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### A Fond Farewell

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# A Fond Farewell

*For years, attorneys with questions about death-penalty issues turned to the Allegheny County Death Penalty Project. The Project now has been replaced by a publicly funded resource center.*

By Bruce Ledewitz

**I**t is time to say goodbye to the Allegheny County Death Penalty Project. Since the Spring of 1981, the Project has assisted defense attorneys in death penalty cases throughout Pennsylvania. More than 200 students have volunteered their time to the Project over the years.

Some of these students have been dedicated death penalty abolitionists; others supported the death penalty but wanted a fair system.

Some students gave only a few hours; others spent more time on the Project than on their studies. But all of them helped to see to it that the rights of indigent defendants were respected in capital cases.

**T**he occasion for the closing of the Project is the belated creation of a publicly funded Resource Center for death penalty cases in Pennsylvania.

The Commonwealth has the fourth-largest death row in the United States. Yet, unlike other big death-row states, Pennsylvania has never had a central body to train and assist defense attorneys, to provide them resources and to coordinate death penalty litigation strategy.

The Project was designed to fill that gap temporarily. As a volunteer organization with only the resources that Duquesne University School of Law essentially donated, the Project never could fulfill the need.

Now a professional and permanently staffed Resource Center will do the job that the Project could only approach.

The origins of the Allegheny County Death Penalty Project lay with the former Duquesne University School of Law Dean John Sciullo and Allegheny County Public Defender Lester Nauhaus. It was John, then simply a professor, who urged me in 1981 to keep some sort of presence in court and not to become purely an academic.

This advice made sense to me, so I went to see my old boss, Lester Nauhaus, to volunteer to help the Public Defender's Office. Lester already had decided that his office had to make a special effort in death-penalty cases, and he urged me to provide research and other support in capital cases for his office.

Although I knew nothing about the legal aspects of the death penalty, I had always opposed it. Lester's offer was the perfect opportunity.

As soon as I started working on death-penalty cases, it became obvious to me that I needed student assistance and that some students would find in the work a chance to express the professional idealism that had brought them to law school.

As I remember it now, that spring I gave the first of what became a yearly talk about the death penalty in Pennsylvania and about the work that students could do.

That talk would later take place each September and there would always emerge a core group of student volunteers as well as one or sometimes two students who would serve as student director of the Project that year. I am not going to name any of these students here. Many names come to me, and many faces. If I started naming them, where would I stop?

In the first few years, the work consisted almost entirely of active involvement in death-penalty cases, particularly Public Defender cases in Allegheny County. I had little direct courtroom experience, so this work was exciting for me and for the students.

Occasionally our clients would receive sentences of death, but usually not. It was during these cases that I learned how to be a courtroom advocate, often in clashes with the then-head of the Allegheny County District Attorney's Appellate Office, Bob Eberhardt.

Unquestionably, the most dramatic and intense trial the Project was directly involved in concerned the brutal murder of Dr. Jeffrey Farkas in his home in Squirrel Hill in 1989. The case exacerbated racial and religious divisions in Pittsburgh. The life sentence for William Yarbough embittered some in the Jewish community and certainly left a lasting impression on me.

As the Project's reputation grew, I began to receive phone calls from around Pennsylvania asking for assistance in death-penalty cases. This usually meant the preparation of a memo or brief on a particular issue that was of concern to the lawyer.

For example, what does Pennsylvania or what do other states say about whether criminal acts committed after the alleged murder "count" as part of an aggravated criminal record? This meant more work for students, and it was the type of work that students do well.

But some of the phone calls from defense attorneys were disturbing in their naivete. The callers would sometimes say that they had a death-penalty case starting in a week and they wanted to know what mitigation was.

Sentencing presentations I assumed took months to prepare, and which had to be integrated into the trial on guilt and innocence, were being compressed into an afterthought of only a few days.

Of course, questions like that could not be answered at all, or if they were answered, the Project ran the risk of helping inadequate attorneys become just competent enough to get their clients executed.

The obvious solution was to concentrate on preparing resources and training attorneys in death-penalty cases. Other

states were doing this through public agencies, either Resource Centers or Statewide Public Defenders. Pennsylvania had neither and so this task either would go undone or would be performed by the Project.

In 1982, the Project had put together a manual for Pennsylvania death-penalty cases and in 1984 had prepared a short update.

