

their innocence, many others have been blocked from DNA testing because post-conviction remedies are no longer available to them.

Many states have statutes of limitation which bar new evidence claims in post-conviction proceedings. Many innocent people have been unable to obtain adequate legal representation to secure a test and have an attorney advocate on their behalf. Consequently, many innocent men and women remain imprisoned or under a sentence of death. Each month the effort to provide relief to these wrongly convicted prisoners is undermined by the destruction of biological material necessary to conduct DNA testing. The failure of some law enforcement agencies to preserve scientific evidence has eliminated any hope for some wrongly convicted prisoners to prove their innocence.

The Innocence Protection Act provides for important new procedures and requirements that would address many of the problems currently preventing the identification of wrongly convicted prisoners through post-conviction DNA testing. . . .

The Innocence Protection Act will do much to restore confidence in many criminal cases where biological evidence can resolve lingering questions about guilt or innocence. Our nation's status as the world's leading democracy and our activism on human rights in the international context requires us to take all steps possible to protect against wrongful convictions and execution of the innocent. Improved procedures for post-conviction DNA testing will tremendously aid the goal of a more reliable and fairer administration of criminal justice. However, it is worth keeping in mind that DNA testing will touch a relatively small subset of cases where innocent people have been wrongly convicted. Improved access to DNA testing for prisoners will be useful only in those cases where 1) biological evidence can determinatively establish guilt or innocence, most notably rape, rape-murder, and sexual assault cases, 2) the accused is still in prison or on death row and, most likely, had his case tried before 1994, and 3) the biological evidence has been preserved and is still available for testing. This is a relatively fixed and finite universe of cases. . . .

In my state of Alabama, it is estimated that only 23 of the 187 people who are currently on death row have been convicted of murders aggravated by rape or sexual assault where biological evidence may be determinative of guilt. In 10 of the 23 cases where death was imposed, the trials took place after 1994 when DNA evidence was presumably available and utilized. While DNA evidence may sometimes prove useful in cases where the condemned has not been convicted or charged with an accompanying rape or sexual assault, a reasonable presumption exists that post-conviction DNA testing will be meaningful in only about 6% of death penalty cases in Alabama. The availability of physical evidence and the credibility of an innocence claim based on

other evidence will further reduce the viability and likelihood of post-conviction DNA testing in these cases. . . .

In Alabama, the death row population has doubled in the last ten years. There are dozens of death row prisoners who are without legal representation and who cannot present compelling claims that their convictions and death sentences are legally and factually invalid. While state law permits an Alabama circuit court judge to appoint a lawyer for post-conviction proceedings, the law does not authorize any appointment of counsel until after a petition has been filed. Petitions cannot typically be filed until the case has been investigated and a lawyer has expended hundreds of hours of work. Even with appointment, state law in Alabama limits compensation for appointed counsel to \$1,000 per case. This rate is so extraordinarily low that no lawyer can reasonably take on one of these difficult cases unless he or she is willing to represent the client for what amounts to *pro bono* service. . . .

Mobilize to Stop the Death Penalty

by John Gilliam-Price

Mr. Price is from Baltimore, Maryland.

I am John Gilliam Price, national speaker for the Campaign to End the Death Penalty. I am an abolitionist, an advocate, and an educator. I've distributed copies of *The New Abolitionist* to each of you on the panel; I'd like to ask that at your leisure, you review them. Inside *The New Abolitionist*, I have five reasons to oppose the death penalty.

I was asked to speak specifically on the racial disparities of the death penalty, but as a national spokesperson, in seeking abolition or a moratorium on the death penalty, I cannot separate the racial disparity issue from the other four issues, which are that the death penalty is racist; the death penalty punishes the poor—it is not just a racial issue, but we also find that it is a class issue; the death penalty condemns the innocent to die; the death penalty is not a deterrent to violent crime; and finally, that it is cruel and unusual punishment.

