



# MCADP NEWS

Massachusetts Citizens Against the Death Penalty, Inc.

Illustration: Detail of Bartolomeo Vanzetti and Nicola Sacco from the cartoon of a mural by Ben Shahn. © Estate of Ben Shahn, licensed by VAGA, NY, NY.

## From the Chairman & the President

David M. Ehrmann & Jim Rooney

**G**reetings! Thanks to the efforts of research fellow Samantha Drake, MCADP has entered the world of social networking in order to offer our members another way to be informed about pertinent death penalty related developments. So become a friend of MCADP on Facebook! You will need a Facebook account, which is easy to create at facebook.com. Anyone with an account can search for MCADP in the search bar and we are the first and only hit. Once you are in, you may not only view what MCADP has posted, you may use the "wall" tab to post news, notices, and relevant links, as well as comment on the posts of others.

And, if you have not done so already, let MCADP know your current e-mail address. That way MCADP can send newsletters like this one to you electronically, as well as news of breaking events. The easiest way to do that is send an e-mail to mcadp@earthlink.net from the e-mail address you wish us to use. Be sure to include your full name in the subject line.

This edition of the newsletter covers the full range of death penalty related news, from local to national and international, and from the past into the future. Boston College Law Professor Mark S. Brodin, who has just written a well-received new book called *William P. Homans, Jr.: A Life in Court*, provides a brief synopsis of the work this noted Boston activist and lawyer performed to convince the Supreme Judicial Court to strike down the death penalty in Massachusetts. Samantha Drake offers an overview of an issue that the U.S. Supreme Court has shown an interest in: the constitutionality of sentencing juveniles convicted of murder to life without the possibility of parole

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## LWOP and Juvenile Justice: The New Death Penalty?

Samantha Drake, Research Fellow

**M**CADP frequently receives letters urging MCADP to come out against the practice of life in prison without the possibility of parole (LWOP) based on an argument that it is normatively similar to the death penalty. Many people, and the Supreme Court in several instances, have begun to see LWOP

as a good alternative to the death penalty. It is less severe, potentially reversible with the discovery of exculpatory evidence, and by many accounts less expensive than execution. However, opponents to LWOP argue that it is another kind of death sentence — "death by incarceration."

MCADP's position is that LWOP is not in fact legally, morally or normatively equivalent to the death penalty and thus has no official position. Because the MCADP charter requires us to direct all of our efforts and resources exclusively to the fight to keep the death penalty out of Massachusetts, determinations about LWOP are beyond the scope of the organi-

zation. Though personally many MCADP members and supporters oppose LWOP, and some have donated time, energy and money towards its abolition, taking a position on the LWOP sentence is outside of the MCADP mission.

MCADP does stay alert to LWOP developments, particularly the latest devel-

**Global Day for Justice**  
**June 22, 2010**  
 MCADP and the Northeast  
 Region of Amnesty International  
 will co-sponsor a vigil in front of  
 the State House to acknowledge the  
 Global Day for Justice and to bring  
 attention to the case of Troy Davis.  
 See more info on our website.

opments concerning the question of whether LWOP is legally, constitutionally, or morally wrong when imposed on juvenile offenders (JLWOP). In 2005 the Supreme Court held, in *Roper v. Simmons* that it is unconstitutional to apply the death penalty to juvenile offenders based on the 8th Amendment's cruel and unusual punishment clause. The Court considered youth to be a mitigating factor, rendering the death penalty inappropriate because juveniles lack the capacity to fully understand and anticipate the ramifications of their actions. Many have argued that this rationale should extend JLWOP sentencing.

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# William P. Homans, Jr.: Battling the Death Penalty to the Death

By Mark S. Brodin, Professor of Law, Boston College

On July 26, 2007, Federal District Judge Nancy Gertner issued a decision holding the FBI liable in the amount of \$101.7 million for framing four innocent men in a 1965 gangland murder in order to protect the real murderer, its own informant Joseph (“The Animal”) Barboza. The four had been condemned to death in the electric chair, but their sentences were reduced to life in prison when Massachusetts abolished capital punishment. They owe that rescue to a small but determined group, most notably William P. Homans Jr., who waged an uphill battle to stop the Commonwealth from killing in the name of justice.