But by 1985, Pennsylvania and federal capital case law were developing rapidly. The 1986 update expanded to 70 pages of case analysis and practice pointers for Pennsylvania.

The updates were prepared at two-year intervals from then on and generally ran about 100 pages. They were distributed at cost in eastern Pennsylvania by the American Civil Liberties Union and in the west, by the Allegheny County Public Defender's Office. The preparation of each of these updates took many months.

Printed materials were not enough, of course, and in any event tactics were more important than law in securing life verdicts.

Lester Nauhaus and John Cook organized a western Pennsylvania training session, in coordination with Duquesne's School of Law in 1982, but they felt that western Pennsylvania was not really the problem. The problem was in the east.

By the mid-1980s the problem of capital representation in Philadelphia has assumed crisis proportions. The very able Defender Association of Philadelphia was barred from handling homicide cases, thus leaving death-penalty cases to the appointment of private attorneys.

Nor were there any standards for eligibility for appointment. The result was that Philadelphia contributed about half of the number of inmates on Pennsylvania's death row.

The Philadelphia Bar Association entered into this area by organizing training sessions in 1988 and 1993, by liberally distributing the Project's updates and by pressing for the creation of capital-case standards.

In addition, the Defender Association of Philadelphia began to represent defendants in capital cases in 1994. During the Defender Association's preparation phase, the Project provided training assistance and materials.

Another resource the Project created in the mid-1980's is the death penalty library, a full set of state and federal capital provisions analyzed by reference to the Pennsylvania death penalty statute. The library allows very fast retrieval of statutory provisions comparable to those in Pennsylvania, but worded with sufficient differences that no computer search locates them.

The library has been an invaluable tool. It has twice been copied by the National Coalition to Abolish the Death Penalty. As one of our last efforts, students are now thoroughly revising the library so that the new Resource Center will be able to use it.

But some of the phone calls from defense attorneys were disturbing in their naivete. The callers would sometimes say that they had a death-penalty case starting in a week and they wanted to know what mitigation was.

As a death penalty abolitionist, I always sought to use the courts to eliminate the death penalty. I was always looking for strategies that would go beyond a life sentence in a particular case.

A number of system-wide challenges were raised in death-penalty cases—Pennsylvania constitutional challenges, challenges to limits on resources and others—and the Project contributed to litigating most of them.

But the issue the Project always raised, and the issue the Project for a time was identified with, was the purported mandatoriness in the Pennsylvania death-penalty statute.

The idea originated with Duquesne University School of Law Professor Pat Basial. The Pennsylvania statute requires death ("verdict must be a sentence of death...") if certain findings are made, such as when aggravation outweighs mitigation.

We argued that such a requirement violated the Eighth Amendment in every capital case with which we were involved. I think the Project came to have the best treatment of this issue in the county.

When the United States Supreme Court granted certiorari in *Commonwealth v. Blystone*<sup>1</sup> on the question whether this requirement was constitutional, we certainly were ready. Together with Stefan Presser of the American Civil Liberties Union, the Project wrote large portions of the brief and submitted them to Professor Tony Amsterdam, America's leading death-penalty advocate (who rewrote every word).

We lost the *Blystone* decision 5-4.<sup>2</sup> That was disappointing but, given the makeup of the Court, not unexpected. *Blystone* was the last chance at knocking out the entire statute and emptying Pennsylvania's death row. After *Blystone*, all efforts had to be case-by-case.

The year 1989 was a turning point in the history of the Project. Until then the Project had been almost exclusively a trial-level undertaking. It had achieved success on that basis, both in obtaining numerous life sentences and in training and providing resources for defense attorneys.

But as 1988 drew to a close, it was clear that possible executions in Pennsylvania would soon become a serious issue.

Prior to 1989, execution warrants had been signed haphazardly by Govs. Richard Thornburgh and Robert Casey. Stays of execution had been obtained in those cases pretty easily.

In 1989, the abolition movement in Pennsylvania decided to try to fund a private monitoring project to keep track of the cases of persons on death row—and to gain their trust—and to prepare and find adequately trained counsel when execution warrants were signed. Pam Tucker, a Pittsburgh business owner and dedicated abolitionist, was hired as part-time director.

See **PROJECT** on page 32

## Death Penalty Project ends

### PROJECT

*Continued from page 13*

This action proved prescient. In the five months before the 1990 November election, Gov. Casey signed seven execution warrants.

