

case
MARYLAND

Matters

FALL 2006

Making Change

Talking to Lawmakers About the Death Penalty

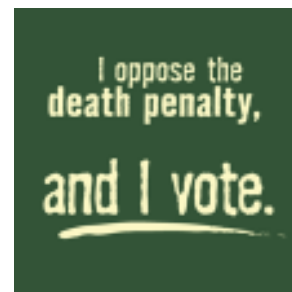
Over the last 30 years since capital punishment was reinstated in our country, the struggle to end the death penalty has increasingly been fought at the state level, bringing to the fore an important venue for citizen input – the state legislature.

Maryland's General Assembly reinstated the death penalty in 1978. So to end executions in our state, we must convince our state legislators to pass legislation to repeal this 28-year-old law.

The good news is we have an opportunity to repeal the death penalty in Maryland in the next couple years. Seizing this opportunity will require hundreds of conversations between lawmakers and their constituents. If you are like large numbers of citizens who have probably shied away from the statehouse, now is the time to chart new territory in your personal fight against state executions.

Your first step: Register to vote if you haven't already. The deadline to register for the November 7 election is October 17th. For registration information visit <http://www.baltimoresun.com/news/elections/> or pick up a registration form at your local library or local branch of the Maryland Motor Vehicle Administration.

Step two: Become an informed voter. The top ballot races for Governor and U.S. Senate may dominate the news headlines



We have buttons! Get yours by calling 301-779-5230 or info@mdcase.org.

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Lethal Injection Challenge Stalls Executions in Maryland

While in Other States, Prisoners Are Executed

Executions remain on hold in Maryland pending a ruling from the state Court of Appeals in a civil suit challenging the state's "execution manual." MD CASE is a party in this suit along with the ACLU of Maryland, the NAACP and death row prisoner Vernon Evans.

Our civil suit was legally bolstered in June when an administrative law judge within the Maryland Division of Corrections (DOC) ruled that Maryland's execution protocol was "legally ineffective." In reviewing a grievance filed by death row prisoner Vernon Evans, Judge Denise Oakes Shaffer concluded that the execution manual is a state regulation – a classification that the State has resisted – and therefore should have been developed in

accordance with the Administrative Procedures Act (APA). Attorneys for the State have argued – in our civil suit as well as this grievance – that because a small number of Maryland prisoners face a death sentence (currently six men), the lethal injection protocols do not warrant the scrutiny that the APA affords other state regulations affecting greater numbers of people. The APA requires all state regulations be drafted with oversight from the legislature and the attorney general, and provide for a period of public scrutiny and comment. None were involved the adoption of the state's execution manual back in 1993, and some portions of the manual have only become public in recent years.

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in our corner

Maryland
Citizens Against
State Executions

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Since 1973, 123 people have been released from death rows in 25 states due to evidence indicating that they were innocent of the crimes for which they were convicted. For some of these prisoners, DNA testing, which categorically eliminated them from the pool of people who could have committed the murder, unlocked the prison gate. Maryland's own Kirk Bloodsworth was the first U.S. prisoner exonerated with DNA evidence. Kirk was first sentenced to Maryland's death row in 1984 for the rape and murder of nine-year-old Dawn Hamilton, a chilling crime that horrified the Essex area of Baltimore County.

In *Bloodsworth: The True Story of the First Death Row Inmate Exonerated by DNA*, Kirk and Maryland lawyer/novelist Tim Junkin chronicle this stunning miscarriage of justice. Drawing on court documents, police records, and dozens of interviews, the book walks readers through the intricacies and failures of the criminal investigation, two trials, and numerous appeals.

