January 31, 2008

Honorable Ronald M. George, Chief Justice,
And Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Dear Chief Justice and Associate Justices of the California Supreme Court:

The California Public Defenders Association remains staunchly opposed to the death penalty for many reasons, including the wrongful convictions of 124 people who were sentenced to death, which represents only those whose innocence has been established so far, and highlights the undeniable risk of executing people for murders they never committed. As lawyers, we honor and respect the law and accept that California has the death penalty. We recognize that no system of laws is perfect, but respect for the value of human life requires that we must guard against the execution of innocent individuals. That is why our Constitution has long required appeals in death penalty cases to be decided by the California Supreme Court. We are opposed to any attempt to transfer these appeals to the lower courts.

Transferring capital appeals will increase the risk of random and arbitrary executions. The determination of whether a person will live or die should not depend on which panel of three justices is assigned to hear the appeal out of the 104 appellate justices on the courts of appeal.

And transferring capital appeals will not reduce the time between jury verdict and completion of the appeal process. Under Chief Justice George’s proposal, the 25-30 capital appeals to be decided by the courts of appeal would not be in addition to those presently decided by the Supreme Court but would instead free the Court to hear more appeals in civil and other cases. The net result would not increase the number of capital appeals decided each year, it would merely transfer those appeals to lower courts. However well-intentioned the Supreme Court’s desire to decide more civil cases may be, it does not justify increasing the risk of unjust or arbitrary executions depending on the vagaries of the appellate panel selected to review the death judgment.

The recent hearings before California’s Commission on the Fair Administration of Justice highlighted many reasons why California’s death row has become so overcrowded that the appellate review process has become bogged down. Unlike virtually any other state or the federal government, California has an enormous number of “special circumstances”, making it possible to impose a death sentence in almost any murder case.

Kathleen Cannon
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There are other well-documented reasons for California's backlog. 90 prisoners on death row don't have a lawyer to represent them on appeal, and 288 don't have one to represent them in their habeas corpus proceedings. It takes up to four or five years for a condemned prisoner to get a lawyer. Qualified lawyers are discouraged from handling capital appeals because the Supreme Court consistently refuses to pay them for the necessary work they actually perform in defending these cases, and they routinely have to pay for investigation, expert and other expenses out of their own pockets because the state refuses to properly fund these cases.

Too many death sentences are imposed at trial because the State has reneged on its promise—and statutory obligation under Penal Code § 987.9—to pay for attorneys' fees, investigation, expert and other expenses at trial. California has breached the pact it made when the death penalty was reinstated in 1977: to reimburse counties for the costs of defense services in capital cases. Reimbursement ended about 20 years ago, leaving individual counties to pay for these costs . . . or cut corners when they don't have the money, making it difficult to prepare these cases properly and supporting claims of ineffective assistance of counsel on appeal.

In addition to these concerns, it is clear that transferring capital appeals would require increased costs to the state. The amount of monies needed and the source for funding are still looming questions that are not discussed in your proposal.

These are real problems that need to be addressed in California, but none of them are resolved by transferring capital appeals from the Supreme Court.

Very truly yours,

C/S

Kathleen Cannon
President
California Public Defenders Association