



Senator Feinstein Urges Governor Schwarzenegger
to Boost Funding to Address Serious Shortage
of Death Penalty Appeal Attorneys

December 8, 2005

Washington, DC – Noting that a serious shortage of death penalty appeals attorneys is causing lengthy delays and could compromise the judicial process in California, U.S. Senator Dianne Feinstein (D-Calif.) today urged Governor Arnold Schwarzenegger to boost funding to recruit more qualified attorneys to handle these appeals.

Senator Feinstein wrote the Governor after receiving a letter from California Supreme Court Justice Ronald George that noted “in more than 100 pending capital cases, the appellant does not have counsel. In another 150 cases, the capital appellant has counsel for the direct appeal, but the court has not yet found counsel to appoint to assist in the habeas proceedings.”

“This widespread failure to provide counsel is distressing, Senator Feinstein said. “The California Supreme Court receives 9,000 petitions for judicial review each year. Under state law, death penalty habeas appeals go directly to the California Supreme Court. Considering that there are approximately 650 individuals currently on death row in California, this also places an enormous strain on the Court, rendering it impossible for it to issue complete and thorough opinions in capital habeas cases.”

The following is a copy of the letter sent to the Governor. Copies of the letter from Chief Justice Ronald George and Senator Feinstein’s original letter to Justice George are available upon request.

December 8, 2005

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I am writing this letter to urge that you address concerns by California Supreme Court Chief Justice Ronald George that a substantial shortfall in state funding has led to a serious shortage of defense attorneys to handle death penalty appeals which has resulted in lengthy and frequent delays and may compromise the judicial appeals process.

This issue came to light as a result of debate in the Senate Judiciary Committee about the “Streamlined Procedures Act,” a proposal to overhaul federal habeas corpus appeals sponsored by Senator Kyl.

Senator Kyl and others asserted that systemic delays in federal habeas cases required an overhaul of federal habeas procedures. While the Committee’s work has not revealed any systemic delay in federal habeas cases, it has shown that state and federal death penalty habeas appeals from California have disproportionately lengthy and frequent delays.

On November 16, I sent a letter to Chief Justice George requesting information on the causes of these delays. The Chief Justice’s thorough response on November 29 describes the primary sources of these delays and possible solutions. I attach copies of both letters for your review.

In his letter, Chief Justice George explained that:

- Insufficient resources to recruit qualified death penalty attorneys are a primary cause of habeas delay;
- Caseload burdens on the California Supreme Court prevent it from providing comprehensive opinions in capital habeas cases; and
- Having the same attorney handle an appellant’s capital habeas case at both the state and federal level would expedite the process and reduce costs.

Chief Justice George wrote that “[o]ne cause of delay in California has been our difficulty in recruiting qualified counsel to accept appointment to handle the direct appeal and related habeas corpus proceedings arising out of a judgment of death.”

The Chief Justice explained that three entities, the Office of State Public Defender, the California Appellate Project, and the Habeas Corpus Resource Center are charged with providing counsel to capital defendants, but that none are funded at a sufficient level to ensure that everyone on death row has an attorney to handle their appeals.

Specifically, the Chief Justice noted that “in more than 100 pending capital cases, the appellant does not have counsel. In another 150 cases, the capital appellant has counsel for the direct appeal, but the court has not yet found counsel to appoint to assist in the habeas proceedings.” This widespread failure to provide counsel is distressing.

The California Supreme Court receives 9,000 petitions for judicial review each year. Under state law, death penalty habeas appeals go directly to the California Supreme Court. Considering that there are approximately 650 individuals currently on death row in California, this also places an enormous strain on the Court, rendering it impossible for it to issue complete and thorough opinions in capital habeas cases.

Chief Justice George identified the “the simplest and most effective solution to the problem of legal representation” as providing “adequate funding for these offices during [the Judiciary] branch’s budget process – and for concomitant increases in the funding of the Attorney General’s

Office and the Supreme Court to ensure that all of the interrelated parts of this system can function effectively.” I wholeheartedly agree with this assessment.

I understand that these problems preceded your tenure as Governor, however, the high number of capital defendants without counsel demands action. I strongly recommend that the California legal system be allocated adequate resources to ensure the effective and timely functioning of capital appeals. As the State’s budget is currently being determined, it is imperative that immediate steps be taken to provide attorneys for those on death row.

The failure to provide counsel for those on death row compromises our justice system by introducing lengthy and unnecessary delays that deny justice to victims, the accused, and society. I would greatly appreciate hearing from you as soon as possible to let me know the funding levels that you are requesting for the Office of State Public Defender, the California Appellate Project, and the Habeas Corpus Resource Center.

In my letter to Chief Justice George, I also shared my concerns about the California Supreme Court’s practice of publishing only brief, summary opinions in its capital habeas decisions. The absence of a thorough explanation of the Court’s reasons for its habeas decisions often requires federal courts to essentially start each federal habeas death penalty appeal from scratch, wasting enormous time and resources.

The Chief Justice explained that, despite additional funding to add staff to assist the California Supreme Court in handling death penalty appeals and habeas corpus petitions, the burden on the Court remains too great for it to provide comprehensive habeas opinions.

Action is required to allow the Court to give the necessary time to all the cases that come before it, including death penalty cases. Coordination between your Office and the California Supreme Court is the best avenue for finding a viable solution to this problem.

At the last meeting of the Federal-State Judicial Council, which seeks mutually agreeable solutions to judicial problems facing both systems, the Council, which includes the Chief Justice, unanimously adopted a joint recommendation that “endorses the concept that the same counsel should represent petitioners in both state and federal capital habeas corpus proceedings.” As the Chief Justice notes, maintaining continuity of counsel throughout the capital habeas process would expedite appeals and reduce costs.

I bring this matter to your attention in the hope that you will use your good offices to address this pressing state issue. Thank you for your consideration. I look forward to hearing from you.

Sincerely yours,

Dianne Feinstein
United States Senator