

## Philadelphia's Judge Sabo: *The Judge Who Became Death Row's King*

by Jane Henderson of *Equal Justice USA*

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### Preface: The March to Death Quickens

1996 looks to be yet another record year for executions in the United States. As of October 1996, 33 people have been executed, more than the total number in 1994 and approaching the record of 56 in 1995, which was the highest yearly total since 1972 -- the year the U.S. Supreme Court cleared every death row in the country with *Furman v. Georgia*. The total number of people on death row in the U.S. now exceeds 3,000.

These totals are sure to grow in the wake of the "Anti-Terrorism and Effective Death Penalty Act", signed into law by President Clinton in April 1996. The new law radically limits the rights of all prisoners to appeal their convictions and sentences in federal courts. It puts a one-year deadline on prisoners wishing to file a federal *habeas corpus* petition, seriously jeopardizing the efforts of death row prisoners, most of whom are indigent, to win new trials. In addition, it only adds to the burden of the few attorneys willing to plead death penalty cases. The clear intent of the law, critics and advocates agree, is to speed up executions.

Such is the climate in which Pennsylvania -- with the fourth largest death-row in the country -- has decided to resume executions. In January 1995, Republican Governor Thomas Ridge presided over the first execution in Pennsylvania in twenty years. In March 1995, he approved legislation that requires the governor to sign a warrant within 90 days of a prisoner's death sentence being affirmed on direct appeal to the State Supreme Court. Thereafter, the governor signed dozens of death warrants and promises to sign many more in the future.

This quickening march towards death has special significance for Philadelphia. The city's Court of Common Pleas is not only responsible for over half of all the active death sentences in Pennsylvania, it is home to the notorious Judge Albert F. Sabo.

**While Sabo no longer hears capital murder cases, he has the right -- which he regularly exerts -- to sit on the appeals of 24 active cases where he served as the trial judge. His long record of bias against defendants, black defendants in particular, cries out for closer public scrutiny of his continued involvement in capital appeals.**

### Introduction: The Judge Who Became Death Row's King

In Philadelphia, even Mayor (and former District Attorney) Ed Rendell admits that the outcome of a "trial depends literally on what judge the case is assigned to." When the case involves capital murder, no judge's record reinforces Rendell's point like that of Philadelphia Court of Common Pleas Judge Albert Sabo. So notorious is his reputation in capital cases that defense attorney Louis Natali has said that Sabo forms "his own jurisdiction." Sabo's "personal" death row is larger than the death rows of 13 of the 38 states with the death penalty.

Sabo hasn't presided over a death penalty case since 1991. Yet data compiled for this report by the NAACP Legal Defense and Education Fund reveals that Sabo still has sentenced *more than twice* as many people to death than any other judge in the country. Sabo has sentenced 32 people to death -- all but two of whom are people of color. (See Chart 1)

### Philadelphia Context

To understand how Judge Sabo became the king of death row, we must look to the structure and practices of Philadelphia's courts.

Sabo was first elected to the Philadelphia Court of Common Pleas in January 1974. From 1978 until he became a senior judge in 1990, Sabo served with a select group of judges that heard only homicide cases.

This homicide calendar -- a distinction of Philadelphia -- evokes serious concern among legal scholars. "The state constitution makes it very clear there should be no class of cases heard by one judge," notes Bruce Ledewitz, a nationally known constitutional scholar and professor of law at Duquesne University in Pittsburgh. In virtually every other jurisdiction, judges hear a random mix of cases because, as Ledewitz concludes: "It's too easy to become ground down, . . . a rubber stamp for the prosecution. Death cases *especially* must be spread around."

Also contributing to Sabo's record is the sheer volume of capital cases in Philadelphia's courts. The District Attorney's office zealously exploits Pennsylvania's broad death penalty statute, pursuing the death penalty in 88% of all first degree murder cases. This, coupled with a high murder rate (27.4 for every 100,000 in 1993), has made Philadelphia responsible for far more death sentences than any other jurisdiction in Pennsylvania. Over half (105) of the 194 prisoners on death row in the state come from Philadelphia.

Nationwide, Philadelphia County comes in third behind Los Angeles County, CA (120) and Harris County, TX (115). (Harris County includes Houston and is responsible for over one third of the executions in Texas.) (See Chart 2.)

