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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 119

Sponsor: P. Fischer

Date referred to committee: 2/1/85

Synopsis completed: 2/4

Fiscal note:

Further referrals: Judiciary

CONTACTS:

Rev. Steven Moore, Archdiocese
of Anch 248-4807

FEB 28 1985

fh-
Alaska State Legislature



While in Juneau

Pouch V
Juneau, Alaska 99811
(907) 465-3791

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
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State Senate

February 28, 1985

MEMORANDUM

TO: Senator Betty Fahrenkamp

FROM: Senator Paul Fischer *pf.*

SUBJECT: Senate Bill 119

In reference to our conversation of February 28, 1985 I have set forth some of the effects of Senate Bill 119 which may make it more acceptable for your consideration.

Effect of the Bill:

1. Mandates a separate advisory sentencing proceeding by jury which allows for hearing evidence as to aggravating or mitigating circumstances relevant to the crime.
2. Allows trial court judge discretion to impose final sentence.
3. Forbids death sentence unless at least one of the following factors is found by the jury to exist:
 - a) Murder involved rape, kidnapping or torture by mutilation.
 - b) The convicted killed two or more victims.
 - c) Earlier conviction for murder in Alaska or elsewhere.
 - d) Victim was an on duty law enforcement or correctional officer.
 - e) A child of nine years or younger was murdered.
 - f) Murder resulted from an attempt to assassinate the President or Governor.
4. Puts question of capital punishment before the people for an advisory vote at the first statewide election after adoption of bill.
5. After the advisory election and convening of the next legislature, the Law would go into operation on August 15, 1987.

If you have any further questions I will be happy to try to respond to them for you.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

MAY 13 1985

Revision Date: _____

REQUEST

Bill/Resolution No.: SB119
Title: CAPITAL PUNISHMENT

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: ALASKA COURT SYSTEM
Program Category Affected: _____
ADMINISTRATIVE OF JUSTICE
BRU, Program or Subprogram(s) Affected: _____
TRIAL COURTS

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		96.5	102.3	108.4	114.9	121.8
200 TRAVEL		112.5	119.3	126.5	134.1	142.1
300 CONTRACTUAL		252.5	267.7	283.8	300.8	318.8
400 SUPPLIES						
500 EQUIPMENT		28.9				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING		490.4	489.3	518.7	549.8	582.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		490.4	489.3	518.7	549.8	582.7
FEDERAL FUNDS						
OTHER						
TOTAL		490.4	489.3	518.7	549.8	582.7

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ROBERT G. FISHER/KARLA FORSYTHE Phone: 264-0561
Division: ALASKA COURT SYSTEM Date: 5/7/85

Approved by Commissioner: [Signature] Date: 5/1/85
Agency: ALASKA COURT SYSTEM

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

ALASKA COURT SYSTEM

SB 119 - CAPITAL PUNISHMENT

FISCAL IMPACT

Senate Bill 119 will result in an estimated 8-12 capital punishment trials each year. These trials will result in additional costs for the following reasons:

1. Personnel Costs and Related Costs. Extensive legal research is required for capital offenses. Additional law clerks will be needed to research motions and other judicial questions. Courtroom security will have to be strengthened for these cases. Personnel funds for an additional security guard for Anchorage and contractual funds for security services in other courts will be needed.
2. Travel Costs. Since death penalty cases are often subject to intense media exposure, expenses associated with jury sequestration and with change of venue can be expected.
3. Juror Selection. Jurors must be questioned individually in capital cases and some courts have required questioning in private. More jurors must be called and the process takes longer, with more challenges for cause, all of which results in higher jury fee expenditures. Similarly, additional bailiff costs can be expected.
4. Transcription Costs. Preparation of the voluminous record which accompanies a death penalty case will result in additional transcribing costs.
5. Equipment. Courtroom security requirements will necessitate the installation metal detectors in major court locations and the use of hand-held detectors in smaller courts to screen trial spectators.

The estimated annual costs associated with these items are summarized in the attached schedule.

ALASKA COURT SYSTEM
 SB 119 - CAPITAL PUNISHMENT
 FISCAL IMPACT

PERSONAL SERVICES:

	SALARY	BENEFITS	TOTAL COST
2 - Law Clerk - Anchorage, (Range 13A)	\$50,664	\$16,598	\$67,262
1 - Security Guard - Anchorage, (Range 10B)	21,744	7,496	29,240

Total Personal Services			96,502

TRAVEL:

Jury sequestration - meals and lodging	112,500
--	---------

CONTRACTUAL:

Security guard services for courts outside Anchorage	25,000
Jury fees	110,000
Bailiff costs	7,500
Transcription	110,000

Total Contractual	252,500

EQUIPMENT: (one-time items)

Standard office equipment and reference materials for law clerks	6,498
Walk-through metal detectors for Anchorage, Fairbanks, Juneau, and Ketchikan and hand-held metal detectors for other superior courts	22,450

Total Equipment	28,948

TOTAL FY 86 COST	\$490,450
	=====

Subsequent fiscal years adjusted to reflect 6% inflation.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2 /12/85

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REQUEST

Bill/Resolution No.: SB119
 Title: "An Act authorizing
 capital punishment. . ."
 Sponsor: Senator P. Fischer
 Requestor: Judiciary
 Date of Request: 2/11/85

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Due Process
 BRU, Program or Subprogram(s) Affected: Public Defender Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES		704.7	740.0	777.0	816.0	857.0
200 TRAVEL		225.0	236.0	248.0	260.0	273.0
300 CONTRACTUAL		450.0	473.0	497.0	522.0	548.0
400 SUPPLIES		27.0	28.0	29.0	30.0	32.0
500 EQUIPMENT		60.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>-0-</u>	<u>1466.7</u>	<u>1477.0</u>	<u>1551.0</u>	<u>1628.0</u>	<u>1710.0</u>
<u>CAPITAL</u>						
<u>REVENUE</u>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1466.7	1477.0	1551.0	1628.0	1710.0
FEDERAL FUNDS						
OTHER						
<u>TOTAL</u>						

POSITIONS:

FULL-TIME	-0-	12.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared By: *slp Dana Fabe* Dana Fabe Phone: 279-7541
 Division: Public Defender Agency Date: 2/12/85
 Approved by Commissioner: Lisa Rudd *A. Steinhilber for* Date: 2-15-85
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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Prepared by Division of Public Defender Agency
Department of Administration
2/12, 1981

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. The United States Supreme Court has recognized that death penalty cases require greater due process procedural safeguards than do non-capital cases. This is due to the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. Some degree of mistake is of course a potential problem in all criminal cases. In non-death cases, the system stands ready to correct those mistakes where they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive than other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive preparation, the use of psychiatric experts and family and friends from out of state, as well as other necessary expenditures.

Finally, even after the death penalty has been imposed, the appeal procedures in death penalty cases are lengthy and time consuming. After guilt and penalty phases of a case, the following procedures would be routinely necessary:

1. Motion to modify before trial judge.
2. Appeal of conviction and sentence to Alaska Supreme Court.
3. Writ of certiorari to the United States Supreme Court.
4. Post-conviction relief proceedings in state court.
5. Appeal of post-conviction relief proceedings in the Court of Appeals.
6. Petition for hearing of post-conviction relief proceedings to the Alaska Supreme Court.
7. Petition for Writ of Habeas Corpus in the Federal District Court.

Senate
XXXX Bill 119
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
2/12/85, 1985

8. Appeal to the United States Court of Appeals.
9. Rehearing in the United States Court of Appeals.
10. Writ of certiorari to the United States Court of Appeals.
11. Commutation applications to executive branch.
12. Emergency stays to the United States Supreme Court.

The figures in this fiscal note are based on an estimation of the number of cases which would have qualified under the bill as capital cases. This agency handles approximately 30 first degree murder cases each year. On the assumption that one third or 10 of these cases would qualify as capital cases under this bill, the specific figures were arrived at as follows:

1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty phase, many states recommend or require by statute that a minimum of two attorneys handle each death penalty case. Based on an estimated 10 cases per year, this agency would need two death penalty teams of two attorneys each to handle the trial and penalty phases of these cases. Two appellate attorneys would be necessary to handle the appeals of these cases. In addition, each team of attorneys would require an investigator and legal secretary.

Use of this death penalty team concept will be needed to adequately represent a client who faces the death penalty. Substantially more attorney time is required in a death penalty case than in a non-capital case. Extensive pre-trial motion practice would be required in each case. Given the lack of plea-bargaining in Alaska, jury trials will be conducted in all capital murder cases. These jury trials will be longer and more complex than in non-capital cases. The penalty phase of each case will require tremendous expenditures of attorney time in preparing for sentencing and coordinating professional and lay witnesses to testify. Finally, appeals of death

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 Fiscal Note Analysis
 Prepared by Division of Public Defender Agency
 Department of Administration
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penalty cases require extraordinary amounts of attorney time. The New York Defender Association estimates that preparation and argument before the United States Supreme Court alone would be equivalent to 883 hours attorney time.

2. Travel and Contractual Fees.

The New York State Defender Association has estimated that a minimum figure for expert witness fees and travel must be \$30,000 for the guilt phase and \$30,000 for the penalty phase per case. Experts in forensics, ballistics, blood analysis, hair analysis, eyewitness identification, psychiatry, and psychology could be necessary during the trial phase in each case, and many of these would be traveling from out-of-state. During the penalty phase friends and family members of the defendant as well as psychiatrists, psychologists and social workers would be involved. Thus the contractual and travel costs for expert witnesses has been calculated at \$60,000 per case. This figure does not include any expert fees which might be necessary at the appellate stages. The amount of contractual fees estimated in this fiscal note is based on an estimated 10 cases per year.

3. Equipment and Supplies.

Other costs include expanded office space as well as equipment and supply money for additional personnel.