Three days before Christmas in 1975, the Court released its decision in *Commonwealth v. O’Neal*, a milestone document whose immediate effect was the invalidation of the mandatory death penalty for rape-murder as constituting cruel and unusual punishment forbidden by the Massachusetts Constitution, but whose implications stretched far beyond. *O’Neal* vindicated Homans’s strategy of chipping away at the death penalty in much the same way that Thurgood Marshall attacked the

“separate but equal” doctrine, culminating in *Brown v. Board of Education*.

The Brief submitted on O’Neal’s behalf, the combined work product of Bill Homans, Max Stern, Larry Shubow, Shubow’s young associate Clyde Bergstresser, and Tufts University philosophy professor Hugo A. Bedau, among others, was a 136-page indictment of capital punishment. It drew upon English and colonial legal history, philosophy, sociology, psychology, criminology, literature, Judeo-Christian tradition, diaries and last words of death row inmates, and even some legal precedent! Crime statistics were marshaled to belie the myth of deterrence, as well as to demonstrate the stark racial and class disparities inherent in the application of the death penalty. Both the execution itself, and the long confinement under sentence of death leading up to it, were condemned as nothing short of “exquisite psychological torture.”

The justices found that the death penalty had not been shown to reduce homicide rates, that imprisonment for life achieved equivalent deterrence and isolation, and that taking a life for the purpose

of vengeance was, simply, uncivilized. In a ringing testament to judicial courage, Chief Justice G. Joseph Tauro acknowledged the contrary weight of public opinion on the matter of capital punishment, but declared that:

*Judges cannot look to public opinion polls or election results for constitutional meaning. It is our duty to interpret the Constitution to the best of our personal abilities and judgment. Our Constitution requires that we be as free, impartial and independent as the lot of humanity will admit. If we succumb to contemporary public opinion we lose that requisite independence and impartiality demanded of us and fail totally in our purpose.*

Capital punishment opponents were elated with the O’Neal decision. *The Boston Globe’s* editorial “Ending the Death Penalty” seemed quite accurate, as the Chief Justice’s opinion, taken together with the separate concurrences of Hennessey, Kaplan and Wilkins (the latter invoked “the inordinate attention, not all

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Currently there are 57 juvenile offenders serving LWOP sentences in Massachusetts. MA law regarding JLWOP, like that of 27 other states, is categorized as “mandatory,” meaning that judges have no option except JLWOP upon conviction for at least one scenario, usually first degree murder. Other states allow discretion in imposing JLWOP. And Alaska, Colorado, Kansas, New Mexico, Oregon, and D.C. ban it altogether.

Federally, the question of JLWOP is still being decided. On May 17, 2010 the Supreme Court ruled in *Graham v. Florida* that JLWOP in non-homicide cases is unconstitutional because, as in *Roper*, of the ban on cruel and unusual punishments. *Graham v. Florida* struck down the existing law in 37 states that allow JLWOP in non-homicide cases, and ruled that though juvenile offenders are not entitled to a “guarantee” of eventual release, they are entitled to “some realistic opportunity to obtain release.” There

are currently 129 juvenile offenders in the United States serving JLWOP who will presumably be resentenced to involve parole hearings. However, there are over 2,000 juvenile offenders serving life without the possibility of parole for homicide cases. Many believe that the next step of this 8th Amendment jurisprudence will be to reevaluate the constitutionality of these cases as well. Much like the death penalty, the United States stands conspicuously apart from the rest of the world in its application of JLWOP. Nowhere else do juveniles serve life without the possibility of parole. Further, nearly 60% of these juvenile offenders serving JLWOP were first-time offenders, and nearly 25% were convicted of felony murder, meaning that the killings occurred during the course of another felony, in which the juvenile participated.

The argument against JLWOP here is intuitive: children are different from adults. Children possess lesser capacity than adults to make good judgments,

control their impulses, and assess consequences. The law has recognized this in many ways by restricting children from voting, buying alcohol and cigarettes, going to war, running for President, driving, even being left unattended in supermarkets. Thus, to treat juveniles as equal to adults in criminal sentencing is logically and maybe soon, constitutionally, inappropriate. One of the popular alternatives to JLWOP is the prospect of mandatory parole hearings after, say 25 years in prison. This solution addresses the problem of irrevocability while maintaining severe punishment for truly heinous crimes.