Having heard the previous speakers, and having been in session all day, we find that these issues are supported through every argument—whether it's economics or health care—we see that there seems to be a master plan, for some reason. Why they leave the death penalty on the books—I could, jokingly, say that I am happy to be before the delegation of the South African [apartheid] government, because that is what this country is moving toward: a system of genocide, a system

of apartheid, in arresting, in incarcerating, and, ultimately, executing those who oppose the system.

We should ask ourselves, is it strange for a case like *LaRouche v. Fowler* to take place, where they nullify the Voting Rights Act of 1965? Is that strange? When we have heard about the FBI investigation that targets the black legislators, the black elected officials, is that strange?

What we see is that the government is going into a new stage of defining who is, or who will be, the criminals. On one hand, we see they have a surplus of prisons, and prison spaces. We have heard those testify that it's a thin line, being a politician, of whether or not you are criminally right, or criminally wrong, and at any time they could bring up charges, and place you into that institution. Well, if they can bring up these charges and place you into those institutions, then who is to say that they won't say that you have now committed a crime which is worthy of death? And this is what we need to look at.

In 1961 in Maryland, there was a study commissioned by a Congressperson there by the name of Murty. Murty found that, in 1961 — just to show that we're at the same place now, historically — in 1961, blacks in Maryland were 95% more likely to be executed than whites. Ninety-five percent more times likely to be executed. Maryland has the most racist death row rate now.

I was going to use an example, if I could, that this panel before us today represents Maryland's death row, where we have one white male, and the majority blacks or other nationalities. And this is how it is in Maryland. But we find that the murders that are taking place are 50% [against blacks]. However, as the facts show, only in the white cases — when the victims are white — are the defendants being sought after more aggressively. It's not that the blacks are doing more of the crime, or committing more of the crimes, it's only that they are being sought after more aggressively.

So, when you look at the whole continuum, whether from racial profiling, to "driving while black," to where you look at our school systems, and our educational systems, where dollar-for-dollar in Maryland, the justice system money is being increased, and the educational system money is being decreased. Where you see that white youth are receiving treatment for their offenses, where you find that the black youth, for loitering, and other things — they're being incarcerated, for the same, or similar, type offenses.

There was also a Maryland "Report Card" done by Prof. James Liebman [of Columbia University School of Law, as reported in "A Broken System: Error Rates in Capital Cases, 1973-1995"]. The Report Card showed that Maryland has a 100% overall error rate in its death row population. One hundred percent error! And the way they break that down is, you go through the different stages of appeals. So if you have 60 cases, on the first direct appeal, 57 of those cases were overturned. These were men that were going to be sentenced

to die! Fifty-seven of those cases were overturned! On the second appeal, you went down to two, and finally, on that last appeal, when the *habeas corpus* relief was granted, then you would have that final sentence overturned. So that if the cases were given the proper representation, the fairness in the courts that is due each and every one of us, if they were given that chance — you've heard of your colleagues being removed from office without hearings and without cases — but if these convicted, or alleged criminals were given the proper legal proceedings, they too would not be there. Not to say that there



I'm in the percentage group of 18- to 35-year-old black males in America, and I should be either in the penal system, coming out of the penal system, or heading into it. . . . I'm an innocent man sitting here before you—but I could be an innocent man sitting on your death row.

—John Gilliam-Price

aren't some who should be incarcerated because of the crimes they've committed.

And what I would like to ask, is that, even as Congressman Jesse Jackson, Jr. has done, to pass, or to introduce legislation, H.R. 4162, calling for a national moratorium, that those innocent may be removed from death row — we must make this our number-one priority, in this election. Whether you're a Democrat or Republican, this must be the number-one priority. Because if we allow them to execute the innocent, juveniles, those who are on death row because of jailhouse snitches, and for other offenses — then, it could be me today. I'm in the percentage group of 18- to 35-year-old young black males in America, and I should be either in the penal system, coming out of the penal system, or heading into it. I'm in the percentage group. That's why I carry my bag everywhere I go — so I know what's in my bag, who's near my bag, who touched my bag — because I *am* living in a state of paranoia. I'm an innocent man sitting here before you — but I could be an innocent man sitting on your death row. Thank you.