

**Testimony of the Boston Bar Association  
Before the Joint Committee on the Judiciary**

**In Opposition to House Bill 1511 - An Act Reinstating the Death Penalty in the Commonwealth**

**Presented by Anthony M. Doniger, President, Boston Bar Association  
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- Good afternoon, Chairman Creedon, Chairman O’Flaherty, and members of the committee. My name is Tony Doniger, and I am the President of the Boston Bar Association. On behalf of the almost 9,500 members of the BBA, I thank you for the opportunity to appear before you today.
- The BBA has long been and continues to be strongly opposed to the institution of the death penalty in the Commonwealth. As lawyers, we are intimately familiar with our justice system and its flaws and limitations. We urge you to reject any bill which would reinstate capital punishment in Massachusetts.
- I speak among other things as a trial lawyer, with over 30 years of experience in both criminal and civil cases. Our justice system is exemplary -- one of the best in the world – but it is not perfect. Mistakes happen. But when it comes to taking a person’s life, we cannot accept anything less than perfection. No greater error can be committed by a civilized society than to execute one of its citizens by mistake.
- First, we know that mistakes are inherent not only in our judicial system, but in our forensics laboratories as well. Recent revelations about the failures of the Commonwealth’s crime lab and medical examiners’ office have shocked us. Science is not capable of eliminating human error from the operation of the justice system. Therefore, we all must acknowledge that any system of capital punishment has the potential to permit the mistaken conviction and execution of innocent people.
- We know from the National Innocence Project that there have been 208 post-conviction DNA exonerations in 31 states in the United States. 15 of those 208 served time on death row.

- Since 1997, Massachusetts has witnessed the exoneration of 9 wrongfully convicted citizens based on DNA evidence, and more than a dozen other wrongful convictions have been documented based on other types of evidence.
- Second, we already know that capital punishment has a disproportionate impact on racial minorities. For example, according to a September 2000 U.S. Justice Department survey, 80% of the cases for which federal prosecutors sought the death penalty between 1995 and 2000 involved racial minorities. Also, whereas nearly half of the white defendants successfully negotiated plea bargains, only a quarter of the minority defendants received plea bargains in capital cases.
- These statistics suggest that our judicial system is subject to the same racial issues that continue to afflict our society as a whole. Given the likelihood that this tension contaminates some capital cases, we cannot in good conscience countenance the death penalty.
- Finally, capital punishment does not deter violent crime. The latest data from the Death Penalty Information Center for 2006 continues to confirm that non-death penalty states actually have lower homicide rates than death penalty states. [For 2006, the average of murder rates among death penalty states was 5.3 per 100,000 citizens, and the average of murder rates among non-death penalty states was 2.9 per 100,000 -- the Massachusetts average was exactly 2.9].
- Since the ultimate and required punishment Massachusetts courts must impose in a first degree murder case is a sentence of life without the possibility of parole, we know that the death penalty will not enhance public safety in the Commonwealth.
- The Commonwealth need not and should not be in the business of killing people. State ordered and conducted executions are as brutalizing and grizzly as the crimes of the condemned. The only thing that reinstating the death penalty will accomplish is to distract our leaders and defer progress on constructive policies and comprehensive improvement of our overall justice system, and to tear at the fabric of our society.
- On behalf of the Boston Bar Association, thank you for your attention and we urge you to give an unfavorable report to House Bill 1511.