BUDGET SUMMARY

Personal Services:

Guilt and Penalty Team-Anchorage			
Attorney V		75.4	
Attorney IV		70.8	
Investigator III		48.7	
Legal Secretary I		29.8	
Appellate Team - Anchorage			
Attorney V		75.4	
Attorney IV		70.8	
Investigator III		48.7	
Legal Secretary I		29.8	
Guilty and Penalty Team-Fairbanks			
Attorney V		85.9	
Attorney IV		80.5	
Investigator III		55.4	
Legal Secretary I		33.3	
			TOTAL 704.7

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Travel:

Based on 10 Capital cases per year	225.0
Employee and non-employee (experts)	

Contractual:

Based on 10 capital cases per year		
Experts	400.0	
Office space		
Anch, Fbks	40.0	
Printing	5.0	
Communications	<u>5.0</u>	450.0

Supplies;

Office, law library	27.0
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Equipment:

Office furniture and machines	<u>60.0</u>
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Total	1466.7
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1.	POSITION TITLE Attorney V			RANGE/STEP 25A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRD PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Anchorage and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	\$4996/mo	59,952						
6.	Benefits		10,178						
7.	Supplemental Benefits		2,680						
8.	Fixed Benefits		2,630						
9.	TOTAL PERSONAL SERVICES		01	75,440					
10.	Travel		02	50,000					
11.	Contractual		03	110,000					
12.	Commodities		04	3,000					
13.	Equipment		05	2,500					
14.	Other								
15.	TOTAL COST			240,940					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		240,940					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER									

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1.	POSITION TITLE Attorney IV			RANK/STEP 24A	BARC. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	IG NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary \$4663/mo	55,956	
6.	Benefits	9,499	
7.	Supplemental Benefits	2,680	
8.	Fired Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	70,765
10.	Travel	02	50,000
11.	Contractual	03	110,000
12.	Commodities	04	3,000
13.	Equipment	05	2,500
14.	Other		
15.	TOTAL COST		236,265

JUSTIFICATION

This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	236,265
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER _____

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1.	POSITION TITLE Investigator III			NAME/STEP 18A	BARG. UNIT GG	FORM 12	PAGE/LINE	COV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF RATINGS 12.0	RD NUMBER	FCR NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.			
3.	CONTINUATION LEVEL			JUSTIFICATION							
4.	TYPE OF EXPENDITURE			AMOUNT							
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	\$3113/mo		37,356							
6.	Benefits			6,342							
7.	Supplemental Benefits			2,289							
8.	Fixed Benefits			2,732							
9.	TOTAL PERSONAL SERVICES		01		48,719						
10.	Travel		02		-0-						
11.	Contractual		03		-0-						
12.	Commodities		04		-0-						
13.	Equipment		05		2,500						
14.	Other										
15.	TOTAL COST				51,219						
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Hatch 1003									
18.		General funds 1004		51,219							
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
FOR BSM USE ONLY											
4A KEY NUMBER											

This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requestes for attorneys

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1.	POSITION TITLE Legal Secretary I			RANGE/SERIES 10A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	Type of EXPENDITURE			AMOUNT	<p>This Legal Secretary I will provide support services to a death penalty team in Anchorage and other parts of the State. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	\$1835/mo	22,020						
6.	Benefits		3,738						
7.	Supplemental Benefits		1,349						
8.	Fixed Benefits		2,732						
9.	TOTAL PERSONAL SERVICES		01	29,839					
10.	Travel		02	-0-					
11.	Contractual		03	-0-					
12.	Commodities		04	3,000					
13.	Equipment		05	12,500					
14.	Other								
15.	TOTAL COST			45,339					
16.	RECEIPT CODE	FUNDING SOURCE							
17.		Federal Receipts	1002						
18.		G.F. Match	1003						
19.		General Funds	1004	45,339					
20.		I-A Receipts	1005						
21.		Program Receipts	1028						
		Other							
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4A KEY NUMBER									

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1.	POSITION TITLE Attorney V				RANGE/STEP 25A	BARG. UNIT PX	FORM 17 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	IS NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This Attorney V will serve as a death penalty team leader in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year. Travel will be to Seattle for the Ninth Circuit Court of Appeals and to Washington, D.C., for the United States Supreme Court. Contractual is to cover printing costs for motions and briefs to the Federal Appellate Courts.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary	\$4996/mo	59,952									
6.	Benefits		10,178									
7.	Supplemental Benefits		2,680									
8.	Fixed Benefits		2,630									
9.	TOTAL PERSONAL SERVICES		01	75,440								
10.	Travel		02	10,000								
11.	Contractual		03	5,000								
12.	Commodities		04	3,000								
13.	Equipment		05	2,500								
14.	Other											
15.	TOTAL COST			95,940								
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		C.F. Match 1003										
18.		General Funds 1004		95,940								
19.		I-A Receipts 1005										
20.		Program Receipts 1023										
21.		Other										
FOR B&M USE ONLY												
4A KEY NUMBER												

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1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This Investigator III will serve as a death penalty team member in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary \$3113/mo		37,356									
6.	Benefits		6,342									
7.	Supplemental Benefits		2,289									
8.	Fixed Benefits		2,732									
9.	TOTAL PERSONAL SERVICES		01								48,719	
10.	Travel		02								5,000	
11.	Contractual		03									
12.	Commodities		04								-0-	
13.	Equipment		05								2,500	
14.	Other											
15.	TOTAL COST										56,219	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts										
17.		G.F. Match 1003										
18.		General Funds 1004		56,219								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR B&H USE ONLY												
4A KEY NUMBER _____												

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1.	POSITION TITLE Legal Secretary I			RANGE/STEP 10A	BARG. UNIT GG	FORM 12 PAGE/LINE	CGV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	FP NUMBER	PCN NUMBER	BRN PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL			JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	\$1835/mo	22,020						
6.	Benefits		3,738						
7.	Supplemental Benefits		1,349						
8.	Fixed Benefits		2,732						
9.	TOTAL PERSONAL SERVICES		01	29,839					
10.	Travel		02	-0-					
11.	Contractual		03	-0-					
12.	Commodities		04	3,000					
13.	Equipment		05	12,500					
14.	Other								
15.	TOTAL COST			45,339					
	RECEIPT CODE			FUNDING SOURCE					
16.				Federal Receipts	1002				
17.				G.F. Maten	1003				
18.				General Funds	1004	45,339			
19.				I-A Receipts	1005				
20.				Program Receipts	1020				
21.				Other					
FOR B&M USE ONLY									
4A KEY NUMBER									

This Legal Secretary I will provide support services to the appellate death penalty team in all parts of the State. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.

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BRU Public Defender Agency
COMPONENT Third Judicial District

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1.	POSITION TITLE <u>Attorney V</u>				RANGE/STEP 25A	BARG. UNIT PX	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PEN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	\$5744/mo	68,928							
6.	Benefits		11,702							
7.	Supplemental Benefits		2,680							
8.	Fixed Benefits		2,130							
9.	TOTAL PERSONAL SERVICES		01	85,940						
10.	Travel		02	50,000						
11.	Contractual		03	110,000						
12.	Commodities		04	3,000						
13.	Equipment		05	2,500						
14.	Other									
15.	TOTAL COST			251,440						
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1002								
19.		General Funds 1004		251,440						
20.		I-A Receipts 1005								
21.		Program Receipts 1020								
		Other								
FOR BSM USE ONLY 4A KEY NUMBER _____										

This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Fairbanks and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

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1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STATE MONTHS 12.0	RY NUMBER	PER NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	\$5,358/mo	64,296							
6.	Benefits		10,915							
7.	Supplemental Benefits		2,680							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01	80,521						
10.	Travel		02	50,000						
11.	Contractual		03	110,000						
12.	Commodities		04	3,000						
13.	Equipment		05	2,500						
14.	Other									
15.	TOTAL COST			246,021						
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		246,021						
20.		I-A Receipts 1005								
21.		Program Receipts 1020								
		Other								
FOR B2M USE ONLY 4A KEY NUMBER _____										

This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

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1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the State. Such a team will consist of an Attorney V, and Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary	\$3564/mo	42,768									
6.	Benefits		7,260									
7.	Supplemental Benefits		2,621									
8.	Fixed Benefits		2,732									
9.	TOTAL PERSONAL SERVICES		01	53,381								
10.	Travel		02	-0-								
11.	Contractual		03	-0-								
12.	Commodities		04	-0-								
13.	Equipment		05	2,500								
14.	Other											
15.	TOTAL COST			57,881								
16.	RECEIPT CODE	FUNDING SOURCE										
17.		Federal Receipts	1002									
18.		G.F. Match	1003									
19.		General Funds	1004	57,881								
20.		I-A Receipts	1005									
21.		Program Receipts	1028									
		Other										
FOR B&M USE ONLY												
4A KEY NUMBER												

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1.	POSITION TITLE Legal Secretary I			RANGE/STEP 10A	BASC. UNIT GG	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	IP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.	
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary \$2072/mo	24,864							
6.	Benefits	4,221							
7.	Supplemental Benefits	1,524							
8.	Fixed Benefits	2,732							
9.	TOTAL PERSONAL SERVICES	01	33,341						
10.	Travel	02	-0-						
11.	Contractual	03	-0-						
12.	Commodities	04	3,000						
13.	Equipment	05	12,500						
14.	Other								
15.	TOTAL COST		48,841						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		48,481					
19.		I-A Receipts 1005							
20.		Program Receipts 1020							
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

This Legal Secretary I will provide support services to a death penalty team in Fairbanks and other parts of the State. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.

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DEC. 12, 1993

Danny-draft response

FEB 27 1995

The lottery of capital punishment is rigged by race.