But the number of homicide cases alone does not explain Sabo's record. Just as significant were the kinds of cases sent to his courtroom. For years, as seasoned defense attorney Norris Gelman points out, the Philadelphia District Attorney (D.A.) worked the assignment judge to assure that Sabo got the most brutal and high-profile cases. Similarly, investigative reporter Fredric Tulsy concluded in a special report in the *Philadelphia Inquirer* that:

"In a system struggling to handle so many murder cases, court officials adopted a grim efficiency: Rather than bog down judges whom defense attorneys consider more even-handed in prolonged jury trials, the officials sent the grisliest cases to Sabo."

However this combination of biases and factor has operated, Sabo has heard fewer homicide cases than many of his colleagues and still has ended up with far more death sentences.

## **Record of Bias**

Sabo's culpability in this unmatched tally of death sentences is clearly demonstrated in his record, which more than lives up to his reputation among members of the Philadelphia defense Bar as a "prosecutor in robes."

Judge Sabo contends he was "only the mechanic through which the jury verdict was carried out." But this description ignores the immense power a presiding trial judge exerts as the chief arbiter of both the law and the facts that the jury is instructed to consider.

The goal of any court should be to seek truth and serve justice. Hence, judges are expected to be impartial and fair, free of bias, committed to providing indigent defendants the resources necessary for an adequate defense, and informed and precise in how they instruct juries on the application of the law.

Sabo fails on every count. "Many defense attorneys, judges and prosecutors agree," the *Inquirer's* Tulsy reports. "Sabo ran trials differently from most judges."

Eleven of Sabo's death penalty cases have been reversed by appellate courts, in part or total, (see Chart 1)

because of errors he either made himself or permitted in his courtroom. This reversal rate of 34% represents one of the highest of any judge in Pennsylvania and the rest of country.

## Racial Bias

Racial bias in Philadelphia is demonstrated in who it sends to death row. Of Philadelphia's 105 active death cases, 84 (80%) are African American and 93 (89%) are people of color.

Racial bias also permeates jury selection. While black people represent 40% of Philadelphia's population, the D.A.'s office consistently excludes black people from juries -- a practice strictly forbidden by the U.S. Supreme Court.

Sabo alone is responsible for 24 (23%) of Philadelphia's active death penalty cases. Of Sabo's career total of 32 death sentences, people of color received 30 (93.5%) of them. Blacks alone account for 27 (84%). Equally telling, *the defendant in every case where Sabo was reversed was black*.

Sabo's record is replete with examples of racial bias and intolerance.

### Example 1

In *Commonwealth v. Crenshaw* and *Commonwealth v. Sistrunk and Mims* (a non-capital case), Sabo allowed the prosecutor to exclude every potential black juror, seating an all-white jury in each case.

### Example 2

In *Commonwealth v. Abu-Jamal*, Sabo rejected a defense request to place the race of prospective jurors on the record so as to document the exclusion of blacks. But when the defense excluded a black juror because of his law enforcement background, Sabo asked him to state his race for the record. A recent affidavit from Abu-Jamal's defense attorney reveals that the prosecution had excluded without cause 11 of 16 potential black jurors.

Further, in *Abu-Jamal*, Sabo replaced one of three seated black jurors with a white man without allowing her to answer to charges that she had left the hotel where the jury was sequestered without the court's permission. Later, when he faced a similar problem with a white male juror, the judge was quite accommodating, adjourning court for a half day so that a court attendant could accompany the juror to a civil service exam.

### Example 3

Sabo's intolerance of people of different cultures was evident in *Commonwealth v. Pana*. In this instance, Sabo refused to provide a translator to Louis Pana, who was born in Puerto Rico and spoke little English. The defense attorney, the prosecutor and ultimately a juror pleaded with Sabo to bring in a translator. The judge's action evoked a sharp rebuke from the Pennsylvania Supreme Court.

## No Help for the Poor

The vast majority of capital defendants in Philadelphia are indigent. Compared to other jurisdictions, Philadelphia spends very little to insure proper representation of such defendants. Los Angeles can allocate up to \$60,000 per case and Columbus (OH) up to \$40,000. According to a 1992 *Philadelphia Inquirer* review of 20 cases, Philadelphia averaged about \$6,400.

