivism rate for murderers is not going to give my constituents much solace. Why the murderer is out in the first place is the question they are going to be asking," Nozzolio said.

Robert Gangi, executive director of The Correctional Association of New York, told the Associated Press his group had been concerned about the sharp decline in paroles during the Pataki Administration, which was sued in federal court by A-1 felons claiming they were repeatedly denied parole based solely on their crimes. "Perhaps the parole commissioners are now free of those political constraints and are now reviewing these cases on individual merits rather than political considerations", Gangi said.

Last December, a federal judge granted the plaintiffs' motion to proceed with a class action lawsuit. The class that has been certified consists of all prisoners in the custody of the New York State Department of Correctional Services who were convicted of A-1 violent felony offenses, have served the minimum terms of their indeterminate sentences, and have had their most recent applications for parole release denied by the Parole Board solely because of the crimes for which they are incarcerated. The plaintiffs' claim that an unofficial practice was instigated by the Pataki Administration, whereby the Parole Board was expected to disregard the mandates of N.Y.S. Executive Law, which requires the Parole Board to consider prisoners' institutional behavior and accomplishments, particularly after a prisoner has previously been denied parole based solely on the seriousness of his or her crime.

Nozzolio's "lock 'em up, throw away the key" approach to penology is wrong. While there are some prisoners who probably should never be released, far too many A-1 felons are repeatedly being denied parole based solely on what they were like when they committed their crimes, with little or no consideration for what they are like today. When individuals are sentenced to 15, 20 or 25 years to life, they have not been sentenced to life imprisonment with no possibility of parole.

The JUDICIAL PROCESS COMMISSION

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VISION

The Judicial Process Commission envisions a society with true justice and equality for all. We understand that in a just society, all institutions will be based on reconciliation and restoration, instead of retribution and violence.

MISSION

The JPC is a grassroots, nonprofit organization that challenges society to create a just, nonviolent community which supports the right of all people to reach their fullest potential. We do this by:

- Providing support services for those involved in the criminal justice system
- Educating the public
- Advocating for changes in public policy.

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