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I thank you, the other members of the Commission and the staff for their tireless efforts in this complex and important task.

I am Michael Peddecord, professor emeritus of public health at San Diego State University. I have authored or co-authored more than 50 peer-reviewed publications in journals such as the *Am. Journal of Public Health* and the *Journal of the Am. Medical Association*. Today, I want to assure the Commission that there is no credible research that supports the long standing myth that the death penalty deters murder and protects our communities.

As a researcher, I want to know: How valid is evidence that purports to support this widespread public perception? My judgment on this topic is informed by my education, statistical training and research experience. In reviewing many of the recent published studies on this topic, I find, like so many other academics who have carefully reviewed these reports --- there is no credible evidence that the death penalty or executions deters future murder or crime in general. In addition, it is my judgment that many of the econometric studies of the death penalty fundamentally flawed. In the document which I am submitting to the Commission, I provide some background on the issue of press coverage and have summarized my six concerns or fallacies. My major concerns are:

- 1) Human behavior fallacy: Most deterrence studies falsely assume that potential murders are deterred because they think rationally about the benefits of their crime versus the possibility of consequences. This assumption has no grounding in behavioral research.
- 2) Findings are not consistent: If a meaningful relationship existed between capital punishment and lower murder rates we would expect to see repeatable results documenting a deterrent effect – we do not.
- 3) Studies use inappropriate data: Most studies use FBI crime reports, census data and a hodgepodge of other sources. This information was never intended for testing theoretical hypotheses, let alone informing public policy on the death penalty.
- 4) Aggregated data fallacy: The data are collected at the county or state level --- not on individual murder cases. As such, studies pool data from vastly different communities. Such approaches are not useful in establishing cause and effect relationships.
- 5) Statistical control fallacy: In order to avoid “apples to oranges” comparisons, econometric studies attempt to statistically adjust for various conditions in each county or state. No adjustment is perfect and given the questionable and inappropriate data used, adjustments in existing studies are unsatisfactory.
- 6) Lastly – death penalty proponents often use theoretical publications and their speculative results to support the death penalty. I suspect that few of academic theoreticians would advocate that this is an acceptable use of their work.

I am not alone in coming to this conclusion. I also recommend to the Commission the 2005 definitive reanalysis and critique of recent studies by professors Donohue and Wolfers published in the *Stanford Law Review* that is cited in my summary.

In conclusion, I encourage the Commission not to be swayed by any argument that the death penalty acts as a deterrent to future murders or crime in general.

Respectfully submitted;

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Six Reasons Why the Commission Should Not Believe Studies that Provide Data to Support the “Deterrence Myth”

Background: Since 1976 when the Supreme Court allowed states to resume the death penalty, there have been a handful of statistical studies that purportedly support the notion that having a death penalty and executing murderers will deter future murders and/or crime in general. While proponents of the death penalty cling to these simplistic sound bites based on these econometric studies, careful review reveals in 2008, just as it has since these studies were first brought to the public policy debate, the results are fallacious and do not withstand logical or objective statistical scrutiny. I encourage the Commission not to be misled or distracted by these.

Don't be Mislead by Headlines: A recent example of how simplistic sound bytes become widely distributed occurred in June 2007 when the Associated Press (AP) released a report with the headline: “Studies Say Death Penalty Deters Crime.” This report was essentially a rehash of statistical reports that have been available for years. The widely circulated AP story gave only passing mention a definitive systematic analysis published in the 2005 Stanford Law Review¹. This study comprehensively reanalyzes data from several previous reports and debunks support for the pro-deterrence argument. Closer examination of the studies cited in the 2007 AP story, reveals that the studies are flawed to the point that they are of no use in considering the policy consequences of the death penalty. After reviewing these studies, I have prepared the following summary of some of the major fallacies that exist in statistic studies that purport to provide evidence the death penalty deters murder.

1. Human Behavior Fallacy: Econometric studies of deterrence are based on invalid behavioral assumptions. Economic models of behavior require that people enter into the “market for murder.” This “market” assumes that they deliberately think about the costs (punishment) and benefits (eliminating a foe, extracting revenge, etc.) of a future action (committing a murder). While this assumption may be true in a few cases, the vast majority of murders are committed in anger and in the heat of the moment without the necessary deliberation required by market theory. Many of the econometric studies acknowledge this issue of “non-deterrable” murders but then merge all murders, thus fallaciously assuming all murders follow a rational pattern of behavior. Another common solution to this fatal flaw is the unsupported assumption that data bases are large enough such that these assumptions will not bias the results.