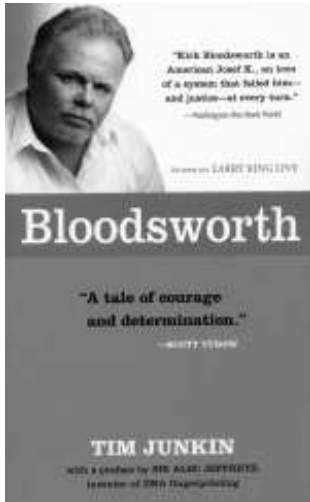
In 1984, Kirk Bloodsworth was in his mid-twenties and directionless. A former Marine who had returned to his small Eastern Shore hometown of Cambridge, MD, Kirk drifted from one job to another, drank too much, and married an older woman who only encouraged his damaging behavior. He followed his wife to Baltimore County, where, living in a house full of people who were usually unemployed and often stoned, he hit rock bottom. His marriage quickly fell apart, and one day, without telling anyone, he quit his job and hopped a Greyhound back home. He didn't know it then, but his sudden departure without explanation had set a nine-year nightmare in motion.

Angry, drunk, and broke, Kirk's wife filed a missing persons report as police investigators searched frantically, with few leads, for Dawn Hamilton's killer. Kirk's profile in the missing persons report somewhat matched the description of a possible suspect seen near the crime scene. The Baltimore detectives alerted the Cambridge police, who were soon knocking at Kirk's door.

Confident in his innocence and trusting of the system, Kirk fully cooperated with the police. His first interview took place in a Cambridge police station over a table on which was laying a pair of little girl underwear and a rock. He repeatedly told the police he knew nothing about the murder. Yet the presence of the two items and the demeanor of the officers made Kirk worry that they didn't believe him. He figured the rock and the underwear had something to do with the murder. Scared, he shared what had happened to him at the police station with friends in Cambridge. The police would later use these conversations to claim that Kirk knew details of the crime that only the actual murderer could know.

Kirk was arrested, and the officers were convinced that they had their man. Three people who said they had seen him near the scene on the day of the crime identified Kirk in a line-up. But their ID was questionable, as two of them had already seen Kirk on television, being led in handcuffs as the police's prime suspect. The third admitted to being high on marijuana the day of the crime.

The heart of the book explores in depth the investigations, trials, and appeals in Kirk's case. Based on eyewitness testimony – some of which was appallingly inconsistent – and a speculative FBI



psychological profile of the suspect, Kirk was convicted. Not wanting to gamble his life on a jury he knew was prejudiced against him, he chose to be sentenced by his trial judge. He lost that gamble on March 22, 1985 and was sentenced to death.

The Bloodsworths were convinced of their son's innocence and put up every dollar they

could leverage to hire a lawyer to represent him at his first trial. Like many families of modest means, they mistakenly thought they could buy a better attorney than the state public defender could provide – sadly only the very wealthy can.

Broke when it came time to appeal, Kirk turned to the Maryland Office of the Public Defender, who immediately sought a new trial based on new evidence pointing to his innocence. Nearly two years later, Kirk's appeal was argued in front of the Maryland Court of Appeals. Kirk's strongest claim was the fact that the prosecution had failed to turn over a detective's report about another suspect – a report that supplied very concrete reasons to believe that Kirk hadn't committed the crime. Prosecutors are bound by law to turn over all evidence turned up in an investigation – particularly if it points to the defendant's innocence. Kirk won a new trial

Kirk once again opted to be represented by a private attorney. This new attorney was held in high regard by his fellow prisoners, had a confident and flashy style of defense, and was very adept at poking mile-wide holes in the faulty case that the prosecution had built. Kirk felt certain that he would prove his innocence this time around.

A different judge presided over the second trial – Judge James Smith, who Kirk instinctively felt was

more concerned about facts and fairness than the judge in his first trial. After a stunning performance by his defense lawyer and a tired re-run of the prosecution's case, Kirk was optimistic about his prospects for acquittal. His hopes were shattered when, after more than six hours of deliberation, the jury returned another guilty verdict.

