



### Ashcroft on the loose

**“You know, the worst person to elect as president is a state governor. They’ve inflicted capital punishment so they’re not afraid of death.”**

– Former Minnesota Senator and 1968 presidential contender Eugene McCarthy, *The Guardian*, March 2003

U.S. Attorney General John Ashcroft’s regularly noted arrogance is perhaps most palpable when it comes to the death penalty. Since taking office in 2001, Ashcroft has overridden local prosecutorial discretion in at least 30 cases, ordering federal prosecutors to seek the death penalty instead of the life sentence they had recommended. Even

more shocking than the Bush Administration’s efforts to enforce Texas-style justice on all federal jurisdictions is his claim that this is part of an effort to create a less biased death penalty system. His office has actually *compared his aggressive pursuit of federal death sentences to federal enforcement of desegregation in the 1960s.*

Clearly, there is strong evidence of racial and geographic bias in the application of the death penalty, even according to the Justice Department’s own review. The Attorney General purports that he aims to minimize these biases by enforcing capital punishment in jurisdictions like New York and Connecticut, where he

overrode 12 of the 30 life recommendations, ignoring the reality that no federal jury in New York City or its suburbs has voted for death in over a decade. And in at least 26 of the 30 cases, and all of the New York and Connecticut cases, the defendant was a person of color, according to the Federal Death Penalty Resource Counsel Project. Ashcroft’s aggressiveness appears to be *exacerbating* the problem of racial bias.

The Attorney General can override a local federal prosecutor’s recommendation not to seek death “in an exceptional case,” according to Department of Justice protocols. But it is unclear just what circumstances deemed these cases

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### An innocent life in the balance

In 1976, Charles Wakefield was sentenced to death for the double murder of Frank Looper, Sr. and his son, Lt. Frank Looper, Jr. 27 years later, though now serving a life sentence\*, he is still fighting to prove his innocence.

Though Wakefield had no prior record, he was one of many African American men picked up and questioned in connection with the Greenville, SC double murder. Wakefield took a paraffin test and other tests to prove he had not recently fired a gun, two lie detector tests, and a truth serum test. His shoes did not match casts of footprints at the scene. His very large afro was a sharp contrast to the eyewitness description provided by Looper, Sr.’s wife, who said the perpetrator had short hair. With this overwhelming set of evidence on his side, Wakefield was initially released.

Nine months later, however, a woman with the Salvation Army came forward and told police she had been at the scene collecting donations that day and fingered Wakefield as the killer. In exchange for her testimony, she received a handsome reward and her son-in-law, who had just been sentenced to 24 years for an unrelated crime, received a vastly reduced sentence. A second man, Wyatt Earp Harper, an 18-year-old substance abuser who had been arrested around the same time, came forward to corroborate the woman’s identification of Wakefield. Harper told police he was the lookout for Wakefield and received a reduced sentence and good treatment in prison in exchange for his testimony.

Wakefield’s case is a maze of prosecutorial and police misconduct and injustice. Defense lawyers, for example, were unaware of Harper’s existence until just be-

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## News briefs

### Mexico lawsuit: U.S. ignores world court

On January 9, Mexico took the U.S. to court for violating the Vienna Convention on Consular Relations. Mexico is asking the International Court of Justice to commute the death sentences of all 54 of its nationals on death rows in the U.S., insisting that had Mexican consulates been notified as guaranteed by the convention, they would have provided the defendants with experienced, Spanish-speaking lawyers. The U.S. routinely provides inexperienced public defenders who speak little to no Spanish. In February, the Court ordered the U.S. to stay the three of the 54 who have exhausted their appeals while it considers the case. Texas and Oklahoma, where the three are housed, have both announced they would ignore the order. Mexico's case comes after a highly publicized Texas execution of a Mexican national last August, after which Mexican President Vincente Fox cancelled his trip to Bush's Texas ranch in protest.

### Ten minutes till death

In a rare last-minute move, the United States Supreme Court halted Texas' **scheduled 300<sup>th</sup>** execution of Delma Banks, Jr. on March 12 to consider whether or not to review his case. Banks, a young African American accused of killing a white teenager, was convicted by an all-white jury in a trial that lasted a single day. Years later, Banks' lawyers found a transcript of police and prosecutors coaching the key witness, who lied at trial and said he had not been coached. Another witness, a paid police informant, testified that he had not been paid. The Court's decision came just ten minutes before Banks was to be executed.

