

Wednesday, October 31, 2007

### **American Bar Association calls for nationwide death penalty moratorium.**

^ ^ The American Bar Association for years struck me as a curious organization. Early on, I pigeonholed the group as overly mainstream, at best, with presidents from big law firms with hiring standards that I could not meet for class grade rank and law review membership. (During law school, on the one hand I had an ideal of a public interest law career, but also was very interested in working at such huge Washington, D.C., law firms as Arnold & Porter, Covington & Burling, and Hogan & Hartson that have spirited pro bono programs, some great lawyers to learn from, and top salaries (which salaries come at the price of working long and efficient hours to bill enough to justify those high salaries eventually, and, I assume, at times to work on the side that oppresses people, which is a counterpoint to the firms' pro bono programs). If I had been hired by one of the foregoing law firms and received favorable performance evaluations, it would have been harder to take the leap to public defender work followed ultimately with my Underdog lawyering work as my own boss, so I owe thanks of sorts to such firms for keeping me out of their hiring radar). ^ Founded in 1878, for decades the American Bar Association excluded African-American lawyers. The National Lawyers Guild was founded in 1937 as an alternative to the ABA's segregationist membership policy and reality, with the ABA waiting until the 1940's to start admitting African-American members. By now, the ABA has a very active Individual Rights and Responsibilities section, and this very establishment organization, fortunately, does some very good things for justice. ^ With that backdrop, I am pleased to report that this week the ABA called for a nationwide moratorium on executions, saying that "[w]hile the ABA takes no position for or against the death penalty itself, since 1997 it has urged a moratorium in each jurisdiction that provides for capital punishment until the state conducts a thorough and exhaustive study to determine whether its system meets legal standards for fairness and due process." The ABA's Death Penalty Moratorium Implementation Project recently issued its key findings of flaws so serious in the death penalty system as to necessitate a moratorium. The key findings show serious flaws in all of the following areas: "(1) collection, preservation, and testing of DNA and other types of evidence; (2) law enforcement identifications and interrogations; (3) crime laboratories and medical examiner offices; (4) prosecutorial professionalism; (5) defense services; (6) the direct appeal process; (7) state post-conviction proceedings; (8) clemency; (9) jury instructions; (10) judicial independence; (11) the treatment of racial and ethnic minorities; and (12) mental retardation and mental illness." While the requisite data often was not collected, maintained, or made available in a way that made analysis possible, general themes emerged in each of the topic areas. ^ Ultimately, serious problems were found in every state death penalty system." ^ Of course, the above-listed flaws in the death penalty system also are the serious flaws in the entire criminal justice system. Death is the ultimate punishment and the ultimate form of torture (a phrase spread by Amnesty International), which justifies starting with the capital punishment system in fixing the criminal justice system -- at least if it is necessary at all to focus on one part of the criminal justice system rather than taking on the whole system at the same time -- but efforts to fix the criminal justice system must ultimately apply to the entire system, and not exclusively to the death penalty machine. ^ In any event, thanks to the ABA for calling for a nationwide execution moratorium. This call will persuade many ears in the so-called national mainstream who will not be as easily persuaded by such less-mainstream-seeming groups as the American Civil Liberties Union, the National Coalition to Abolish the Death Penalty, and the National Lawyers Guild. Jon Katz. ^ ADDENDUM: Thanks to the National Coalition to Abolish the Death Penalty for having posted to its website the news of the ABA's call for an execution moratorium.

Posted by Jon Katz in Criminal Defense at 01:00