MCADP was founded to fight for the abolition of the death penalty in Massachusetts, and has no official position on either LWOP or JLWOP. However, many of the arguments opposing JLWOP were first successfully made in the fight against the death penalty. The ideology is markedly similar, so it is no coincidence that many of our supporters also support the effort to abolish JLWOP. ■

# Report from the 4th World Congress Against the Death Penalty

Steven Crimaldi

For three days at the end of February, I had the pleasure of attending the 4th World Congress Against the Death Penalty in Geneva, Switzerland. As the National Coordinator for the Dead Man Walking School Theatre Project, my boss and friend, Sister Helen Prejean, invited me to the event to meet, to mingle and to be inspired.

What struck me most about the Congress was the number of people in attendance. Over one thousand people from all across the world gathered in Geneva to attend workshops, network and energize one another to continue to work tirelessly to abolish the death penalty in every nation. Keynote speakers included Shrin Ebadi of Iran, advocate and winner of Nobel Peace Prize in 2003, Robert Badinter of France, former Senator and member of the Justice Ministry, who led the charge for the abolishment of the death penalty in his nation, and Sister Helen Prejean, author of *Dead Man Walking* and human rights activist.

Sister Helen likes to say that prisons are places of “great exile.” She is right. And at times, the issue itself can seem banished to that same black hole, especially during this day and age when other issues, however important, seem to dominate national and local discussions. The death penalty is rarely talked about in the halls of Congress and state houses, let alone in high school and college classrooms, which is why Sister Helen and Tim Robbins created the Dead Man Walking School Theatre Project. Through the use of the book and play *Dead Man Walking*, we are trying to create a discourse on the subject on campuses across the United States. We are trying to inspire the next generation of social activists who will join the movement.

While it may seem at times a lonely and uphill battle for those of us involved in this human rights campaign, I realized at the World Congress that we are not alone. This is a worldwide movement that inspires the young and the old. This is a movement that calls to the souls of people. After listening to the stories of exonerated men, murder victims’ families, human rights activists, lawyers and even

teenagers who visit an uncle on death row in Texas—the faces, the lives and the stories we listened to at workshops and over coffee and dinners helped inspire those of us already deeply committed to the issue to continue our fight, to continue to inspire one another, and to work to

educate the next generation to understand the issue and eventually to take action to abolish the death penalty.

When I departed Geneva to return to Boston, there was only one thought in my mind—we will succeed. *The death penalty will be abolished.* ■



## The Dead Man Walking School Theatre Project

is implementing a unique approach for changing public attitudes and opinions toward the death penalty in the United States. The purpose of the project is to incorporate the power of theatre arts and academic study into the national discourse on the death penalty. The project engages students, faculty, and community members through utilizing the play and book *Dead Man Walking* as a tool for justice.

For more information about the project see: <http://www.dmwplay.org/>  
Contact: National Coordinator, Steven Crimaldi, at 617.263.7550,  
e-mail: [playcoordinator@dpdiscourse.org](mailto:playcoordinator@dpdiscourse.org).

## Death Penalty Case in Vermont

Rev. Jonathan Tetherly, MCADP Board

In August, 2009, Atty. General Eric Holder announced that he was seeking the death penalty in the case of Michael Jacques in Vermont. The Department of Justice Press Release describes a particularly heinous case involving kidnapping, incest, as well as premeditated murder.

The case could have been left to the state of Vermont, which does not have a death penalty. It could have been prosecuted by the federal government without seeking the death penalty, respecting Vermont as an abolitionist state.

When the Bush administration sought the death penalty in abolitionist states,

it seemed to be a cynical way to make sure we had a death penalty, whether we wanted one or not. Why, then, does the current administration seem to be imitating the Bush administration?

If there is a great outcry in Vermont for the death penalty in this case, I am not aware of it. Is this a case that the Obama administration wants to lift up and say, “This is where we draw the line – this case is the worst of the worst?”

It is important that we respond that we are well aware of the heinous nature of murder, but that killing the killer will not improve our society. ■

or LWOP, a practice that is currently allowed in Massachusetts. As Samantha points out, MCADP has not taken a position on LWOP, but developments in the law related to juvenile LWOP may have a particular bearing on the death penalty because the arguments against imposing life sentences on juveniles are so similar to those against imposing the death penalty on juveniles. Finally, Steven Crimaldi, National Coordinator of the Dead Man Walking School Theatre Project, which has established its national headquarters in Boston, describes both the Project’s efforts to promote discussion of the death penalty through school theater productions of the play *Dead Man Walking* and his most recent attendance at the 4th World Congress Against the Death Penalty held in Switzerland.