DECISIONS OF DEATH

BY DAVID BRUCK

THERE ARE 1,150 men and 13 women awaiting execution in the United States. It's not easy to imagine how many people 1,163 is. If death row were really a row, it would stretch for 1.3 miles, cell after six-foot-wide cell. In each cell, one person, sitting, pacing, watching TV, sleeping, writing letters. Locked in their cells nearly twenty-four hours a day, the condemned communicate with each other by shouts, notes, and hand-held mirrors, all with a casual dexterity that handicapped people acquire over time. Occasionally there is a break in the din of shouted conversations—a silent cell, its inhabitant withdrawn into a cocoon of madness. That's what death row would look like. That's what, divided up among the prisons of thirty-four states, it does look like.

This concentration of condemned people is unique among the democratic countries of the world. It is also nearly double the number of prisoners who were on death row in 1972 when the Supreme Court, in *Furman v. Georgia*, averted a massive surge of executions by striking down all the nation's capital punishment laws.

But in another sense, death row is very small. If every one of these 1,163 inmates were to be taken out of his or her cell tomorrow and gassed, electrocuted, hanged, shot, or injected, the total of convicted murderers imprisoned in this country would decline from some 33,526 (at last count) to 32,363—a reduction of a little over 3 percent. Huge as this country's death row population has become, it does not include—and has never included—more than a tiny fraction of those who are convicted of murder.

It falls to the judicial system of each of the thirty-eight states that retain capital punishment to cull the few who are to die from the many who are convicted of murder. This selection begins with the crime itself, as the community and the press react with outrage or with indifference, depending on the nature of the murder and the identity of the victim. With the arrest of a suspect, police and prosecutors must decide what charges to file, whether to seek the death penalty, and whether the defendant should be allowed to plea-bargain for his life. Most of these decisions can later be changed, so that at any point from arrest to trial the defendant's chances of slipping through the death penalty net depend on chance: the inclinations and ambitions of the local prosecutor, the legal and political pres-

ures which impel him to one course of action or another, and the skill or incompetence of the court-appointed defense counsel.

In the courtroom, the defendant may be spared or condemned by the countless vagaries of the trial by jury. There are counties in each state where the juries almost always impose death, and counties where they almost never do. There are hanging judges and lenient judges, and judges who go one way or the other depending on who the victim's family happens to be, or the defendant's family, or who is prosecuting the case, or who is defending it.

Thus at each stage between arrest and sentence, more and more defendants are winnowed out from the ranks of those facing possible execution: in 1979, a year which saw more than eighteen thousand arrests for intentional homicides and nearly four thousand murder convictions throughout the United States, only 159 defendants were added to death row. And even for those few who are condemned to die, there lies ahead a series of appeals which whittle down the number of condemned still further, sparing some and consigning others to death on the basis of appellate courts' judgments of the nuances of a trial judge's instructions to the jury, of whether the court-appointed defense lawyer had made the proper objections at the proper moments during the trial, and so on. By the time the appeals process has run its course, almost every murder defendant who faced the possibility of execution when he was first arrested has by luck, justice, or favor evaded execution, and a mere handful are left to die.

This process of selection is the least understood feature of capital punishment. Because the media focus on the cases where death has been imposed and where the executions seem imminent, the public sees capital punishment not as the maze-like system that it is, but only in terms of this or that individual criminal, about to suffer just retribution for a particular crime. What we don't see in any of this now-familiar drama are hundreds of others whose crimes were as repugnant, but who are jailed for life or less instead of condemned to death. So the issues appear simple. The prisoner's guilt is certain. His crime is horrendous. Little knots of "supporters" light candles and hold vigils. His lawyers rush from court to court raising arcane new appeals.

The condemned man himself remembers the many

David Bruck practices law in Columbia, South Carolina.

points of his procession through the judicial system at which he might have been spared, but was not. He knows, too, from his years of waiting in prison, that most of those who committed crimes like his have evaded the execution that awaits him. So do the prosecutors who have pursued him through the court system, and the judges who have upheld his sentence. And so do the defense lawyers, the ones glimpsed on the TV news in the last hours, exhausted and overwrought for reasons that, given their client's crimes, must be hard for most people to fathom.

I am one of those lawyers, and I know the sense of horror that propels those last-minute appeals. It is closely related to the horror that violent crime awakens in all of us—the random kind of crime, the sniper in the tower or the gunman in the grocery store. The horror derives not from death, which comes to us all, but from death that is inflicted *at random*, for no reason, for being on the wrong subway platform or the wrong side of the street. Up close, that is what capital punishment is like. And that is what makes the state's inexorable, stalking pursuit of this or that particular person's life so chilling.

The lawyers who bring those eleventh-hour appeals know from their work how many murderers are spared, how few are sentenced to die, and how chance and race decide which will be which. In South Carolina, where I practice law, murders committed during robberies may be punished by death. According to police reports, there were 286 defendants arrested for such murders from the time that South Carolina's death penalty law went into effect in 1977 until the end of 1981. (About a third of those arrests were of blacks charged with killing whites.) Out of all of those 286 defendants, the prosecution had sought the death penalty and obtained final convictions by the end of 1981 against 37. And of those 37 defendants, death sentences were imposed and affirmed on only 4; the rest received prison sentences. What distinguished those 4 defendants' cases was this: 3 were black, had killed white storeowners, and were tried by all-white juries; the fourth, a white, was represented at his trial by a lawyer who had never read the state's murder statute, had no case file and no office, and had refused to talk to his client for the last two months prior to the trial because he'd been insulted by the client's unsuccessful attempt to fire him.

If these four men are ultimately executed, the newspapers will report and the law will record that they went to their deaths because they committed murder and robbery. But when so many others who committed the same crime were spared, it can truthfully be said only that these four men were *convicted* because they committed murder: they were *executed* because of race, or bad luck, or both.

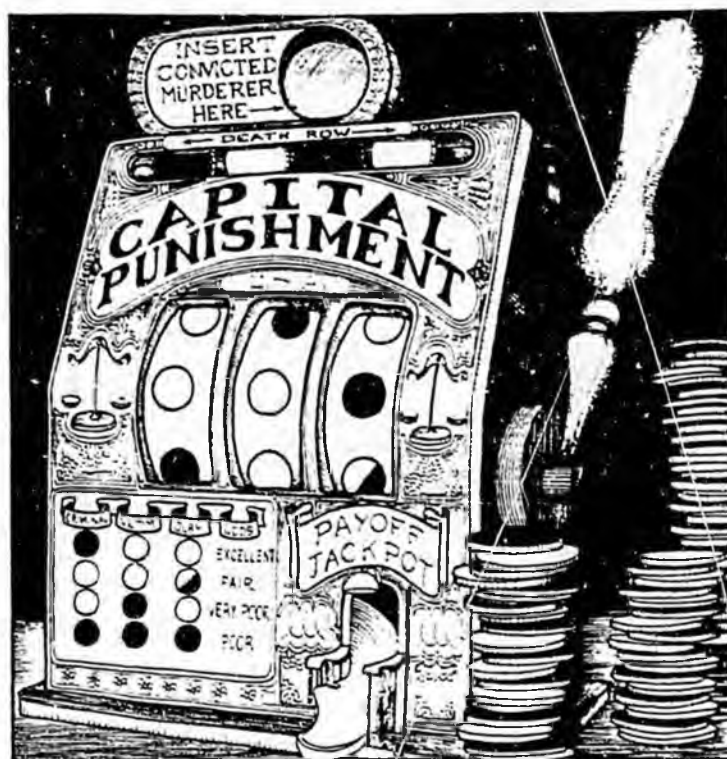
If one believes, as many do, that murderers deserve whatever punishment they get, then none of this should matter. But if the 1,163 now on death row throughout the United States had actually been selected by means of a lottery from the roughly 33,500 inmates now serving sentences for murder, most Americans, whatever their views

on capital punishment as an abstract matter, would surely be appalled. This revulsion would be all the stronger if we limited the pool of those murderers facing execution by restricting it to blacks. Or if we sentenced people to die on the basis of the race of the *victim*, consigning to death only those—whatever their race—who have killed whites, and sparing all those who have killed blacks.

The reason why our sense of justice rebels at such ideas is not hard to identify. Violent crime undermines the sense of order and shared moral values without which no society could exist. We

punish people who commit such crimes in order to reaffirm our standards of right and wrong, and our belief that life in society can be orderly and trusting rather than fearful and chaotic. But if the punishment itself is administered chaotically or arbitrarily, it fails in its purpose and becomes, like the crime which triggered it, just another spectacle of the random infliction of suffering—all the more terrifying and demoralizing because this time the random killer is organized society itself, the same society on which we depend for stability and security in our daily lives. No matter how much the individual criminal thus selected for death may "deserve" his punishment, the manner of its imposition robs it of any possible value, and leaves us ashamed instead of reassured.

It was on precisely this basis, just eleven years ago, that the Supreme Court in *Furman v. Georgia* struck down every death penalty law in the United States, and set aside the death sentences of more than six hundred death row inmates. *Furman* was decided by a single vote (all four Nixon



DRAWING BY VINT LAWRENCE FOR THE NEW REPUBLIC

appointees voting to uphold the death penalty laws), and though the five majority justices varied in their rationales, the dominant theme of their opinions was that the Constitution did not permit the execution of a capriciously selected handful out of all those convicted of capital crimes. For Justice Byron White and the rest of the *Furman* majority, years of reading the petitions of the condemned had simply revealed "no meaningful basis for distinguishing the few cases in which [death] is imposed from the many in which it is not." Justice Potter Stewart compared the country's capital sentencing methods to being struck by lightning, adding that "if any basis can be discerned for the selection of these few to be sentenced to die, it is on the constitutionally impermissible basis of race." Justice William O. Douglas summarized the issue by observing that the Constitution would never permit any law which stated

that anyone making more than \$50,000 would be exempt from the death penalty . . . [nor] a law that in terms said that blacks, those that never went beyond the fifth grade in school, those who made less than \$3,000 a year, or those who were unpopular or unstable would be the only people executed. A law which in the overall view reaches that result in practice has no more sanctity than a law which in terms provides the same. [Emphasis added.]