This means that poor defendants facing death sentences are represented by a single practitioner, often unable to hire an investigator, a psychologist, or a ballistic, forensic or medical expert. The 1992

*Philadelphia Inquirer* review found only two cases where a second attorney was assigned, eight cases where the court paid for an investigator (\$605 average) and only two cases where the court paid for a psychologist -- \$400 in one case and \$600 in another. According to the U.S. Supreme Court, indigent defendants have a right to the expert services needed to present an adequate defense. Needless to say, when the decision is between life and death, such expertise is essential.

As a result of the county's tight fiscal practices, only about 80 of Philadelphia's 8,000 attorneys both qualify and are willing to represent indigent capitolly-charged defendants. Those who do handle such cases have to wait months, if not years, to get paid.

Until recently, there was no organized structure to assist publicly paid attorneys. In June of 1993, Philadelphia contracted with its Defender Association to handle 10% of all homicide cases. But the majority of capital defendants still must rely on court-appointed attorneys, and often these appointments are based on who knows whom. Not surprisingly, Court findings reveal that some defendants have received miserable representation.

### *Example 1*

Judge Sabo has a reputation for being particularly stingy and hostile toward defense requests for court funds. For instance, in *Commonwealth v. Reid* the defense attorney, Samuel Stretton, asked for money for a psychologist to evaluate his client's mental health for the jury. Sabo refused, deciding instead to rely on the 'expertise' of the defendant, telling Stretton:

"Your client told me . . . that he has no problems at all so what are we going to look for?"

Stretton answered, "I want the jury to understand his personality . . . his intellect . . . I am looking for mitigating circumstances . . ."

Sabo retorted, "Why don't you look for gold while you are at it."

When the defense attorney protested that he had already hired a psychologist, Sabo told him pay for it out of his fee, claiming "there was no basis for me to expend public funds needlessly."

Hence, the only mitigating information heard by the jury that sentenced Reid to die was his foster sister's emotional pleas for his life. No expert evaluated his mental state as the result of having been abandoned by his parents before his first birthday and having grown up in poverty.

### *Example 2*

In the case of death row prisoner Mumia Abu-Jamal, Sabo allotted a mere \$150 to investigate over 100 witnesses who had given statements to the police. To compound matters, the addresses and phone numbers of these witnesses had been deleted from the police reports released to the defense. Sabo denied the defense attorney's request that this information be turned over. Hence limited investigative time was wasted locating witnesses.

### *Example 3*

Sabo also refused to pay for either an investigator or a psychiatric expert for John Blount, sentenced to death at age 17. Hence, Blount was found guilty of first degree murder without any independent investigation of his claim of self-defense. He was sentenced to death at a hearing where no one testified on his behalf.

Blount's trial attorney Richard E. Johnson summed up the situation: "If your client doesn't have any money, you are up the creek without a paddle."

## Aiding and Abetting Prosecutors

"A trial in front of Sabo means that the prosecution has the home court advantage," explains Norris Gelman, the Philadelphia defense attorney who has won the most capital case reversals in the city (9 total). In a sworn affidavit which names seven defense attorneys -- six of whom are former prosecutors -- ready to testify to the same, Philip I. Weinberg, Esq. charges:

"Judge Sabo is reported to offer assistance to the prosecution in the course of criminal proceedings, going so far as to suggest that the prosecution proffer evidence that has been omitted against defendants."

Similarly, a 1992 *Philadelphia Inquirer* review of 35 of Sabo's trials found that "through his comments, his rulings and his instructions to the jury, [Sabo] has favored prosecutors." Reporter Tulsy quotes another judge as calling Sabo's trials "a vacation for prosecutors."

### *Example 1*

In *Commonwealth v. Bryant*, Sabo allowed the prosecution to present evidence of a prior unconnected and dissimilar crime for which Bryant had been convicted. This was so egregious that the Pennsylvania Supreme Court reversed Bryant's conviction. "Commission of one crime is not proof of the commission of another," the Court ruled, noting that such evidence served to "create prejudice."