This was no doubt purely cynical politics. He never signed that many before, and has not signed that many since. In any event, the Project has been involved in providing assistance to the volunteer attorneys in all warrant cases.

In recent years, monitoring death row has itself become more or less a full-time commitment of the Project. Pam needed to know what recent case law held and how it affected other cases. She also prepared forms for students to go back through old cases in order to identify potential issues and to analyze the case itself.

These forms proved invaluable later, with the often pressure-filled deadlines of warrant litigation. With the coming of the Resource Center, the monitoring project is closing as well.

While the Allegheny Death Penalty Project was operating, Dean Sciullo and other Professors would frequently suggest that the Project become a formal school clinic. That way students would receive academic credit and I could count the hours I spent as part of my teaching load. A few years ago, Temple University School of Law did that very thing.

I always resisted these proposals. In my mind, the Project represented service, not study—practice, not preparation. I did not wish the formal learning of students to be a consideration. I wanted service to the client and to the profession to be the only thing that mattered.

The students always understood this. Their efforts through the years, whether large or small, were always a matter of giving of themselves.

They were always helping the legal profession live up to its own ideals. They never wanted, nor received, anything in return.

As the Project closes, I will take the memory of their service with me.

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*Bruce Ledewitz is a Professor of Law at Duquesne University School of Law.*

## Advances in Career Services Office make job searches easier even as the market is tight

### CAREER

*Continued from page 15*

A Lexis and Westlaw computer have been installed to access different databases for job opportunities. Career Services has scheduled a representative from each company to conduct a monthly training session for interested students. The CSO also has acquired a fax machine to allow a quicker turn-around when students respond to employers.

In addition, CSO will hold symposiums on the topics of a well-rounded law student, how to run for political office, how to use the offices Downtown, and how to set up your own law office.

The Career Services Office should be used as a tool to empower the student to find a job. Plenty of resume, cover letter and thank-you letter writing books are available, as well as the advice of Suzanne McClure, the Assistant Director of Career Services, on writing styles.

Further, the updated job search manual gives a detailed outline of the resources available in Career Services. Other seminars that will be offered through the Career Services Office are lectures on resume writing and interviewing.

A law degree is versatile. A graduating student needs to realize that practicing law is only one possibility available to lawyers. Law school has prepared its graduates for careers in areas other than litigation.

The law school experience has enhanced a graduate's knowledge and has prepared him or her for positions that require a higher degree of education. A Juris Doctor can only expand the opportunities afforded to a graduate regardless of whether the student decides to practice law.

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*Erin Larabee is a third-year day student at Duquesne University School of Law.*

## A student also teaches

### TEACHING

*Continued from page 9*

This becomes very annoying for my family because they miss half the show when I jump up and exclaim that there is more to the term quasi contract than the sole fact that it is not a real contract. I continue on, giving them a detailed explication of the word or phrase.

Lately, some of my freshman students have refused to use a few terms correctly as well. They turn in papers with spelling errors and stare at me blankly when I tell them that "alot" is not a word. And, of course, some use the nonexisting word again and yet again on subsequent papers.

At least I feel that I have learned from them. They have taught me not to make the same mistakes on my papers. They have taught me to come prepared and to pay attention to my professors in class. More importantly, they have taught me that professors do not make any money from their jobs and therefore must be in it for the sheer enjoyment of teaching.

They really are great kids. They just live in outer space. They have not become accustomed to their new atmosphere. The upperclassmen in law school keep telling us first-year students that we will not know what is going on until Thanksgiving.

I tell my freshmen the same thing. Once they become acclimated with the campus, their professors and college life in general, they will be able to breathe easier and truly feel comfortable in their new surroundings.

It appears now, as I look back at my first-year law experience so far, that I never really moved from outer space. I, like my freshman students, feel as if I am floating in a strange new world, a world that has opened new ideas, thoughts and yes, questions.

I have become engulfed in an atmosphere that dedication and hard work will help me comprehend. It is a world that I will one day be able to live in without the protection of my legal dictionary. I look forward to the day that this unfamiliar world of jurisdictional questions, torts and consideration will not be so bizarre, so different and so, well, foreign to me.

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*Mary R. Castelli is a first-year evening student at Duquesne University School of Law.*