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Foreward

Janice C. Griffith

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FOREWORD

DEAN JANICE C. GRIFFITH,
GEORGIA STATE UNIVERSITY COLLEGE OF LAW

On July 24, 1997, the Carter Center in Atlanta held a symposium on the death penalty to explore issues raised by its use as well as its impact upon our judicial system. Georgia holds a unique place in constitutional history: first, as the state whose death penalty law was found to operate in an arbitrary and unconstitutional manner in *Furman v. Georgia*, and second, as the state that rewrote its death penalty law, which was upheld by the Court in *Gregg v. Georgia* four years later. Georgia State University Law Review takes no editorial position on the death penalty, but decided to publish written transcripts of the participants' commentary at the symposium to stimulate debate on death penalty issues and to draw attention to some of the flaws that stem from the current system of administering it.

Most of the speakers at the Carter Center symposium approached capital sentencing from an anti-death penalty point of view; the panel was not constituted to debate academically the arguments for and against capital punishment, but to discuss its ramifications upon our legal system and to explore some of the history and politics associated with the death penalty. From this perspective, the participants' experience and insights as related at the symposium make a significant contribution to the national debate on this issue.

The program opened with a message from Rosalynn Carter, who has worked extensively on issues surrounding the mentally ill and the mentally retarded, and closed with the comments of former President Jimmy Carter, who, as governor, signed into law the death penalty statute that the Supreme Court upheld in *Gregg v. Georgia*. Following the opening message, two American Bar Association (ABA) members—Robert J. Grey, Jr., and Ronald J. Tabak—presented the concerns of the ABA, which recently approved a resolution calling upon states to declare a moratorium on the imposition of the death penalty unless they can guarantee fair trial and appellate processes in all capital cases and provide each defendant with competent trial counsel. The ABA has expressed concern as to the competency of trial

counsel in capital cases and has advocated standards for measuring the quality of their representation.

The symposium's three panels looked at specific societal influences on the imposition of the death penalty: race, poverty, and mental incapacity stemming from youth, mental illness, and mental retardation.

Moderated by University of Georgia School of Law Dean Edward D. Spurgeon, the first panel, charged with examining whether racial bias influences who is sentenced to death, brought viewpoints from scholars from three very different areas of study. William S. McFeely, the Abraham Baldwin Professor of the Humanities Emeritus in the University of Georgia Department of History and the author of many books, including a biography for which a 1982 Pulitzer Prize was awarded, explored the link between African-Americans and the societal infliction of death. Michael Radelet, Chair of the University of Florida's Sociology Department and author of several studies on racial disparities in the imposition of the death penalty, including one done for the Florida Supreme Court's Racial and Ethnic Bias Study Commission, provided a statistical analysis of the relationship between race and death sentencing. Bryan A. Stevenson, Executive Director of the Equal Justice Initiative of Alabama and a visiting professor at the University of Michigan School of Law and the New York University School of Law, related his observation of the persistence of racial bias in the criminal sentencing system from his representation of indigents and people of color in death penalty cases.

The next panel explored the impact of poverty upon an indigent capital defendant's ability to obtain adequate legal representation. This panel was moderated by Linda A. Klein, president of the State Bar of Georgia. Stephen B. Bright, Director of the Southern Center for Human Rights who has been a visiting professor at the law schools of Emory, Harvard, and Yale universities, provided samples of ineffective representation of capital defendants from his extensive representation and work involving death penalty cases. Marcia Coyle, Washington Bureau Chief of the *National Law Journal*, reported on the results of a 1990 journalistic project, conducted in the six states with the greatest number of executions, that found significant defects in the quality of legal representation in capital cases. Harold

Clarke, former Chief Justice of the Georgia Supreme Court, discussed the difficulty of finding funding to defend those facing the death penalty and related his efforts as Chief Justice to secure that funding.

The third panel, moderated by Howard O. Hunter, Dean of Emory University School of Law, considered whether the death penalty constitutes an appropriate punishment for the mentally retarded, the mentally ill, and juveniles. Ruth Luckasson, Regent's Professor of Special Education at the University of New Mexico, provided background on the effects of mental retardation and presented reasons why people with mental retardation frequently are not identified as such until they are facing the death penalty. Dr. Robert T. M. Phillips, Deputy Medical Director of the American Psychiatric Association and former Assistant Professor of Clinical Psychiatry at Yale University School of Medicine, who has done clinical evaluations in capital sentencing cases, summarized the issues raised by the imposition of the death penalty upon persons lacking mental competency. David I. Bruck, Death Penalty Resource Counsel to the federal public defender system and a South Carolina attorney, discussed his work defending juveniles facing death sentences.

The final speaker, William A. Schabas, Dean of the Law School at the University of Quebec at Montreal, compared the legal status of capital punishment in the United States to the international community's approach to the issue.

Ronald Tabak, Esq. provided the symposium transcripts. Although some footnotes have been added to provide clarification and to note resource materials, the commentary printed here closely parallels the actual discussion at the Carter Center, including questions from the audience and the panelists' responses.