On the basis of these views, the Supreme Court in *Furman* set aside every death sentence before it, and effectively cleared off death row. Though *Furman v. Georgia* did not outlaw the death penalty as such, the Court's action came at a time when America appeared to have turned against capital punishment, and *Furman* seemed to climax a long and inexorable progression toward abolition. After *Furman*, Chief Justice Warren E. Burger, who had dissented from the Court's decision, predicted privately that there would never be another execution in the United States.

What happened instead was that the majority of state legislatures passed new death sentencing laws designed to satisfy the Supreme Court. By this year, eleven years after *Furman*, there are roughly as many states with capital punishment laws on the books as there were in 1972.

In theory the capital sentencing statutes under which the 1,163 prisoners now on death row were condemned are very different from the death penalty laws in effect prior to 1972. Under the pre-*Furman* laws, the process of selection was simple: the jury decided whether the accused was guilty of murder, and if so, whether he should live or die. In most states, no separate sentencing hearing was held: jurors were supposed to determine both guilt and punishment at the same time, often without benefit of any information about the background or circumstances of the defendant whose life was in their hands. Jurors were also given no guidelines or standards with which to assess the relative gravity of the case before them, but were free to base their life-or-death decision on whatever attitudes or biases they happened to have carried with them into the jury room. These statutes provided few grounds for appeal and worked fast: as late as the 1950s, many prisoners were executed within a few weeks of their trials, and delays of more than a year or two were rare.

In contrast, the current crop of capital statutes have created complex, multi-tiered sentencing schemes based on lists of specified "aggravating" and "mitigating" factors which the jury is to consider in passing sentence. Sentencing now occurs at a separate hearing after guilt has been determined. The new statutes also provide for automatic appeal to the state supreme courts, usually with a requirement that the court determine whether each death sentence is excessive considering the defendant and the crime.

THE FIRST of these new statutes—from Georgia, Florida, and Texas—came before the Supreme Court for review in 1976. The new laws were different from one another in several respects—only Georgia's provided for case-by-case review of the appropriateness of each death sentence by the state supreme court; Florida's permitted the judge to sentence a defendant to death even where the jury had recommended a life sentence; and the Texas statute determined who was to be executed on the basis of the jury's answer to the semantically perplexing question of whether the evidence established "beyond a reasonable doubt" a "probability" that the defendant would commit acts of violence in the future. What these statutes all had in common, however, was some sort of criteria, however vague, to guide juries and judges in their life-or-death decisions, while permitting capital defendants a chance to present evidence to show why they should be spared. Henceforth—or so went the theory behind these new laws—death sentences could not be imposed randomly or on the basis of the race or social status of the defendant and the victim, but only on the basis of specific facts about the crime, such as whether the murder had been committed during a rape or a robbery, or whether it had been "especially heinous, atrocious and cruel" (in Florida), or "outrageously or wantonly vile, horrible or inhuman" (in Georgia).

After considering these statutes during the spring of 1976, the Supreme Court announced in *Gregg v. Georgia* and two other cases that the new laws satisfied its concern, expressed in *Furman*, about the randomness and unfairness of the previous death sentencing systems. Of course, the Court had no actual evidence that these new laws were being applied any more equally or consistently than the ones struck down in *Furman*. But for that matter, the Court had not relied on factual evidence in *Furman*, either. Although social science research over the previous thirty years had consistently found the nation's use of capital punishment to be characterized by arbitrariness and racial discrimination, the decisive opinions of Justices White and Stewart in *Furman* cited none of this statistical evidence, but relied instead on the justices' own conclusions derived from years of experience with the appeals of the condemned. The *Furman* decision left the Court free to declare the problem solved later on. And four years later, in *Gregg v. Georgia*, that is what it did.

It may be, of course, that the Court's prediction in *Gregg* of a new era of fairness in capital sentencing was a sham.

window dressing for what was in reality nothing more than a capitulation to the mounting public clamor for a resumption of executions. But if the justices sincerely believed that new legal guidelines and jury instructions would really solve the problems of arbitrariness and racial discrimination in death penalty cases, they were wrong.

Before John Spenkelnik—a white murderer of a white victim—was executed by the state of Florida in May 1979, his lawyers tried to present to the state and federal courts a study which showed that the “new” Florida death penalty laws, much like the ones which they had replaced, were being applied far more frequently against persons who killed whites than against those who killed blacks. The appeals courts responded that the Supreme Court had settled all of these arguments in 1976 when it upheld the new sentencing statutes: the laws were fair because the Supreme Court had said they were fair; mere evidence to the contrary was irrelevant.

After Spenkelnik was electrocuted, the evidence continued to mount. In 1980 two Northeastern University criminologists, William Bowers and Glenn Pierce, published a study of homicide sentencing in Georgia, Florida, and Texas, the three states whose new death penalty statutes were the first to be approved by the Supreme Court after *Furman*. Bowers and Pierce tested the Supreme Court’s prediction that these new statutes would achieve consistent and even-handed sentencing by comparing the lists of which convicted murderers had been condemned and which spared with the facts of their crimes as reported by the police. What they found was that in cases where white victims had been killed, black defendants in all three states were from four to six times more likely to be sentenced to death than were white defendants. Both whites and blacks, moreover, faced a much greater danger of being executed where the murder victims were white than where the victims were black. A black defendant in Florida was thirty-seven times more likely to be sentenced to death if his victim was white than if his victim was black; in Georgia, black-on-white killings were punished by death thirty-three times more often than were black-on-black killings; and in Texas, the ratio climbed to an astounding 84 to 1. Even when Bowers and Pierce examined only those cases which the police had reported as “felony-circumstance” murders (i.e., cases involving kidnapping or rape, and thus excluding mere domestic and barroom homicides), they found that both the race of the defendant and the race of the victim appeared to produce enormous disparities in death sentences in each state.

A more detailed analysis of charging decisions in several Florida counties even suggested that prosecutors tended to “upgrade” murders of white victims by alleging that they were more legally aggravated than had been apparent to the police who had written up the initial report, while “downgrading” murders of black victims in a corresponding manner, apparently to avoid the expensive and time-consuming process of trying such murders of blacks as capital cases. Their overall findings, Bowers and Pierce concluded,

are consistent with a single underlying racist tenet: that white lives are worth more than black lives. From this tenet it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers.

Such stark evidence of discrimination by race of offender and by race of victim, they wrote, is “a direct challenge to the constitutionality of the post-*Furman* capital statutes . . . [and] may represent a two-edged sword of racism in capital punishment which is beyond statutory control.”

This new data was presented to the federal courts by attorneys for a Georgia death row inmate named John Eldon Smith in 1981. The court of appeals replied that the studies were too crude to have any legal significance, since they did not look at all the dozens of circumstances of each case, other than race, that might have accounted for the unequal sentencing patterns that Bowers and Pierce had detected.

THE MATTER might have ended there, since the court’s criticism implied that only a gargantuan (and extremely expensive) research project encompassing the most minute details of many hundreds of homicide cases would be worthy of its consideration. But as it happened, such a study was already under way, supported by a foundation grant and directed by University of Iowa law professor David Baldus. Using a staff of law students and relying primarily on official Georgia state records, Baldus gathered and coded more than 230 factual circumstances surrounding each of more than a thousand homicides, including 253 death penalty sentencing proceedings conducted under Georgia’s current death penalty law. Baldus’s results, presented in an Atlanta federal court hearing late last summer, confirmed that among defendants convicted of murdering whites, blacks are substantially more likely to go to death row than are whites. Although blacks account for some 60 percent of Georgia homicide victims, Baldus found that killers of black victims are punished by death less than one-tenth as often as are killers of white victims. With the scientific precision of an epidemiologist seeking to pinpoint the cause of a new disease, Baldus analyzed and reanalyzed his mountain of data on Georgia homicides, controlling for the hundreds of factual variables in each case, in search of any explanation other than race which might account for the stark inequalities in the operation of Georgia’s capital sentencing system. He could find none. And when the state of Georgia’s turn came to defend its capital sentencing record at the Atlanta federal court hearing, it soon emerged that the statisticians hired by the state to help it refute Baldus’s research had had no better success in their search for an alternative explanation. (In a telephone interview after the Atlanta hearing, the attorney general of Georgia, Michael Bowers, assured me that “the bottom line is that Georgia does not discriminate on the basis of race,” but referred all specific questions to his assistant, who declined to answer on the grounds that the court proceeding was pending.)

The findings of research efforts like Baldus’s document

what anyone who has worked in the death-sentencing system will have sensed all along: the Supreme Court notwithstanding, there is no set of courtroom procedures set out in lawbooks which can change the prosecution practices of local district attorneys. Nor will even the most elaborate jury instructions ever ensure that an all-white jury will weigh a black life as heavily as a white life.

At bottom, the determination of whether or not a particular defendant should die for his crime is simply not a rational decision. Requiring that the jury first determine whether his murder was "outrageously or wantonly vile, horrible, or inhuman," as Georgia juries are invited to do, provides little assurance that death will be imposed fairly and consistently. Indeed, Baldus' research revealed that Georgia juries are more likely to find that a given murder was "outrageously or wantonly vile, horrible, or inhuman" when the victim was white, and likelier still when the murderer is black—hardly a vindication of the Supreme Court's confidence in *Gregg v. Georgia* that such guidelines would serve to eliminate racial discrimination in sentencing.

AT PRESENT, 51 percent of the inhabitants of death row across the country are white, as were seven of the eight men executed since the Supreme Court's *Gregg* decision. Five percent of the condemned are Hispanic, and almost all of the remaining 44 percent are black. Since roughly half the people arrested and charged with intentional homicide each year in the United States are white, it would appear at first glance that the proportions of blacks and whites now on Death Row are about those that would be expected from a fair system of capital sentencing. But what studies like Baldus's now reveal is how such seemingly equitable racial distribution can actually be the product of racial discrimination, rather than proof that discrimination has been overcome.