### *Example 2*

In *Commonwealth v. Tilley*, Sabo warned the D.A. to be careful about raising the issue of the defendant's drug use as it could lessen the charge from first degree to third degree murder.

### *Example 3*

In both *Commonwealth v. Baker* and *Commonwealth v. Abu-Jamal*, Sabo allowed the same prosecutor, Joseph McGill, to use misleading language about lengthy appeals available to death row prisoners in his summation to the jury. In 1986, in *Baker*, the court ruled that such language "minimiz[ed] the jury's sense of responsibility for a verdict of death" and overturned the death sentence. Oddly, the court reversed this precedent in 1989, upholding Abu-Jamal's death sentence. Then in 1990, in

*Commonwealth v. Beasley*, they re-established this precedent, "precluding all remarks about the appellate process in all future trials."

### *Example 4*

Sabo's sympathy towards the prosecution is at times so evident that it is not unusual for prosecutors to warn the judge that he has gone too far in support of their side! When Sabo held the defense attorney in *Abu-Jamal* in contempt and imposed a six-month sentence, (see below) the D.A. pleaded his defense and convinced the court to back down.

### *Example 5*

Also in *Baker*, Sabo shocked all parties by insisting that the defense's post-trial, pre-sentencing motions be titled and filed as post-conviction motions. When the defense refused, Sabo affirmed Baker's death sentence without a hearing. After the defense appealed, the D.A. actually filed a motion to the state Supreme Court, siding with the defense and urging Sabo to hold the hearing. The Supreme Court agreed and ordered Sabo to hold a pre-sentencing hearing.

### *Example 6*

The prosecutor of co-defendants Andrew Eric Huffman and Eric Grier was unsuccessful in convincing Sabo that he was going beyond what the law required of him. Judge Sabo allowed the jury to hear that both had confessed to police that they had been in the office where the victim was murdered. But he didn't let the jury hear that each stated that the other had committed the crime.

## Undermining the Defense

Sabo reinforces his pro-prosecution bias by actively undermining the defense.

Attorney Weinberg details Sabo's anti-defense tactics:

"Judge Sabo is reported to exhibit bias against defendants by a pattern of conduct designed to secure conviction and a trial record apparently free from reversible error. This is accomplished by directing that certain remarks and exchanges do not appear on the record, and by otherwise causing the record to inaccurately reflect the course of proceedings before him.

". . . Sabo is reported to exhibit bias against defendants through a pattern of constant denial of all their discretionary pre-trial motions, and through a pattern of routine denial of post-trial motions."

Some charge that Sabo's hostility toward defendants is rooted in his strong law enforcement background. Before becoming a judge, Sabo served for 16 years as an Under-Sheriff in Philadelphia County. His official biography lists him as a former member of the National Sheriff's Association, "retired FOP [Fraternal Order of Police]" and as associated with the Police Chiefs' Association of SE Pennsylvania.

### *Example 1*

In *Abu-Jamal*, a case involving the shooting death of a police officer, Sabo refused to allow the defense to cross-examine a key prosecution witness who had retracted his first statement, which exonerated Abu-Jamal, and was still on probation for a felony conviction. Further, he cut short the defense's questioning of its own witness when she began to detail how the police had offered both her and a central prosecution witness favors in exchange for their testimony against the defendant.

### *Example 2*

Sabo is known for blocking defense evidence that other judges allow. When the same jailhouse informant testified in two separate cases that the defendants had confessed to him, Sabo kept this information from the jury. The judge in the other case, David Savitt, decided the jury should be advised that the informant had offered testimony about hearing confessions in other cases.

### *Example 3*

When the jury at Lee Baker's trial notified Judge Sabo that they were deadlocked, Sabo failed to notify the defense attorney until the afternoon of the following day. In ruling on the case, the state Supreme Court noted that "a criminal defendant must be effectively represented at all critical stages of the proceeding," and criticized Sabo for not meeting this requirement.

### *Example 4*

In *Commonwealth v. Ly*, Sabo failed to screen jurors who might have heard a graphic and highly publicized 911 tape of the victim being murdered.

A 1983 Philadelphia Bar survey found that over one third of the attorneys responding found Sabo was unqualified to be a judge. In response, Sabo owned up to his bias, saying that if he were a defense attorney, "I wouldn't vote for me either."