## Support Equal Justice USA with a simple phone call!

If Working Assets is your long distance or cell phone provider, simply call 1-800-788-0898 before June 30, 2003 and say you would like to nominate Equal Justice USA/Quixote Center for a Working Assets grant. We will send them all the additional information they need. The more calls they get, the better our chance. Thanks!

## Pennsylvania Court urges halt

The Pennsylvania Supreme Court gave an historic boost to the movement for a moratorium on executions in the state when it released a 550-page report in March calling on the Governor, the courts, and the legislature to halt executions in the state immediately. A ten-member committee, appointed by the Court in October 1999, was charged with examining racial and gender bias in all aspects of the Pennsylvania court system, including the death penalty.

"The Supreme Court Committee's recommendations do not present anything new in their indictment of the shocking level of racial bias in Pennsylvania's death penalty," said Jeff Garis, Executive Director of Pennsylvania Abolitionists United Against The Death Penalty (PA Abolitionists). "Nine of Pennsylvania's largest city councils and the Pennsylvania and Philadelphia Bar Associations have called for a moratorium. Anyone who has taken even a cursory look recognizes the need for a moratorium. What is significant about this committee's recommendation is that it is coming from the Pennsylvania Supreme Court."

"Philadelphia has placed more African Americans on death row than any other city or county in the United States," federal public defender Robert Dunham told the *New York Times*. "The odds that a black defendant will be sentenced to death in Philadelphia are triple that of a white defendant."

Some critics of the study's findings counter that the numbers are a result of the disparate numbers of minorities *committing* crime. The committee itself, however, acknowledged that the initial numbers it examined don't tell the whole story, and that more comprehensive and ongoing data collection and review is needed. The committee also recommended a Racial Justice Act so defendants could challenge their sentences on the basis of racial bias, statewide standards for the selection of defense counsel, changes to jury selection and duty, and a state system to certify court interpreters.

In light of the report, PA Abolitionists and EJUSA are increasing their pressure on Governor Ed Rendell to impose the moratorium. Rendell stated during his campaign that while he supports the death penalty, he would support a moratorium if there was evidence to suggest that it was warranted. Rendell has signed two death warrants since the beginning of his term, and with 245 people on its death row, Pennsylvania could soon become the "Texas of the north."

**Pennsylvanians,  
take action!**

Contact Governor Rendell and tell him he has his  
evidence: 225 Main Capitol Building  
Harrisburg, PA 17120  
phone: 717-787-2500/ fax: 717-772-8284



“exceptional.” In independent letters to Ashcroft, Senators Russ Feingold and Patrick Leahy each have sought clarification of what criteria underlies Ashcroft’s capital prosecution policy.

Seemingly Ashcroft’s policy is not to create stricter standards and guidelines *but simply to pursue more death sentences*. Already, this approach has proven reckless. In one New York case, the Attorney General ordered the local U.S. Attorney to seek a death sentence against a defendant who already had signed a plea deal in which he would provide prosecutors important information about a deadly drug ring in Queens. Critics note that Ashcroft’s action sends a dangerous message to defendants to not trust plea

deals made with local federal prosecutors. As one former federal prosecutor in Manhattan told the *New York Times*, “if you can’t bargain away death, you will never get a plea.”

Ashcroft’s aggressive drive for federal death sentences could yield other disastrous results. A 2002 Columbia University study demonstrated that the more aggressively a jurisdiction pursues the death penalty, the higher the rate of serious reversible error. In other words, frequent use of the death penalty means *more* mistakes – increasing the chance that innocent people will end up being sentenced to death.

Three federal prisoners have been executed since the return of capital pun-

ishment in federal cases – all under Ashcroft’s watch. The most recent, Gulf War veteran Louis Jones, was executed on March 18, 2003 – the night before Bush launched his full-scale war on Iraq. Jones was exposed to chemical fallout, including sarin nerve gas, during the first Gulf War. Prior to the exposure, Jones was a decorated soldier with no criminal record. Medical evidence indicated that Jones’ suffered from an extreme form of Gulf War Syndrome, which could have instigated his violent behavior. Tragically, just 36 hours after Jones’ execution, the Bush Administration sent a new generation of young men and women off to a second war against Iraq.

# Take action!

Use the sample below or craft your own message and send a postcard, letter, or email to John Ashcroft at: U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
AskDOJ@usdoj.gov

Dear Attorney General Ashcroft,

I am very disturbed by recent news that you routinely override prosecutorial discretion to seek the death penalty in federal cases, including cases where the defendant is mentally retarded or has already accepted a plea bargain. Your claims that this aggressive pursuit of the death penalty will correct racial and geographic bias, when most of the defendants in the cases you have overridden are people of color, are laughable. The only way to reduce error in the death penalty is to use it less. Your reckless and aggressive Texas style of justice will only increase the risk that innocent people are sentenced to death.

