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February 19, 2008

Chair John Van de Kamp
California Commission on the Fair Administration of Justice
900 Lafayette Street, Suite 608
Santa Clara, CA 95050

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RE: Racial and Geographic Disparities in California's Death Penalty

Dear Chair Van de Kamp:

I am writing on behalf of Equal Justice Society to urge the California Commission on the Fair Administration to recommend reforms to address the racial and geographic disparities in California's death penalty. As an organization committed to defending and promoting civil rights in California, Equal Justice Society views this as an issue of vital importance. We therefore wish to respond to the Commission's focused questions on these problems.

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EJS is a national advocacy organization strategically advancing racial justice through law and public policy, communications and the arts, and alliance building. EJS plays two essential roles to racial justice: (a) to serve as a catalyst to draw more institutional and public attention to race; (b) to build coalitions and alliances of disparate groups interested in advancing a racial justice agenda, but lack the capacity to gather the momentum necessary to effect structural change.

As a national organization of scholars, advocates and concerned individuals advancing creative legal strategies and public policy for enduring social change, EJS aims to unify and organize those who are interested in generating, developing, and supporting innovative legal theories and strategies to eliminate the conservative bias of our legal system. Specifically, the Equal Justice Society seeks to:

- Develop and disseminate new legal theories to help ensure fairness and democracy;
- Sponsor forums, presentations and debates on the legal issues of our day;
- Mentor progressive advocates to go forth and fight for social justice; and
- Forge concrete connections between law students and those who are out on the front lines practicing law, working for justice, developing jurisprudence, and serving on the bench.

The Commission has posed a series of questions that are of particular importance to our organization. The first question asks whether there are significant racial

disparities in death sentencing. The answer to this question is clear –the evidence presented at the Commission’s first hearing demonstrated that California’s death penalty is plagued by racial and ethnic disparities, particularly as they relate to the race of the victim. As you are aware, defendants who kill white victims are three times more likely to be sentenced to death than those whose victims are African-American, and four times more likely than those whose victims are Latino.

The Commission also asked whether significant geographic disparities exist. Again the evidence presented at the first hearing demonstrates that death sentences are sought in an inconsistent and arbitrary manner across California’s 58 counties, and this variation cannot simply be attributed to differences in homicide rates or population levels.

The Commission further asks if geographic disparities are “a problem.” Equal Justice Society is particularly concerned by these geographic disparities because they too are tied to differences in the racial and ethnic makeup of the community in which a crime occurs. For instance, a person convicted of the same crime is more than three times more likely to be sentenced to die if the crime occurred in a predominantly white, rural community rather than a diverse, urban area.

Thus, to answer the first part of both focus questions posed by the Commission: racial, ethnic and geographic disparities are indeed prevalent in California’s death penalty, and contribute to arbitrary and biased death sentencing. To civil rights organizations such as ours, this is a serious problem that absolutely must be addressed.

The Commission also asks what remedies, if any, exist to address these disparities. I must acknowledge that Equal Justice Society does not have expertise in the complicated procedural world of the death penalty. Thus, we cannot provide you with an analysis of all the possible reforms. From our perspective, the simplest and most effective reform would be to eliminate executions in favor of more equitable alternative sentences.

Nevertheless, other reforms are feasible short of ending the death penalty. Therefore, it is entirely unacceptable for California to continue to do nothing to fix these problems. Most, if not all, death penalty states exhibit racial, ethnic and geographic disparities in death sentencing; thus, California is not alone in that respect. However, most states have also taken some measures to address these injustices, while California has done absolutely nothing. This is particularly unacceptable given California’s unparalleled diversity and the sheer numbers of people we sentence to death.

Therefore, though Equal Justice Society is not in a position to advocate for anyone one reform over another, as a civil rights organization, it is incumbent upon us to

urge the Commission to recommend the appropriate reforms so that these clear disparities do not go ignored any longer. That stated, I understand a system of proportionality review, similar to New Jersey's, has already been proposed, and that other states such as Kentucky have passed legislation that allow defendants to challenge death sentences when there is evidence that the sentence may have been racially biased. There are surely other possible reforms, and the Commission must consider which reforms would be the most feasible and meaningful in California, and recommend that they be adopted.

Equal Justice Society considers death penalty reform of utmost importance to promoting civil rights in California. We encourage the Commission to take this historic opportunity to recommend reforms that would address the clear racial, ethnic and geographic disparities and make California's death penalty fairer.

Sincerely,

A handwritten signature in black ink, appearing to read "Eva Paterson". The signature is written in a cursive, flowing style.

Eva Paterson
President