## Abuse of Contempt

Sabo has earned a reputation for using contempt charges to coerce defense attorneys and witnesses as well as defendants and their families. After one defendant's conviction, Sabo held the defendant's wife in contempt for revealing information during her trial testimony which he had ruled inadmissible. A higher court later overruled him.

As mentioned above, in *Abu-Jamal* Sabo held the defense attorney in contempt and imposed a six month sentence because he followed his client's instruction and refused to offer questions for prospective jurors. This situation developed after Sabo barred Abu-Jamal from acting as his own attorney and forced a court-appointed attorney to take over, creating a destructive attorney-client relationship.

Again, Weinberg's affidavit describes the pattern:

"Judge Sabo makes use of the contempt power against defense attorneys so as to chill the vigorous representation of their clients. This is accomplished by holding defense counsel in contempt in the course of criminal proceedings, then failing to see that fines and punishments are carried out. Said use of the contempt power also serves to drive a wedge between defense counsel and client, as the client is forced to effectively 'choose sides' in a dispute between his attorney and the Court, and thereby question the effectiveness of his/her representation."

## Instructions to Jurors

The Pennsylvania Supreme Court has repeatedly criticized Sabo for improperly instructing juries under his charge.

### *Example 1*

The court overturned the convictions of co-defendants Huffman and Grier, concluding that Sabo gave a "patently erroneous statement of the law" when he told their jury that each could be found guilty for the actions of the other. Sabo was sharply criticized for failing to heed the "unambiguous language" of the law.

### *Example 2*

Sabo was again found to have ignored the law when he failed to inform the jury in *Commonwealth v. Bannerman* that "evidence of good character may by itself raise a reasonable doubt as to guilt and justify a verdict of not guilty" (Pennsylvania's Suggested Jury Instruction, 3.06(3)). The Supreme Court concluded that Sabo's "unauthorized refusal to apply existing law cannot be tolerated."

### *Example 3*

Additionally, one defense attorney who has studied Sabo's trials highlighted the cavalier manner in which he conducts jury selection in capital cases. Typically, the judge does not question jurors about the death penalty, thus leaving them ill-prepared for the decision that they are confronting.

## Recommendations

The findings of this report lead to four specific recommendations:

- 1) Sabo should recuse himself from all of his active death penalty cases.

The Pennsylvania Code of Conduct requires that "a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned."

Sabo's extraordinary record certainly makes it reasonable to question his impartiality in any case. Since the stakes are highest when a defendant is facing a death sentence, Sabo should recuse himself in the post-conviction appeals of the 24 current death row cases where he presided over the trial, so as to insure all petitioners an unbiased hearing.

Should Sabo refuse to disqualify himself in these cases, a reviewing court should carefully scrutinize the case record for bias and, on finding it, issue a prompt reversal of Sabo's appellate rulings and then pass the case on to a neutral judge.

2) The Philadelphia Court of Common Pleas should abandon the practice of assigning all homicide cases to a special subset of judges who hear murder cases exclusively.

Currently there are nine judges who hear all of Philadelphia's homicide cases. In virtually all other jurisdictions, judges hear a random mix of cases. By adopting a mixed assignment policy, Philadelphia can prevent future abuses of power so blatantly illustrated in Sabo's judicial career.

3) Philadelphia must develop the infrastructure and allocate the resources necessary to provide adequate representation to indigent defendants.

Contracting with the Defenders Association of Philadelphia is a step in the right direction, but it is scarcely enough to cope with the rapidly escalating caseload. Other resources must be developed -- and soon. Justice delayed has for too long been justice denied to indigent defendants.

4) The Philadelphia District Attorney's Office should abandon its reckless pursuit of the death penalty.

The D.A.'s zealous pursuit of the death penalty in the majority of homicide cases adds undue stress to a system bursting at the seams. Equal Justice USA believes that Philadelphia, and indeed the entire state of Pennsylvania, should abandon the death penalty. But failing to do that, the D.A. should set up responsible guidelines for its application.