Immediately Kirk's attorney filed a motion for another trial. Unbeknownst to Kirk, before the second trial, this lawyer had learned about additional evidence that the prosecution had withheld, a report about yet another, third suspect. Already prepared for the second trial, his attorney had not used this new evidence in Kirk's defense. Nor had he sought to postpone the trial to allow time for this new lead to be investigated. This mistake hurt. Judge Smith denied the motion for a new trial, admonishing the prosecution for withholding the evidence and the defense attorney for trying to play both sides of the coin – arguing the trial well, but withholding the smoking gun in case it didn't go the way he wanted.

Yet, Judge Smith seemed to have some serious reservations about the quality of the evidence against Kirk. He not only spared his life this time around, but he also stored in his chambers physical evidence from the crime scene that would one day exonerate Kirk.

The years following his second trial were dark ones for Kirk. He fell into a deep depression, which his increasing drug use only made worse. Eventually he broke out of the despair and hopelessness, quit using cold turkey, and began a massive letter-writing campaign. Every day, he wrote at least one letter to anyone and everyone – from the president to Willie Nelson – who might help him with his quest to prove his innocence and, increasingly important to Kirk, to find the real killer of an innocent child.

Finally, in 1989, attorney Bob Morin agreed to meet with Kirk as a favor to a friend. Morin was a skilled lawyer who worked almost exclusively on death cases. He had already declined Kirk's case once as Kirk was no longer on death row and he wasn't completely convinced of Kirk's innocence. After the face-to-face meeting, however, Morin agreed to help and immediately filed a motion to preserve any physical evidence that remained.

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but those for state legislature are just as important. If you don't already family and friends to murder – and you'll be on your way to changing their minds. If you don't already know which legislative district you live in, visit www.mdelect.net (Not online? Call MD CASE at 301-779-5230). By simply entering in your street address and zip code, you can find out your state legislative district and who currently represents you in Annapolis. You will have one state senator. Your number of Delegates depends on how densely populated your district is – three in urban and suburban districts, two in rural districts, and just one if you are in one of a handful of subdivided districts (i.e. 12A or 12B).

All these state legislators, as well as the Governor and other statewide office holders, must face the electorate every four years. You can find out who is running this year in your district at one or both of the following websites: <http://www.gazette.net/election06/> or <http://www.baltimoresun.com/news/elections/>.

And remember to go vote on Election Day – November 7th. No one is more persuasive to lawmakers than citizens who vote.

Step three: Let your legislators know you care about and oppose the death penalty. The approach you'll want to take will depend on your lawmaker's position on the death penalty and the political climate of your particular district. Some legislators are ready to vote for repeal: all they really need are your supportive phone calls, letters, visits, and emails. Other legislators, unfortunately, are staunch and steadfast supporters of capital punishment. It is important that they hear the opinions of constituents like you, who oppose it, and that a respectful dialogue is opened.

In between these two sides is an important block of undecided lawmakers – the swing voters, those who might have supported capital punishment in the past, but whose minds can be changed. These movable legislators must be approached with the most care and consideration.

Celeste Fitzgerald, the executive director of New Jerseyans for Alternatives to the Death Penalty, gives some sound advice on winning the votes of “pro-

death” legislators: “You should always give them the space to move off their position. This could be political space or moral space. Whether you live in Texas or Vermont, there will be lots of people who *have supported the death penalty their entire life*. In order to win, we must help them move by giving them both the reasons to move and the words to explain their move.”

So learn as much as possible about your legislator's position and what it will take to move him or her. One easy way to find out what they think is to talk with them, using your first meeting or phone call to listen carefully and learn, and to save your efforts to persuade for a later conversation. Be sure to be in touch with Rion Dennis at MD CASE, who has already gathered intelligence on many legislators regarding their views on the death penalty. You can call Rion at 301-779-5230 or email riondennis@mdcase.org.

Some legislators are highly responsive to constituent pressure, so if you live in a jurisdiction where citizen support for death penalty repeal is high (Prince George's County, for example), be sure you share polling that demonstrates such support.

