Death Penalty Forum Seeks Solutions

By Karen Murray

After being dormant for several years, the King County Bar Association’s Public Policy Committee held its first CLE forum on November 30. The subject was “The Death Penalty in Washington State: Public Policy Choices and The Impact on the Justice System.”

The goal of the Public Policy Committee (PPC) is to provide leadership decisions on issues where KCBA can enter into discussions and its voice can make a difference. To accomplish that goal, the PPC meets regularly to discuss, research and summarize its findings on legal issues of public and social concerns affecting the membership and the communities we serve.

The CLE topic fit the PPC’s precise goal on several fronts. First, the PPC members researched and discussed the death penalty, following recent studies on the racial disproportionality and disparity of ethnic minorities in the criminal justice system. The committee strongly suspected that the death penalty was being imposed in similar fashion and, thus, invited death penalty proponents and opponents to educate PPC members on their views.

Committee members read numerous articles on how other jurisdictions are addressing this issue. The person who repeatedly captured the PPC’s attention with his comments was Illinois Gov. Pat Quinn, which summarized what many members felt.

In 2011, as he signed the bill making Illinois the 16th state to abolish the death penalty, Gov. Quinn stated, “[O]ur system of imposing the death penalty is inherently flawed…. Since our experience has shown that there is no way to design a perfect death penalty system, free from numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish it.”

PPC members also discussed California’s measure to repeal its death penalty statute in the November general election and Oregon Gov. John Kitzhaber’s moratorium on all executions a year earlier when an inmate neared voluntary execution. Oregon’s legislature is now preparing a bill that would repeal its death penalty statute.

What made all of the PPC members ultimately realize the timeliness of this sensitive and difficult discussion were the recent media accounts of approximately 130 innocent individuals who have been freed from death row because of brilliant investigative reporters, the Innocence Project, and a variety of law school programs and clinics.

To ensure that the PPC’s goal was met, these concerns and developments served as guideposts to developing the overall theme of the plenary panel discussions. The diverse panel included former King County Prosecutor Christopher Bayley; Snohomish County Prosecutor Mark Roe; retired Whatcom County Superior Court Judge David Nichols; Mishi Faruqee, ACLU campaign manager for the Safe and Just Alternatives Campaign; public defenders Carl Luer (Associated Counsel for the Accused) and Kathryn Ross (The Defender Association and
Faruqee, Larrañaga and Ross comprised the panel for a discussion on “The Public Policy & Legal Precedents for the Death Penalty.” Each agreed that the death penalty is imposed arbitrarily, astronomically expensive to carry out, and a poor alternative to life without parole. Since 1981, in Washington, of the 81 death penalty notices filed, 33 death sentences have been imposed. Only eight inmates are currently on death row. Nineteen of these sentences have been reversed, one inmate committed suicide, and five have been executed (three voluntarily). The estimated cost to taxpayers of the four death penalty cases pending in Washington is $8.6 million.

Larrañaga, who is now in private practice, but was a longtime public defender with The Defender Association, and also the first director of WSDPAC, pondered whether jurors should be involved when the death penalty is at stake because of the emotional toll it can take on them. Studies have shown that some jurors on death penalty cases suffer from post-traumatic stress disorder. Larrañaga believes this also must be considered when calculating the full cost of the death penalty.

A session about the decision points at the pre-trial stage covered the prosecutor’s process in deciding whether to pursue the death penalty, based on aggravating and mitigating factors, and what defense counsel’s duties are to mitigate the accused’s case once the decision is made to go forward.

Bayley commented that he sometimes distinguishes between the theoretical argument of the death penalty (deterrence and retribution) versus the utilitarian argument of costs, which he believes are not fungible. He also stated, “I don’t think a prosecutor can consider disparity when it comes to the number of victims.” When asked what he meant, he said, “I am making reference to Cal Brown (who was executed in September 2010 for a single murder conviction) and Gary Ridgway. These are not good arguments.”

In Bayley’s support, Roe added, “There are people who do stuff that they need to die for.” But similar to earlier presenters, he agreed that the death penalty does not act as a deterrent.

Public defender Luer did not bite his tongue when it came to discussing the constant delays in handling a death penalty case. He strongly remarked, “When the prosecution, the media, and family members of the victim point the finger at defense as dragging our feet and causing unnecessary delays it makes me angry, especially since it is the prosecution that has the power to make the decision not to seek the death penalty. If the prosecution made decisions not to seek the death penalty, these cases could be substantially shortened.”

A session centered on prosecuting, defending, adjudicating and appealing death penalty cases took an up-close and very personal look at the human emotional toll on the players involved in high-profile cases. Judge Nichols and Prothero shared their professional insights.
Judge Nichols commented that after his many years on the bench, he began to see how arbitrarily the death penalty was being applied, which came to a head in the Ridgway case. He could not fathom how Ridgway was spared a death sentence while another person, who may have acted out on one occasion and done something out of character in killing someone, could face execution. Prothero, Ridgway’s lead defense attorney, did not disagree. He admitted that many evenings he, too, would find himself shaking his head in disbelief.

The CLE ended with a group discussion and exchange with the audience on the consequences of the death penalty. While the consensus was that the cost of a death penalty case is in the millions of dollars, statistics demonstrate that states without the death penalty have a lower homicide rate. So, the questions still to be debated are what the criminal justice system would look like if all states abolished the death penalty and replaced it with life without parole and whether the death penalty should abolished just because of the astronomical costs.

One thing beyond dispute is that those individuals freed from death row were saved because of new technology and the individuals who believed in them. But what of those who may yet be wrongfully executed because technology isn’t available to them or there is no champion to pursue their cause? Can we expect the justice system to work without abolishing the death penalty? These are the questions we are trying to answer.

By bringing this issue to the membership, the PPC is seeking to meet its goal of providing information, so that each KCBA member can make an informed decision about the death penalty.