The explanation for this seeming paradox is that the judicial system discriminates on the basis of the race of the victim as well as the race of the defendant. Each year, according to the F.B.I.'s crime report, about the same numbers of blacks as whites are arrested for murder throughout the United States, and the totals of black and white murder victims are also roughly equal. But like many other aspects of American life, our murders are segregated: white murderers almost always kill whites, and the large majority of black killers kill blacks. While blacks who kill whites tend to be singled out for harsher treatment—and more death sentences—than other murderers, there are relatively few of them, and so the absolute effect on the numbers of blacks sent to death row is limited. On the other hand, the far more numerous black murderers whose victims were also black are treated relatively leniently in the courts, and are only rarely sent to death row. Because these dual systems of discrimination operate simultaneously, they have the overall effect of keeping the numbers of blacks on death row roughly proportionate to the numbers of blacks convicted of murder—even while individual defendants are being condemned,

and others spared, on the basis of race. In short, like the man who, with one foot in ice and the other in boiling water, describes his situation as "comfortable on average," the death sentencing system has created an illusion of fairness.

In theory, law being based on precedent, the Supreme Court might be expected to apply the principles of the *Furman* decision as it did in 1972 and strike down death penalty laws which have produced results as seemingly racist as these. But that's not going to happen. *Furman* was a product of its time: in 1972 public support for the death penalty had been dropping fairly steadily over several decades, and capital punishment appeared to be going the way of the stocks, the whipping post, and White and Colored drinking fountains. The resurgence of support for capital punishment in the country over the last decade has changed that, at least for now. Last summer the Supreme Court upheld every one of the four death sentences it had taken under consideration during its 1982-83 session, and in November the Court heard arguments by California in support of its claim that the states should not be required to compare murder sentences on a statewide basis in order to assure fairness in capital sentencing. The justices may have given an indication of their eventual decision on California's appeal when, just three hours before they heard that case, they lifted a stay of execution in a Louisiana case where a condemned prisoner named Robert Wayne Williams had been attempting to challenge the very limited method of comparison used by the Louisiana courts: as a result, Williams may well be dead by the time the California decision is handed down this spring. When in 1972 the Supreme Court was faced with a choice between fairness and the death penalty, it chose fairness. This time the odds are all with the death penalty.

EVEN WITH the Court's increasingly hard-line stance on capital appeals, there will probably not be any sudden surge of executions in the next year or two. One of the unreckoned costs of the death penalty is the strain it places on the state and federal judicial systems. Any large number of imminent executions would overload those systems to the point of breakdown. A great deal is being said nowadays about the need to speed up capital appeals: Justice Lewis Powell even added his voice to the chorus last spring at the very moment that the Supreme Court had the question of stays of execution under consideration in a pending case. But this attitude tends to moderate the closer one gets to a specific case. No judge wants to discover after it's too late that he permitted someone to be executed on the basis of factual or legal error, and for that reason alone the backlog of death row prisoners can be expected to persist.

Still, the pace of executions is going to pick up to a more or less steady trickle: possibly one a month, possibly two, maybe more. In September Mississippi's William Winter became the first governor since Ronald Reagan to permit an execution by lethal gas: Jimmy Lee Gray died banging his head against a steel pole in the gas chamber while the

reporters counted his moans (eleven, according to the Associated Press). A month later, J. D. Autry came within minutes of dying by lethal injection in Texas, only to have Supreme Court Justice Byron White reverse his decision of the day before and stay the execution. Now Autry is re-prieved until the Supreme Court decides whether California (and by implication Texas) must compare capital sentences to ensure some measure of fairness: if the Court rules that they don't have to, Autry will in all likelihood be executed next year.

So far, the power of the death penalty as a social symbol has shielded from scrutiny the huge demands in money and resources which the death sentencing process makes on the criminal justice system as a whole. Whatever the abstract merits of capital punishment, there is no denying that a successful death penalty prosecution costs a fortune. A 1982 study in New York state concluded that just the trial and first stage of appeal in a death penalty case under that state's proposed death penalty bill would cost the taxpayers of New York over \$1.8 million—more than twice as much as imprisoning the defendant for life. And even that estimate does not include the social costs of diverting an already overburdened criminal justice system from its job of handling large numbers of criminal cases to a preoccupation with the relative handful of capital ones. But the question of just how many laid-off police officers one execution is worth won't come up so long as the death penalty remains for most Americans a way of expressing feelings rather than a practical response to the problem of violent crime.

IT IS IMPOSSIBLE to predict how long the executions will continue. The rise in violent crime in this country has already begun to abate somewhat, probably as a result of demographic changes as the baby boom generation matures beyond its crime-prone teenage and early adult years. But it may well turn out that even a marked reduction in the crime rate won't produce any sharp decrease in public pressure for capital punishment: the shift in public opinion on the death penalty seems to have far deeper roots than that. The death penalty has become a potent social symbol of national resolve, another way of saying that we're not going to be pushed around anymore, that we've got the willpower and self-confidence to stand up to anyone, whether muggers or Cubans or Islamic fanatics, that we're not the flaccid weaklings that "they" have been taking us for. The death penalty can only be understood as one of the so-called "social issues" of the Reagan era: it bears no more relationship to the problem of crime than school prayer bears to the improvement of public education. Over the past half-century, executions were at their peak during the Depression of the 1930s, and almost disappeared during the boom years of the 1950s and early 1960s. The re-emergence of the death penalty in the 1970s coincided with the advent of chronic inflation and recession, and with military defeat abroad and the decline of the civil rights movement at home. Given this historical record, it's a safe bet that whether the crime rates go up or

down over the next several years, public support for executions will start to wane only as the country finds more substantial foundations for a renewal of confidence in its future.

In the meantime we will be the only country among all the Western industrial democracies which still executes its own citizens. Canada abolished capital punishment in 1976, as did France in 1981: England declined to bring back hanging just this summer. By contrast, our leading companions in the use of the death penalty as a judicial punishment for crime will be the governments of the Soviet Union, South Africa, Saudi Arabia, and Iran—a rogues' gallery of the most repressive and backward-looking regimes in the world. Just last week Christopher Wren reported in *The New York Times* that the total number of executions in the People's Republic of China may reach five thousand or more this year alone.

It's no accident that democracies tend to abolish the death penalty while autocracies and totalitarian regimes tend to retain it. In his new book, *The Death Penalty: A Debate*, John Conrad credits Tocqueville with the explanation for this, quoting from *Democracy in America*:

When all the ranks of a community are nearly equal, as all men think and feel in nearly the same manner, each of them may judge in a moment the sensations of all the others; he casts a rapid glance upon himself, and that is enough. There is no wretchedness into which he cannot readily enter, and a secret instinct reveals to him its extent . . . In democratic ages, men rarely sacrifice themselves for one another, but they display general compassion for the members of the human race. They inflict no useless ills, and they are happy to relieve the griefs of others when they can do so without much hurting themselves; they are not disinterested, but they are humane . . .

Tocqueville went on to explain that his identification of America's democratic political culture as the root of the "singular mildness" of American penal practices was susceptible of an ironic proof: the cruelty with which Americans treated their black slaves. Restraint in punishment, he wrote, extends as far as our sense of social equality, and no further: "the same man who is full of humanity toward his fellow creatures when they are at the same time his equals becomes insensible to their affliction as soon as that equality ceases."

In that passage, written 150 years ago, Tocqueville reveals to us why it is that the death penalty—the practice of slowly bringing a fully conscious human face to face with the prospect of his own extinction and then killing him—should characterize the judicial systems of the least democratic and most repressive nations of the world. And it reveals too why the vestiges of this institution in America should be so inextricably entangled with the question of race. The gradual disappearance of the death penalty throughout most of the democratic world certainly suggests that Tocqueville was right. The day when Americans stop condemning people to death on the basis of race and inequality will be the day when we stop condemning anyone to death at all.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: S.B. 119
 Title: "An Act authorizing capital punishment...."
 Sponsor: Senator Paul Fischer
 Requestor: Senator Paul Fischer
 Date of Request: February 6, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			301.3	949.2	996.6	1,046.5
200 TRAVEL			1.8	5.8	6.1	6.4
300 CONTRACTUAL			2.4	8.0	8.4	8.8
400 SUPPLIES			9.4	14.5	15.2	16.0
500 EQUIPMENT			2.6	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	317.5	977.5	1,026.3	1,077.7

CAPITAL	-0-	1,644.0	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND		1,644.0	317.5	977.5	1,026.3	1,077.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1,644.0	317.5	977.5	1,026.3	1,077.7

POSITIONS:

FULL-TIME		-0-	18	18	18	18
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Prepared By: William W. Ladwig
 Division: Deputy Commissioner, Administration

Phone: 465-3376
 Date: February 15, 1985

Approved by Commissioner: [Signature]
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 15, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency (ies)

ANALYSIS

A. Assumptions:

Enactment of Senate Bill No. 119 would change the State law to permit capital punishment for the crime of murder in the first degree. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 2 to 4 years. Therefore, we are predicting the need for a maximum of 12 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two additional fixed guard posts to be created and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 Correctional Officers II plus 1 Supervisor Correctional Officer III.
4. Inflation is estimated at 5% per year except as noted.
5. The unit will be available for occupancy April 15, 1987, (effective date of the bill).

B. Estimated Costs

1. Capital Expenditures

- a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 12-cell complex.

12 beds X \$137,000 = \$1,644,000.

- b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

Analysis (continued)

2. Salaries & Related Costs Funded for 4 months
in FY 1987

a. Staff (see attached forms for detail)

15 Correctional Officer
II Positions \$ 246,840

3 Correctional Officer
III Positions
Total \$ 54,481
301,321

b. Other Costs

Travel (Staff Training) 1,800
Utilities, Cable TV,
Subscriptions 2,400
Food, Clothing, Bedding 9,400
Equipment 2,600

Total \$ 317,521

c. For years after FY87 assumes 5% inflation factor.