Further, I am outraged that the Bush Administration silences anti-war dissent for the sake of “supporting the troops.” Yet on the eve of war, you allowed the execution of decorated Gulf War veteran Louis Jones, who suffered from Gulf War Syndrome after being exposed to nerve gas in service to his country. Is that your way of “supporting the troops?”

I urge you to cease overriding the discretion of your own local prosecutors who select not to seek the death penalty.

Sincerely,  
Your name and address

fore trial. Though Harper told Wakefield's defense lawyers that he had never seen Wakefield before they met in the courtroom, he testified that he participated in the crime. Harper has since recanted his testimony in interviews with Wakefield's current lawyer and Equal Justice USA's Grassroots Investigative Project (GRIP) Coordinator Claudia Whitman. According to Harper, prosecutors told him to lie about his involvement if the defense became aware that he planned to testify. The battery of tests Charles originally submitted to were never presented at trial and their documentation can no longer be located. Many of the witnesses are now dead, and local lawyers are reluctant to get involved in a case shrouded in such gross misconduct.

Meanwhile, Wakefield has twice been granted parole, but media campaigns conducted by the same law enforcement officials responsible for his conviction and incarceration resulted in parole being revoked. He has had a perfect record during his time in prison, never receiving a single disciplinary action in all these years.

Charles Wakefield was one of many prisoners who contacted GRIP after the release of our 2000 report, *Reasonable Doubts: Is the U.S. Executing Innocent People?* Since the initial contact, a lawyer in New York has taken the case pro bono and conducted an intense investigation that uncovered all the deals that were made with prosecution witnesses. This winter, the attorney asked GRIP to join the investigation and to help train local people to aid with this ongoing probe. So far, GRIP Coordinator Whitman has trained two people and is hopeful that the team will grow.

GRIP also met with members of the newly formed South Carolina Innocence Project and discussed the possibility of training with them. Wakefield's case is typical of most innocence cases, where defense teams are overworked and there is little money to conduct full investigations. GRIP's work on Wakefield's case will, hopefully, not only help set this innocent man free, but will prove a useful model for low-cost investigations in the future.

\*Wakefield's death sentence was commuted to life plus 25 years when SC's death penalty was overturned by the Supreme Court because it failed to comply with guidelines set by the U.S. Supreme Court in the 1972 *Furman v Georgia* decision.

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**Yes, I want to fuel the moratorium momentum!**

Enclosed is a donation of:

\$35  \$60  \$100  other (Tax deductible gifts payable to Equal Justice USA)

Please send me an organizing packet. (Suggested donation, \$10)

Your name & address:

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## Maryland moratorium narrowly defeated

On March 18, the Maryland Senate defeated a bill to restore the state's moratorium on executions by a vote of 23-24. By a single vote, the Maryland legislature has ignored a University of Maryland study showing significant racial bias in the death penalty and has exempted itself from the death penalty debate in the state. The issue is now in the hands of Republican Governor Robert Ehrlich, who lifted the moratorium early in his term, and has appointed Lt. Governor Michael Steele to conduct his own review. The bill's defeat comes in the midst of an investigation of a Baltimore County police chemist whose incompetent and possibly fraudulent work touched anywhere from 500 to 5,000 criminal cases over a ten-year period. Meanwhile, the Maryland Court of Appeals has delayed executions while it looks at issues pertaining to last year's U.S. Supreme Court decision, *Ring v Arizona*, which rendered several state death penalty statutes unconstitutional.

## A unique opportunity for state organizers

In November 2003, EJUSA will host an energizing three-day retreat for state moratorium organizers at the beautiful Blue Mountain Center in New York's Adirondack Mountains. Five state teams will be invited to attend the all expense paid retreat, which will feature strategic planning with a dedicated facilitator, personalized training, time for outdoor recreation, and more. This one-of-a-kind opportunity for state coalitions is not an ordinary conference! If your state would like to be considered for one of the slots, please contact Shari Silberstein at 301-699-0042 or [sharis@quixote.org](mailto:sharis@quixote.org) for an application. To take a virtual tour of the Blue Mountain Center and its grounds, visit [www.bluemountaincenter.org](http://www.bluemountaincenter.org).