### Report Summary

- Judge Albert Sabo has condemned 32 people to death, *more than twice* as many as any other judge in the country.
- Sabo has heard far fewer homicide cases than many of his colleagues and yet has still ended up with far more death sentences.
- Of Sabo's career total of 32 death sentences, African-Americans alone received 27 (84%) of these sentences and people of color 30 (93.5%), revealing a clear pattern of racial bias.
- Sabo is notoriously stingy--in a city that is notoriously stingy--when it comes to allocating public funds for indigent defendants, thus making an effective defense for the poor impossible.
- Sabo aids and abets the prosecution, even to the point of telling the prosecutor what evidence to present and keeping from the jury information that might harm the prosecution's case.
- Sabo reinforces his pro-prosecution bias by actively undermining the defense through his decisions on the bench, earning him the reputation as "a prosecutor in robes" among members of the Philadelphia Bar.
- Sabo has earned a reputation for using contempt charges to coerce defense attorneys and witnesses as well as defendants and their families.
- The Pennsylvania Supreme Court has repeatedly criticized Sabo for improperly instructing juries under his charge.
- Eleven of Sabo's death penalty cases have been reversed in appellate courts, either in part or total. This reversal rate of 34% is one of the highest of any judge in Pennsylvania or the rest of the country.
- The defendant in every case where Sabo was reversed was black.



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**(Chart 1)****Listing of Sabo Cases****Total number: 32****Reversed on Appeal:**

Lawrence Baker (B) resentenced to life or term  
Samuel Bannerman (B) awaiting retrial  
John Blount\* (B) resentenced to death  
James Bryant (B) awaiting retrial  
Willie Clayton\* (B) retried, resentenced to death  
Robert Crenshaw (B) resentenced to life or term  
Eric Grier (B) awaiting retrial  
Donald Hall (B) death sentence vacated, resentenced to life imprisonment  
Eric Huffman (B) awaiting retrial  
Craig Murphy\* (B) retried, resentenced to death  
Tyrone Robinson (B) death sentence vacated, life sentence imposed

**Total Conviction/Sentence Reversals 11 (34%)***\*Also on the active list***Active Cases:**

Mumia Abu-Jamal (B)  
Lee Baker (B)  
Lesley Beasley (B)  
John Blount (B)  
Willie Clayton (B)+  
Henry Daniels (B)  
Henry Fahy (W)  
Arnold Holloway (B)  
Reginald Lewis (B)  
Cam Ly (A)  
Jerry Marshall (B)  
Kevin Matthews\* (B)  
Kelvin Morris (B)  
Craig Murphy (B)+  
Kevin Pelzer (B)  
Otis Peterkin (B)  
Simon Pirela (L)  
Ernest Porter (B)  
Anthony Reid (B)  
Saharis Rollins (B)  
Sam Tharivak (A)  
William Tilley (W)  
Herbert Watson (B)  
Zachary Wilson (B)

+ resented to death by judge other than Sabo

**Total Active Cases: 24**

**Racial Breakdown Active Cases**

Black (B) 19 (79%)

White (W) 2 (8.5%)

Latino/a (L) 1 (4%)

Asian (A) 2 (8.4%)

**Racial Breakdown All Sabo Cases:**

Black (B) 27 (84%)

White (W) 2 (6.5%)

Latino/a (L) 1 (3.%)

Asian (A) 2 (6.5%)

**Primary Source: NAACP Legal Defense and Education Fund**

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**(Chart 2)**

**Death Penalty in Pennsylvania**

Pennsylvania has the fourth largest death row population in the U.S., behind California with 444, Texas with 394, and Florida with 349.

On May 2, 1995 Pennsylvania carried out it's first execution since 1962 when Keith Zettlemyer was put to death by lethal injection.

**Philadelphia**

Philadelphia County (which includes the city of Philadelphia) ranks third among U.S. counties in terms of the number of people it has sentenced to death. First is Los Angeles County with 133 people. Second is Harris County (which includes Houston and is responsible for over one third of the executions in Texas) with 119 people. Philadelphia has sentenced 112 people.

**Total # on death row: 203**

Women: 4 (2%)

Black: 126 (62%)

White: 64 (31%)

Latino/a: 10 (4%)

Asian: 2 (1%)

**Of the 112 Philadelphia prisoners:**

94 (84%) are black

11 (10%) are white