NOTE:

It is assumed that State expenditure will also occur in the Department of Law and the Public Defender's Office for the lengthy appeal process. The costs for the other two agencies are not addressed in this fiscal note.

1.	POSITION TITLE Correctional Officer II (15)				RANGE/STEP 13/B	BARG. UNIT G	PAGE/LINE	GOV.	APPROV	DTSAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 180	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA		LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		161,160		Overtime					
6.	Benefits		43,875		\$ 11,645					
7.	Supplemental Benefits		10,965		Shift Diff					
8.	Fixed Benefits		13,150		\$ 6,045					
9.	TOTAL PERSONAL SERVICES		01		\$246,840					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04		6,000					
13.	Equipment		05							
14.	Other		06		252,840					
15.	TOTAL COST									
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			252.8					
19.		I-A Receipts 1005								
20.		Program Receipts 1006								
21.		Other								
	For B&M USE ONLY									
	KEY NUMBER									

These positions will provide security coverage for the unit where inmates subject to capital punishment are confined.

Single Position Costs per year

\$2,686 X 12 =	=	\$ 32,232
Overtime 100 hrs. @ \$23.29	=	2,329
Shift Diff. @ .0375	=	1,209
		<u>35,770</u>
PERS @ .1979	=	7,079
SBS @ .0613	=	2,193
Var Ben @ .047408	=	1,696
Health Ins. @ \$219.20/mo.	=	2,630
		<u>\$ 49,368</u>
		X 15
		<u>\$740,520</u>

Funding at left is only for the 4 months of FY87 the positions will be filled.

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Southcentral Region
COMPONENT _____

1 1

FY 87

DEPARTMENT OF CORRECTIONS

Pouch T
Juneau, Alaska 99811

POSITION PAPER
Senate Bill No. 119

"An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies."

Senate Bill No. 119 classifies first degree murder as a capital offense and establishes the death penalty as an available penalty under specified circumstances.

With the *Furman vs. Georgia* ruling in 1967, the United States Supreme Court declared what amounted to a moratorium on capital punishment. The moratorium was, in effect, lifted in 1975 when the Court approved death penalty legislation which had been passed in Florida, Georgia, and Texas. Thirty-seven states have subsequently passed death penalty legislation but, despite continuous, vigorous effort on the part of state prosecutors, there has been little success in implementation of these statutes. As of June 30, 1984, there had been 20 executions. Gary Gilmore, executed by a firing squad in January 1977 in Utah, and Jesse Walter Bishop, executed by a gas chamber in Nevada in October 1979, did not appeal and succeeded in obtaining court rulings prohibiting others from proceeding with the appeal process in their behalf. Steven Judy, who was electrocuted in Indiana on March 9, 1982, also elected to forego the appeal process.

Meanwhile, the number of men and women on death rows around the country has risen to 1202 at yearend 1983. All of these offenders are in various states of the appeal process. The legal costs and the associated costs to these states are enormous. The maintenance of a "death row" is also extremely expensive because of space and staff requirements. There is a likelihood that the death penalty is the most costly remedy possible in a criminal proceeding, even more costly than life imprisonment.

Senate Bill No. 119 presumably uses model provisions which are designed to meet constitutional requirements for a legal capital punishment statute.

Perhaps undertaking this new approach to punishing murderers in Alaska would be worthwhile if we could be sure that the result would be fewer murders. There is no doubt that capital punishment effectively deters those subjected to it, but whether it has any value in deterring others, especially those with the most serious homicidal tendencies, is questionable. During the eight-year moratorium, the United States Supreme Court listened to a great deal of testimony on the issue of deterrence, but was unable to conclude from the evidence presented that there was a deterrent value to capital punishment.

Prepared by:

William W. Ladwig
William W. Ladwig
Deputy Commissioner
for Administration

Date:

2/14/85

Approved by:

Roger V. Endell
Roger V. Endell
Commissioner

Date:

2/14/85

Attention:
Bettye Fahrenkamp
Senate
Legislative Standing
Committee

* H e a l t h E d u c a t i o n g
and S o c i a L s e r v i c e s

For Submission to
Senate "Hess" Committee Files re:
Senate Bill No. 119

Statement Dated: 2-7-85

From: DIRK Nelson
Senior Social Work Student
P.O. Box 81273
College Alaska 99702

Quite often, most often, the reaction to violent crime is the desire for revenge.

Our system has tried a limited number of approaches to this "problem" and tends to merely pendulate from the hard left, who says, "rehabilitate," even in the case of hardened habitual criminals, back to the hard right, who says, "the electric chair is the answer." Saudi Arabia should show us that the death penalty is not a deterrent to crimes of anger.

As far as I have been able to grasp, there are three reasons for the death penalty:

1. Deterrence through;
2. Extreme level of retaliatory punishment sometimes for;
3. Avoid the cost of housing people committing heinous crimes.

Statistically, according to a criminal justice professor I have studied under, the death penalty has never been a realistic or effective deterrent to violent crime. Generally, when a person is angry enough to kill someone, he/she does not sit themselves down and logically weigh the penalty versus the crime.

As far as an extreme level of retaliation toward violent crime, this may be so, but a couple of questions must be asked:

1. Has the criminal justice system ever had a 100% accuracy rate in its convictions?
2. Is death an irreversible sentence?

The answer to the court's accuracy record is No! No court has ever had a 100% accuracy rate because it is run by men, and men have never been perfect. The answer to question two is Yes! Death is an irreversible sentence. So maybe people are willing to take the chance so as to get a revenge or rid themselves of a criminal element, but thus by believing so strongly in the accuracy of their

system, they (the juries, judges, and prosecutors) should pay dues for their system, be willing to sign for liability, that should the wrong person be sentenced to death, "they" (the previously categorized) should be willing, as dues for the system they back, to serve sentences for negligent homicide, which is exactly, by definition, what would be the case, were the wrong person convicted.

What are the chances of this, you ask. A couple of months ago, a few people that know me casually were willing to swear that it was me they'd seen dancing at a tavern, yet it was not. I certainly wouldn't want my look-alike to do anything unethical in public, for these people might just as willingly testify that it was me.

Third, in the way of cost expedience as opposed to housing a violent or habitual criminal, I recall the constitution as being a restraining or restraint defining document, limiting the powers of the government. The people, as individuals in this society, were given the right to defend life, liberty, and property, with violent force, if necessary. I don't recall when that right was seized by the system, though it obviously was. If I find someone committing a violent act, at least I am closer to a one-on-one situation, with which to immediately define the occurrence.

Once this crime gets to court, one is dealing with a twice removed situation where the reality of the crime and the criminal has been turned into a proverbial hockey puck to be slapped about by whoever's lawyer can score the most points, often via character assassination.

For all these reasons I urge you to oppose the death penalty legislation.


"Those who forget their pasts are bound to repeat them."

Hopefully you have read this with great amounts of attention, because with all my heart, and supposed "knowledge," I emphasize: We are dealing with human

lives, and irreversible sentences. Those backing this as a religious or moral cause might note what Christ said about "throwing the first stone," and reflect on the situation of my look-alike, and how many of you might find yourselves having the same circumstantial problem.

Sincerely yours,

In social work and beliefs.



Dirk Nelson
Graduating Senior Social Work Student

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

State Senate

March 28, 1985

Memorandum

To: Senator Bettye Fahrenkamp, Chairwoman
Health, Education & Social Services Committee

Subject: Hearing schedule for SB 119 "An Act authorizing capital punishment"

Dear Bettye,

I would appreciate your scheduling a hearing on SB 119 at your earliest convenience. The issue raised by the bill is one which, I am sure you will agree, deserves a maximum of careful attention. I am hopeful that you will feel it appropriate to calendar it this session.

I strongly believe it is more appropriate to consider this matter in the atmosphere of a non-election year. Additionally, I would hope that discussion this year would allow time for placing a responsible statute before the voters at the next election.

A copy of a poll by the Dittman Research Corporation is attached in case you have not already been provided with one. It shows support for death penalty legislation running at 77% statewide. This naturally from my point of view is an additional reason why SB 119 deserves to be placed before our committee in the near future.

Perhaps you and I might be able to get together privately to discuss the matter. Looking forward to hearing from you.

Cordially,

A handwritten signature in cursive script that reads "Paul".

Paul

PAF:wmm

Encl: Dittman Poll

The
Alaska
Poll®

DITTMAN RESEARCH CORPORATION
THE FIRST INTERSTATE BANK OF ALASKA BUILDING
3230 "C" STREET, P.O. BOX 4-1234
ANCHORAGE, ALASKA 99509
(907) 561-5301

MAR 21 1985

ALASKA POLL
February 1985

The ALASKA POLL shows support for death penalty legislation...

The statewide Alaska Poll by the Dittman Research Corporation of Alaska* shows broad Alaskan support for proposed death penalty legislation regarding criminals convicted of serious crimes such as killing policemen and "contract" murderers...

"There ^{was} been a bill introduced in the state legislature which would allow capital punishment (the death penalty) for criminals convicted of killing a policeman or murdering for hire. Do you favor or oppose passage of the bill?"

Yes.....77%
No.....21%
Undecided..... 2%

*The Dittman Research Corporation of Alaska has a perfect political public opinion accuracy record dating back to 1972, including each of the six elections decided by one-half of 1% or less.

ALASKA POLL
February 1985

...support is consistent throughout all Alaskan geographic regions...

	<u>%</u> <u>Favor</u>	<u>%</u> <u>Oppose</u>	<u>%</u> <u>Undecided</u>
Rural Alaska	74	22	4
Central Alaska	76	23	1
South Central	78	20	2
Anchorage	78	19	3
Southeast	75	24	1

...and all major political categories are also in support, however Democrats are a little less favorable (70%) than Republicans (82%), and Libertarians or non-partisans (75% each)...