MCADP welcomes the *Dead Man*

**Your Membership is Important!**

Please renew your membership, if you haven’t done so recently, and encourage others to join.

*Walking School Theatre Project* to Boston. You can too by keeping Dec. 4, 2010 open. While the details have still to be worked out, MCADP intends to honor the project with the Ehrmann Award that day, when Harvard University will mount a production of the play.

We hope to see you there.

And, on a final note, MCADP chairman David Ehrmann has co-authored with Herbert F. Voigt Ph.D., of Boston University’s Bioengineering Department, an article to be published in the inaugural issue of *Ethics in Biology Engineering and Medicine* called “The Ethical Code of Medical and Biological Engineers Should Preclude Their Role in Judicial Executions.” Keeping bioengineers out of the business of trying to come up with a “better” way to perform lethal injections will be one small step toward eliminating the death penalty.

As always, thank you your support in fighting to keep the death penalty out of Massachusetts. ■

of it favorable” that the Commonwealth had attracted over 300 years of capital punishment from the Salem witch trials through the execution of Sacco and Vanzetti) seemed to broadly foreclose capital punishment for *any* crime.

But the battle was far from over. In 1978 Governor Michael Dukakis, an outspoken opponent of capital punishment, was defeated in the Democratic primary by conservative Edward J. King. Upon election, King asked for and got from the legislature a bill restoring the death penalty, which he signed in 1980.

The showdown came when Homans, representing a black teenager accused of killing a white cab driver, faced off against District Attorney Newman A. Flanagan, who sought a ruling making the young man eligible for capital punishment under the latest legislation. But the Court firmly adhered to its view that the death penalty is unacceptably cruel under contemporary standards of decency, and could not be administered without arbitrariness and discrimination.

Chief Justice Hennessey openly embraced abolitionist dogma in *District Attorney for the Suffolk District v. Watson* when he wrote that “there is an impetus to respond in kind in punishing the person who has been convicted of murder, but the death penalty brutalizes the State which condemns and kills its prisoners.” Justice Paul J. Liacos went further when he characterized capital punishment as “antithetical to the spiritual freedom that underlies the democratic mind.” He quoted generously from the amicus brief submitted by another Bill Homans’s client, Henry Arsenaault, an inmate at MCI Norfolk who had literally escaped execution by minutes.

The views of the Justices had demonstrably hardened against capital punishment from *O’Neal* to *Watson*. In the earlier decision they had dismissed out of hand Homans’ contention that the discretion exercised at every level of the criminal justice system, including the prosecutorial decision as to what charge to pursue, inevitably renders any capital punishment scheme arbitrary, capricious, and open to discrimination. Five years later they were now on board. Noting that the extant Supreme Court decisions dealt only with jury discretion in capital cases,

the Justices observed that:

*Power to decide rests not only in juries but in police officers, prosecutors, defense counsel, and trial judges. In the totality of the process, most life or death decisions will be made by these officials, unguided and uncurbed by statutory standards. In any given case, decisions may rest upon such considerations as the level of public outcry. The criminal justice system allows chance and caprice to continue to influence sentencing, and we are here dealing with the decisions as to who shall live and who shall die. With regard to the death penalty, such chance and caprice are unconstitutional under article 26.*

“Moreover,” Chief Justice Hennessey added in another extraordinary confession, “the existence of racial prejudice in some persons in the Commonwealth of Massachusetts is a fact of which we take notice.” And the usually conservative Justice Robert Braucher, who had refused to join the majority in *O’Neal*, now came around: “Since death sentences will rarely be carried out, and since they will be carried out only after agonizing months and years of uncertainty, the punishment is cruel and unusual and violates article 26 of the Declaration of Rights.”

It is fair to say that Bill Homans played no small part in this process of judicial education. His quotations from Camus, Dostoevsky, and Scripture often found their way into the judges’ opinions together with his traditional legal arguments. It must be equally noted that these jurists exhibited considerable fortitude in taking the widely unpopular “soft-on-crime” stand.

Bill Homans hailed *Watson* as a “momentous decision” going beyond prior precedent. He was particularly taken by the Court’s adoption of Marquis de Lafayette’s famous observation: “I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me.” And Homans lived long enough to see the Constitutional Court of the new Republic of South Africa cite to the *Watson* precedent as support for its own abolition of the death penalty.

Like Clarence Darrow before him, Bill Homans’ battle against capital punishment is his most lasting legacy. ■