For those who really believe in the death penalty, there needs to be space for them to come to agree that problems with death sentencing in our state – like racial bias or executing the wrong person – make it unworkable public policy, particularly when a guaranteed sentence of life with out parole (LWOP) is the alternative. Emphasize the fact that Maryland public opinion on the death penalty is shifting, and that support for alternatives is much wider than years past. (According to 2005 polling, 63% of Maryland voters support substituting the death penalty with LWOP.)

Other lawmakers might be concerned about the fiscal impact that capital punishment has on taxpayers. In these cases, make legislators aware of the slew of recent studies indicating that the death penalty is more expensive than a system with a maximum sentence of LWOP.

For a lawmaker whose support of the death penalty has historically been rooted in ideas of fairness and concern for murder victims' family members, point out that we've come to understand that the lengthy trial and appeals processes can

actually *prolong the suffering* of murder victims' loved ones, and that arbitrariness in prosecution and sentencing actually leaves many of these folks feeling that their loved ones are less deserving of "justice" than others.

Persuading legislators who are on the fence to cast a pragmatic vote in favor of repealing Maryland's death penalty does not necessarily require them to oppose capital punishment on moral principle. And that's fine – it's more important that they come to understand that the death penalty doesn't work, that it's simply bad public policy for our state. As New

Jersey's Fitzgerald notes, "we need to be careful not to push legislators against a moral wall that implies that their position is simply wrong because they do not believe what we believe. Moral messages have their place but we need to be wise in how we use them." Give your representatives the space to recognize the facts about Maryland's death penalty – it's expensive and arbitrarily applied, that voters are ready to replace it with LWOP, that we can do better by our fellow citizens who've lost family and friends to murder – and you'll be on your way to changing their minds.

Making New Allies

National League of Women Voters Urge End to Death Penalty

Delegates to the National Convention of the League of Women Voters (LWV) unanimously voted for a resolution calling for the abolition of the death penalty in Minneapolis this past June. Titled the "Illinois Death Penalty Concurrence," the resolution affirms one adopted by the League of Women Voters of Illinois and brought to the national convention in 2004. The convention lacked the super-majority needed for concurrence in 2004. Thanks to the efforts of dedicated Leaguers – including Maryland LWV delegate Marcia Reinke – that super-majority was achieved this year.

The LWV is the nation's largest and most trusted of civic organizations to take a position for death penalty repeal in recent years. Yet, the League's action in June ultimately made little splash in the media – despite the fact that Supreme Court decisions and state-by-state challenges of lethal injection statutes gained headlines across the country.

Noting that the death penalty is largely a state issue, the website of the national LWV offers instructional advice, suggesting that the state leagues take the new position to their constituents and legislatures and use it "to begin state action efforts to work towards abolition."

One step ahead of the national LWV, Maryland's League of Women Voters adopted a position for death penalty repeal in June of 2005. The Maryland

resolution followed two years of research and study by local LWV groups around the state – each of which came to a local consensus on the issue. Over the last year, League members have been organizing and taking action. Concise, well-informed fact sheets and talking points are readily available on the Maryland League's website (www.lwvmd.org - click on "Publications and E-Library"). In December 2005, as Maryland prepared to execute Wesley Baker, League members joined with other citizens to urge Governor Ehrlich to grant clemency.

The LWV of Maryland is a new, vital force in the growing statewide campaign to end executions in our state. The League of Women Voters of Montgomery County is actively working with Montgomery Citizens of Faith Against State Executions to bring constituents and lawmakers together in conversation about Maryland's death penalty. Additionally, the LWV has hosted candidate forums across the state, providing important opportunities for citizens to query those running for elected office on the issue of capital punishment.

We welcome this invaluable new state partner in our efforts to end Maryland's death penalty. To find out more about the work of LWV of Maryland, or to find the local league nearest to you, visit www.lwvmd.org or call 410-269-0232.