	<u>%</u> <u>Favor</u>	<u>%</u> <u>Oppose</u>	<u>%</u> <u>Undecided</u>
Democrat	70	27	3
Republican	82	18	--
Libertarian	75	25	--
Non-partisan	75	22	3

Age-wise, younger people are more in favor of the proposed legislation...

	<u>%</u> <u>Favor</u>	<u>%</u> <u>Oppose</u>	<u>%</u> <u>Undecided</u>
18-24	79	21	--
25-40	78	21	1
41-55	76	21	3
56 Plus	73	20	7

ALASKA POLL
February 1985

...while females are less likely to be in favor than
males...

	<u>%</u> <u>Favor</u>	<u>%</u> <u>Oppose</u>	<u>%</u> <u>Undecided</u>
Male	80	19	1
Female	74	23	3

SUMMARY

Overall, Alaskans appear to be near the mainstream as far as the nation as a whole is concerned regarding death penalty legislation. Nationwide surveys generally show well over 70% are in favor of the death penalty for particularly serious and gruesome crimes, and 38 other states have passed capital punishment legislation.

Technical data:

Sample size : N=510
Universe : State-wide
Date : February 7 - 17, 1985
Sample error : 3-5%
Methodology : Telephone RDD (random digit dialing)

Confessions of a tour guide

Harriet shifted her 200 pounds of well packed weight onto her other small foot and glared at me. Her brown eyes were clear and bright — pretty eyes. But now they looked angry.

"No plane rides unless there are more than two engines!"

"Harriet, this is the biggest — the only — plane going to Whitehorse today."

"Then I'll take a bus." Her hands sat defiantly on her hips.

"A bus trip would take you three days. We'll be on the ship to Vancouver before you could get to Whitehorse." It was the Comptons' influence, I knew.

She shook her head wearily, picked up her bag and carried it toward the ramp. Harriet considered herself a seasoned traveler. Each year for the last four, she had sandwiched a 10-day tour to some exotic place between her quiet days in New Jersey and winters in Florida. I followed as she walked over to Audrey, whom she had befriended on the trip.

"You see a few of those," she said, pointing out the terminal window at the expanse of mountains stretching boldly across the horizon. "That's enough. Mountains, trees, trees, mountains. They're all the same. They're like the Buddhas in China. How many Buddhas do you need to see to know what one looks like?"

Audrey shook her head in agreement, and I watched sympathetically as they moved forward, their 60-year-old shoulders pulled down by the weight of their overnight bags. I hadn't arranged the whirlwind itinerary that left no time for anything as simple as a trip to the bathroom, much less a few moments of solitary reflection. I was just the guide, a pinch hitter, hired at the last minute to cover for someone who was sick. My duties? To count bags, make certain that rooms, meals, trains, planes and buses lived up to their promises.

Our trip had started in Anchorage with 18 members — eight couples and Harriet and Audrey — all pushing on the upper edge of middle age. They had come to see the Alaska promised by glossy brochures and enthusiastic travel agents. Harriet — and the others — liked Anchorage — the Sheraton, 25-cent cups of coffee at Nordstrom, the Dimond Mall. She frowned when I said that we'd leave at 6 a.m. for Kotzebue.

A bus to the airport, the driver's quickly rattled facts about Anchorage, the plane ride, a long bus tour around Kotzebue with a non-stop talk by the driver, another talk, a dinner of Shee fish. The group went wearily to its rooms at midnight. The sky was still golden and I walked along the edge of town. A woman skinned a fat seal at the water's edge. Ice floes moved slowly by the town, packed so tightly together that it seemed I could jump from one to the other until I was a half mile out into the ocean.

The Comptons, with their faces pinched in permanent disapproval, were the tour's critics, and, like a rotting nectarine in a fruit bin, they had a ripple effect on the others. With a single piercing comment, they could change Harriet's innocent smile at the quaintness of a hotel, to a frown reminiscent of their own.

From Kotzebue, we flew to Nome for three hours — a tour, and a talk and a visit to a gold dredging operation. Expanses of beach and open country waited for us, but there was no time to look leisurely for traces of the city's past.

Denali was next. A mix-up in the hotel



The Comptons, with their faces pinched in permanent disapproval, were the tour's critics . . .

reservations left us short two rooms. Harriet and Audrey doubled up when promised a refund, and I found a room 15 miles away. I reached it after midnight, set my alarm for 4:15 and lay down, giggling suddenly in the quiet. Then I heard voices — the disembodied sounds of tour bus drivers spouting Alaska trivia. It was like the background music in an elevator. I couldn't turn it off.

Clouds ringed the mountains when I reached the wildlife tour bus at 5 a.m., but the sun shone around the bus like a halo. Our group climbed aboard last, and the driver helped Harriet and Audrey up the steps. I looked skeptically at the bus and checked the schedule — six hours.

"I'm gonig to stay behind and go over our Fairbanks schedule," I said guiltily, avoiding their eyes. The door closed irrevocably in front of me and the Comptons glared out their window as if to say that if they were going to suffer, I should too. The bus pulled away with a blast of exhaust, and I smiled with the freedom of a kid playing hookey. I took a deep breath, and started walking.

The desk clerk barely looked up from his

paperwork.

"I've changed my mind about the tour. I'm going to rest instead. May I have the key to the room?"

The name?"

"Compton." I said, biting my lip.

Room 313 looked as though a high wind had whirled its way through. Towels were thrown about the floor, the bedding was mangled. The Comptons might be more interesting than I was giving them credit for. I curled up on one of the beds and set my handy alarm.

Fairbanks. We dropped our bags off, and started on a city bus tour, a stream of facts pouring out the ever-present loudspeaker. We ate dinner, and there was a speech by someone from the university.

I set my alarm for 5 a.m. and fell onto my bed. The voices started again and I held my ears. I was exhausted, and I noticed that the circles under the eyes of the others had grown darker, and they seemed to become irritated even faster. The word "tour" on our schedule elicited a conditioned response — my head started to hurt and I had to go to the bathroom.

Story by Chris Klein • Illustrations by Peter Dunlap-Shohl

**EUGENE LAMOORE
HANGED . . .
Convicted Slayer
Goes to Gallows
Here Pleading He Is
Innocent**
The Daily Alaska Empire,
Juneau, April 14, 1950

execute multiple murderers or those guilty of extremely violent homicides involving torture or rape. "Those aren't crimes of passion," she says. "They're crimes of utter meanness. And you can't rehabilitate someone like that."

The debate is also quite real for Superior Court Judge Victor Carlson. Carlson presides over first-degree murder cases every year. So far, his harshest sentence for a murderer has been life imprisonment. Of these, the harshest of them all was the sentence of 396 years in prison with no chance of parole handed to multiple murderer Charles Meach.

Death penalty advocates sometimes point to Meach — a man Carlson described in sentencing as a manipulative, cold-blooded murderer — as excellent fodder for capital punishment. But had Pettyjohn's law been in place, it probably wouldn't have altered Meach's sentence. The initiative leaves the final death-penalty decision in the hands of the judge. And Carlson made it clear at sentencing that he wouldn't favor executing Meach even if he could.

In a seven-point statement, he explained his position. He is opposed to the death penalty generally, because courts can err, the taking of human life is wrong, and death sentences have historically been handed down disproportionately to minorities or people too poor to afford adequate defense. He is opposed to it practically, because capital cases are so expensive and protracted, since "absolutely no stone can be left unturned."

It's much more difficult to convict a guilty man in capital cases, he said, because of the emotional toll on jurors. "Consequently acquittals can be expected when, in fact, the prosecution would otherwise (in cases calling for a lesser penalty) been found to have met its burden of proof beyond a reasonable doubt."

The fine scrutiny paid to death penalty cases make them costly. A few years ago the New York State Defenders Association estimated the price of a typical capital-punishment trial at \$1.5 million (\$845,000 for the prosecution, \$300,000 for the court, \$176,000 for the defense). The association's figures didn't account for the cost of any subsequent appeals, standard practice in capital cases.

Alaska correctional officials say the state also would have to build some sort of "death row," which officials estimate at \$1.6 million (not including annual operation costs).

Against such numbers, the cost of housing a criminal in a high-security prison compares favorably. An inmate housed at San Quentin costs roughly \$20,000 a year, or \$1 million for a 50-year life sentence. But arguments over cost usually don't count for much in a debate rooted in deeper questions than dollars and cents. For some the issue is fear, for others retribution.

When Gilmore was executed eight years ago, opponents of capital punishment were hopeful Americans would recoil at the spectacle and clamor for an end to executions. But polls have found just the opposite occurring: as the rate of executions has increased, so has national support for a death penalty.

The United States is virtually alone in the Western world in its continued practice of capital punishment. Its European allies — England, France, West Germany, Italy — no longer impose death sentences. Among industrialized nations only the Soviet Union and South Africa impose the death penalty as often. Among undeveloped nations, the United States joins the company of Iran, Iraq, Libya and Chile in its zeal to carry out executions.

Boyko sees the new drive for the death penalty here as symptomatic of the national



Sara Lienhart: "If they could take a picture of someone they love more than anyone or anything in this world. And then imagine having someone come in the door of their house and tie that person up and hold a gun six inches from their head and then pull the trigger . . . I would just ask anyone who fights the death penalty to try and put themselves in my shoes."

state of mind. "We have Mr. Meese, our attorney general, saying an innocent suspect is a contradiction in terms — that if he was innocent he wouldn't be a suspect," says Boyko. "It's that mindset . . . that kind of arrogance that belongs to the Third Reich."

Clocksinn senses a changing mood at home, too. "Some people even recommended capital punishment for the guy who killed Star the Reindeer," Clocksinn says, "so maybe there is (a new mood)."

State Sen. Jan Faiks estimates that 70 percent of her South Anchorage constituents support the death penalty. At a recent neighborhood meeting, she says, 15 people signed her death penalty petition with hardly an encouraging word on her part. She expects to easily reach her quota of 50 signatures.