2. No Consistency of Findings: Even accepting the lack of a logical connection between murders at the street level, protracted trials, appeals and future executions in distant prisons, the findings by different investigators are not uniform, even in their direction¹. Some studies find executions deter murder, some find the opposite result and some find no statistical relationship. To find relationships, multivariable statistics with myriad complex and debatable assumptions are needed. Often, when these assumptions are altered using a statistical procedure know as sensitivity testing, the significance and direction of results often change dramatically thus demonstrating that deterrence results are not robust and sensitive to these theoretical and statistical assumptions. See Donohue and Wolford¹

3. Studies Use Inappropriate Data: Reliable and valid data is the key to quality research. Data used in these studies were never collected for hypothesis testing. Researchers use available data secondary to its intended use. In other words, researchers take data such as FBI crime statistics which are designed to compare communities and track trends over time, then use this data to test hypotheses. Perhaps the most egregious data problem in most deterrence studies is that the “murder” data include all types of murders as well as cases of non-negligent manslaughter.

4. Aggregated Data Fallacy: The studies that are often cited as demonstrating deterrence use state or county level data, not case-specific data. This aggregation involves pooling of data – using a single value (averages, percents, or rates) to summarize the data from all cases in a state or county. Known as the aggregation or ecological fallacy, the assumption is that

Conventional Wisdom is Wrong: Studies that Suggest that the Death Penalty Deters Crime are Flawed

everything is the same in all communities across that county or state and that the average applies to individual cases and localities. Would anyone believe that the law enforcement and socioeconomic environment is consistent across all communities in Los Angeles County?

5. Statistical Control Fallacy: To bolster the credibility of studies, researchers often collect aggregated environmental data intended to approximate the market and socio-economic characteristics that exist in each county and state. This might include such information such as murder rates; arrest rates; per capita expenditures for law enforcement; percent of the population that is Black; execution rate; having a Republican governor; or, estimates of gun ownership. The fallacy is that researchers can never control for all relevant environmental conditions. At best, studies use approximations that are crude and at worst they are a biased hodgepodge gathered from a myriad of un-standardized sources over different time periods.

6. Academic Publishing: While academic economists value behavioral theory and the publication of what peers regard to be sophisticated econometric studies, these are not grounded in carefully collected data. Economic journals, unlike journals from many other academic disciplines (social science, community psychology, epidemiology and engineering), appear to devote little relevance to the details of data quality. Rather, econometric journals seem to value the nuances of the mathematical assumption underlying the analyses. Most other disciplines would regard these types of theoretical studies as useless in making practical public policy decisions because they are not based on observable and replicable measurements. The credibility of some studies is further undermined by the lack of rigorous peer review. Some studies that are available to the press and the public are posted by the authors on non-peer reviewed websites.

Final Thought ----Why Do Death Penalty Proponents Need Empirical Support? Using data to support policy has long been useful (but not sufficient) to support policy and legal decisions. In our society, it is a political reality that we do not need data to enact public policy. Why then does the conventional wisdom of deterrence continue? Why do proponents of the death penalty continue to rehash the flawed academic studies that support this form of punishment? Perhaps it is because the moral and religious justification of this brutal policy does not exist. Proponents of a continuation of the death penalty have long since lost the support of most organized religions that once provided the moral support needed for capital punishment. In the 21st century, states which now lack the acquiescence of organized religions seek other crutches to support this dilapidated practice. As long as researchers continue to produce evidence to support the deterrence hypothesis, the debate will continue. Like the global warming issue, someone will always be willing to swim upstream against the overwhelming tide of evidence. Proponents will continue to grasp at any data to support their argument, no matter how flawed the data may be. So given that there will always be those who believe in deterrence, in the end, higher moral values, not empirical evidence, must be the guiding principle.

In conclusion, I encourage the Commission not to be swayed by any argument that the death penalty acts as a deterrent to future murders or crime in general.

ⁱ Donohue, John J. and Wolfers, Justin, "Uses and Abuses of Empirical Evidence in the Death Penalty Debate" . *Stanford Law Review*, Vol. 58, 791-846. December 2005. Available at SSRN: <http://ssrn.com/abstract=870312> Accessed January 9, 2008.