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A few more agonizing years would pass between Morin's entrance into the scene and Kirk's eventual exoneration. Morin would ultimately find the physical crime scene evidence – Dawn Hamilton's underwear, shorts, and a stick – held for safe keeping by Judge Smith. He had it rechecked for any possible biological material that could be subject to emerging DNA technology. A semen stain on the underwear, missed by the FBI's lab, was found and proved viable for DNA testing. On his own dime, and with a promise from the Baltimore County State's Attorney's Office that they would honor the results once they verified the methodology, Morin sent the evidence off to a lab in California.

Months later, the results from DNA test of the semen sample categorically excluded Kirk. He was ecstatic. The Baltimore County State's Attorney was stunned, and immediately reneged on the original agreement. The prosecutor insisted that the FBI conduct its own DNA test of the semen sample. Morin warned that there might not be enough of it left for another test. Luckily, there was. The FBI lab would shortly confirm the first test. Kirk Bloodworth had spent more than nine years in prison and he was innocent.

On June 28, 1993, Kirk walked out of the Jessup House of Corrections a free man. He returned to Cambridge, to his beloved waters of the Chesapeake Bay, and faced the hard work of rebuilding his life. Kirk has become a voice for the wrongly convicted and an activist for reform of a broken criminal justice system.

But Kirk's struggle didn't stop there. Though a celebrated DNA exoneree nationally and internationally, he lived under suspicion in his home state that he was really guilty but had gotten off light. These suspicions were fueled by Baltimore County State's Attorney Sandra O'Connor's refusal to apologize to Kirk. She repeatedly asserted that while the DNA excluding him left her unable to successfully prosecute him again, that he might indeed be guilty of the murder.

Throughout his ordeal, Kirk never forgot that a nine-year-old girl had been killed and was determined that her killer be found. With help of the Innocence Project in New York, he pressed O'Connor to search

state and national DNA databases of convicted felons to find a match with the DNA evidence that had freed him.

It took more than ten years for O'Connor to do it. Finally, in 2003 her office submitted the evidence for comparison with the state database and found a match. State's Attorney Ann Brobst, who had twice prosecuted Kirk, went to Cambridge to deliver the news. It was the DNA of Kimberly Ruffner, a man Kirk had known in prison and had even helped with research in the law library. At first Kirk was angry, enraged at this woman who had repeatedly called him "a monster" and played a large role in the many injustices that had occurred in the past twenty years of his life. But, much to his surprise (and hers), he found himself forgiving her.

Instead of holding onto his rage at the criminal justice system, Kirk has turned it into action to make things right. Aside from refusing a job as a park ranger on the grounds that he could never work for the state that sentenced him to die, he bears no ill will. In addition to campaigning for things like the Innocence Protection Act, national legislation which guarantees defendants access to DNA testing both prior to and post-conviction, Kirk actively speaks against the death penalty and is a member of the Board of Directors of MD CASE.



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Judge Shaffer's opinion came down strongly in favor of public scrutiny:

"The protocols, when viewed as a coherent whole, address the far awesome task of carrying out a sentence of death. The DOC is charged with accomplishing this task without offending the Eighth Amendment of the U.S. Constitution. . . Ensuring that the State complies with the Constitution is an interest in which all Maryland Citizens have a stake."

Public Safety Secretary Mary Ann Saar quickly rejected Judge Shaffer's ruling. The issue remains

before the Court of Appeals, which can rule at anytime. If the Court rules with the State, executions are expected to resume, probably within 60 days. If the Court rule with MD CASE and our co-plaintiffs, the DOC will likely be compelled to develop a new execution procedure following the APA process, which could hold up executions for several more months.

Most death states, including Maryland, simply adopted wholesale the deadly, three-drug method developed by Oklahoma, the first state to use lethal injection. Medical evidence has mounted over the years that this drug cocktail subjects the prisoner to a painful death, particularly when, as in Maryland, a doctor does not administer it.

Nationwide, a flurry of legal challenges – attacking both the method as inhumane and the lack of public scrutiny – have suspended executions in California, Missouri, Delaware, New Jersey and Arkansas. Most recently, the governor of South Dakota stayed the state’s first execution in 59 years and asked the legislature to update the state’s lethal injection law.

Meanwhile, 40 prisoners have been executed this year by lethal injection in other states – 21 in Texas alone. Most had legally challenged the method. Dissenting in the Tennessee case of Sedley Alley, one federal judge sharply criticized the wide disparity of court responses:

“The dysfunctional patchwork of stays and executions going on in this country further undermines the various states’ effectiveness and ability to properly carry out death sentences. We are currently operating under a system wherein condemned inmates are bringing nearly identical challenges to the lethal injection procedure. In some instances stays are granted, while in others they are not and the defendants are executed, with no principled distinction to justify a result.”

Alley was executed in June.

MD Executioners Shown Incompetent



A hearing in federal District Court in Baltimore in late September revealed incompetence and confusion among the Maryland Division of Corrections staff responsible for carrying out executions.

Death row prisoner Vernon Evans is challenging Maryland’s lethal injection procedure under the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment.

Testimony and depositions from medical experts and members of the state’s execution team – including the author of the Maryland Executions Operations Manual – underscored Evans’ claim that executions in Maryland are so botched that they likely inflict unnecessary pain and suffering. Indeed, execution team members testified that they have little or no understanding of the drugs and intravenous procedures involved. One team member admitted that he did not know the names or functions of the drugs, though he was specifically responsible for injecting them. When asked if the procedures he drafted would result in a painless death, the author of the Manual responded: “I don’t recall thinking about that.”

Execution team members were also unaware of all the duties assigned to them in the Manual and some admitted to never having seen it. A doctor whose only role in the last two executions has been to pronounce death, expressed surprise that the Manual also designates her to cut into the prisoner to insert a catheter if the team’s nursing assistant can not start a standard IV. She responded, “I don’t do cut-down procedures. Period.”

In June, the President of American Society of Anesthesiologists issued a statement re-emphasizing the Society’s prohibition on its members taking part in the executions.

Attorneys for the State of Maryland contend that an execution is not a medical procedure and thus should not be held to medical standards. They will present the State’s defense over four days in October.

FALL EVENTS

OCTOBER

13-19

Journey of Hope...From Violence to Healing Virginia Speaking Tour

Find specific dates and stops at www.journeyofhope.org

The Journey of Hope organizes speaking tours featuring murder victims' family members and family of those executed. Events are public education-oriented and focused on alternatives to the death penalty. This tour will feature stops in Northern Virginia.

20-22

National Weekend of Faith in Action

Amnesty International USA www.amnestyusa.org/faithinaction/

Organize a death penalty-focused event or activity in your faith community - you could host a forum, bring in a speaker, work with your pastor or rabbi to develop a sermon, or simply hand out petitions and literature. Visit Amnesty's website for more information and resources!

27-29

Abolition Rising: 30th Annual NCADP Conference

Hyatt Fair Lakes Hotel, Fairfax, VA

This conference will provide opportunities to meet, discuss, plan, learn, and network with others to help make the movement more effective. Topics will include lobbying and legislative strategy, sustaining a long-term grassroots campaign, effective ways of using research in lobbying efforts, and other strategy and movement building issues.

NOVEMBER

7

Maryland General Elections

Don't forget to vote!

If you don't know which district you live in, visit www.mdelect.net to find out. You can also find out more about each candidate running for office at www.vote-smart.org

14, 15

Community Forums with Kirk Bloodsworth

Goucher College, Towson (11/14, also with Jane Henderson)

Come hear the story of the first person in the country to be exonerated from death row by DNA. Jane Henderson will also provide an overview of Maryland's current repeal campaign!

St Vincent de Paul, Baltimore (11/15, also with Vicki Schieber)

This evening event will feature perspectives from both murder victims' family members and death row exonerees. Stay tuned to www.mdcase.org for more information as these events develop!