"It's unfortunate when people have to go to the initiative process," Faiks says, "because it means their legislators aren't listening."

Death penalty opponents like Clocksinn say they are listening — to their conscience.

And so the debate continues. Next year, it could be decided at the ballot box. ■

Superior Court Judge Victor Carlson is opposed to the death penalty generally, because courts can err, the taking of human life is wrong, and death sentences have historically been handed down disproportionately to minorities or people too poor to afford adequate defense. He is opposed to it practically, because capital cases are so expensive and protracted, since "absolutely no stone can be left unturned."

DEATH PENALTY

Continued from Page O-9

And in the grisliest story of them all, a baker named Robert Hansen was convicted in 1984 of kidnapping, torturing and killing at least 17 Anchorage women over a 10-year period — then hiding their mutilated bodies in Southcentral graves.

It's murder cases like those, Pettyjohn says, that have rallied support for the death penalty. Horrible crimes, he says, deserve horrible penalties.

"Justice means giving people what they deserve. Can any conduct be deserving of death? Of course!

"In my view, to confine (Hansen) to prison for the rest of his life — feeding and clothing him, letting him watch TV and write his memoirs — is not proportionate punishment," Pettyjohn says in a published essay. "It's not just because it's not what he deserves."

□

William Moffatt exemplifies some of the complexity surrounding Alaska's death penalty debate. A proponent of capital punishment, he is also an active supporter of the Right-to-Life organization opposed to abortion — a fact some of his death penalty opponents take to task.

"It's kind of like, 'Let's bring them into the world so we can kill them later,'" says Boyko.

Moffatt says there's no contradiction between his two positions. "I think all human life is sacred," he says. "But I can make the distinction between an innocent baby and a cold-blooded murderer."

Of all the issues surrounding the debate, the simple moral question of taking a human life is the hardest for opposing sides to reconcile. It's a question as old as the Bible, its division as precise as Old Testament ("You shall appoint as a penalty life for life, eye for eye, tooth for tooth . . .") and New ("Ye have heard that it hath been said, 'an eye for an eye and a tooth for a tooth'; but I say unto you . . . whosoever shall smite thee on thy right cheek, turn to him the other also.")

When the state Senate two years ago held hearings on a death penalty bill, also introduced by Pettyjohn, the same argument emerged. Moral Majority executive director Tim Ewell testified that the Bible's commandment "Thou shalt not kill" was actually a poor translation. Properly, he said, it should be "Thou shalt not commit murder." Speaking against capital punishment, Anchorage attorney Robert Wagstaff called up the image of the crucifixion in criticizing "the Pontius Pilate aspects of the bill."

The debate is academic to most Alaskans. But for Nancy Imlach, 43, and Sarah Lienhart, 45, the issue is quite real. Imlach is the mother of Sabrina Imlach, the 17-year-old girl shot down three years ago by Charles Meach. Lienhart is the niece of Emilia Elliott and the daughter of Tom and Ann Faccio, all elderly victims last spring of an execution-styled multiple murder.

Lienhart, a soft-spoken foster parent to eight children, supports the initiative. She believes the death penalty will help deter murder. "It's becoming scary," she says, "because nowadays you can literally get away with murder. You can get away with a seven-year sentence. And I feel that if we begin to give these people the punishment they deserve, it's going to be a deterrent."

People who say they're opposed to capital punishment should try and imagine the murder of a member of their family, say Lienhart. "If they could take a picture of someone they love



Edgar Paul Boyko: "People think there's some kind of scientific accuracy to the criminal justice system. There's not . . . Every once in awhile you read about some guy who has served five years and was found to be innocent. What do you do if you've executed him? Throw some flowers on his grave?"

more than anyone or anything in this world, and then imagine having someone come in the door of their house and tie that person up and hold a gun six inches from their head and pull the trigger . . . I would just ask anyone who fights the death penalty to try and put themselves in my shoes."

For the past three years Nancy Imlach has known murder, too. A longtime-opponent of capital punishment, Imlach is struggling to reconcile her beliefs in the aftermath of her loss.

"I was raised to believe that murder, no matter who was doing it, was wrong," she says. "I never felt that the state had any more right to kill anybody than anybody else . . . I don't trust the court system to not make mistakes."

But young people need to know that if they're going to commit crime, they're going to be punished, she says. Nowadays, both parents and courts are failing to teach that lesson. "My mother paraded me behind the hangman's gallows down behind the Third Avenue (Anchorage) jail when I was a little girl," she says. "I don't think they ever used it, but it was there. And you walked by and when they told you what it was, it really made an impression on a three- or four-year-old girl."

Does she support the death penalty now?

Imlach stops short of saying yes. But she says she's read the initiative and thinks it's written in a way that wouldn't be misused; it would only

**AN AWFUL CRIME
EXPIATED . . . Hardy
Was Hanged at 9:40
O'clock . . . Died
Protesting
Innocence to the
Last**

The Nome Nugget,
Sept. 19, 1902

**State Rep.
Fritz Pettyjohn:**
"Justice means giving
people what they
deserve. Can any
conduct be deserving of
death? of course!"



Wendell Kay: "They used to hang pickpockets. And when they did, others would pick the pockets of the crowd watching the hanging. Capital punishment is supposed to be a great deterrent to murder. It isn't."

words: "I did not kill Jim Ellen."

The territorial legislature voted to abolish the death penalty seven years later. Former territorial legislator Wendell Kay recalls there wasn't much opposition. "Earl Cooper and Warren Taylor were the men who led the fight," Kay says. "Taylor made a real good speech . . . I think it passed by more than a two-thirds vote."

The argument against the death penalty, then as now, centered on moral principle: Thou shalt not kill. But there were also judicial arguments raised that claimed it was disproportionately used against minorities, was a failure as a deterrent, was capable of executing innocent men — questions still being raised today.

Anchorage defense lawyer Edgar Paul Boyko says 40 years of practice has left him unalterably opposed to capital punishment. "People think there's some kind of scientific accuracy to the criminal justice system," he says. "There's not . . . Every once in awhile you read about some guy who has served five years and was found to be innocent. What do you do if you've executed him? Throw some flowers on his grave?"

Rep. Don Clocksin, D-Anchorage, contends the death penalty in Alaska has always come down hardest on minorities and the poor. "The research indicates that eight people were hanged and five of them were minorities," he says. "The last two were black."

Rich or middle-class whites who commit murder have historically received lighter sentences, Clocksin says. A lot is subject to prosecutorial choices. A recent study in Texas showed that, in cases where a black or Chicano killed a

white, 65 percent of the defendants were tried for capital murder; in cases where a white killed a black or Chicano, only 25 percent faced the death penalty.

Boyko says much depends on being able to afford a good lawyer. If you're rich, you're O.K. "But if you're poor, it's going to be a shoestring defense. And you're just not going to get fair representation."

□

In 1968 all the hangman's gallows, gas chambers and electric chairs in America stood empty. The Supreme Court had agreed to hear two cases challenging the constitutionality of the death penalty.

Five years later, the court made its decision. The justices said the country's death penalty laws were vague and capricious — that they allowed judges and juries enormous latitude in deciding who gets executed and who doesn't.

The Supreme Court immediately nullified statutes in all 40 states that allowed capital punishment. It also commuted the sentences of 648 inmates on death row to life imprisonment.

The decision had two fairly immediate effects. It prompted state legislatures to immediately begin redrafting their death penalty laws in a way that adhered to the Supreme Court's objections; in a few years, 37 states had approved new capital punishment legislation. It also had the effect of rallying proponents of the death penalty into action.

Five years after the Supreme Court ruling, a firing squad in Utah executed Gary Gilmore — an episode dramatized in Norman Mailer's book, *Executioner's Song*. Gilmore's death marked the first execution in America in 10 years. Since then, 47 men and one woman have been executed with considerably less fanfare. Most of the executions have occurred in just three southern states — Florida, Georgia and Texas. Last month, the execution of William Vandiver in Indiana's electric chair marked the first execution outside the South in 4½ years.

Before the Supreme Court ever became involved in the death penalty question, the incidence of violent crime in America had begun to build back to 1920-1930 levels. The homicide rate doubled from 1960 to 1983 — from 4.7 murders per 100,000 to 9.8.

This time the crime wave wasn't lost on Alaska. The 49th state had grown — and so had its incidence of murders. The FBI placed Alaska's homicide rate at 14.0 per 100,000 in 1984 — the second highest murder rate in the United States.

Something else was happening in Alaska. Newspaper and television newsmen began reporting stories about bizarre, new multiple killings at an alarmingly steady rate.

In 1982 a previously convicted murderer named Charles Meach shot and killed four teenagers camping at Russian Jack Springs Park in Anchorage.

In 1983 an out-of-work computer programmer named Louis Hastings tried to shoot everyone in the tiny community of McCarthy, killing six and wounding two.

In 1984 a stranger-to-town named Michael Silka executed seven residents of Manley Hot Springs, then killed a state trooper in a shootout that left Silka dead.

In 1985 an 18-year-old named Cordell Boyd and a 14-year-old girl named Winona Fletcher were arrested on charges of tying three elderly members of the Faccio family to their living room chairs in Anchorage — then shooting them point-blank with a handgun.

Last February an Associated Press poll found that 84 percent of Americans support the death penalty "under certain circumstances." In Alaska the Dittman Research group last February reported that 77 percent of Alaskans favor capital punishment for the specific crimes of killing a policeman or murdering for hire.

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Bill Moffatt: "I think all human life is sacred. But I can make the distinction between an innocent baby and a cold-blooded murderer."

DEATH PENALTY

Continued from Page O-7

agonizing death," Pettyjohn says. "And I don't know that there's really anybody out there who has experience at being a hangman."

The gallows in Fairbanks was a makeshift affair. It consisted of a scaffold connecting the second-floor window of the courthouse with the second-floor window of the bank. A trap door was cut midway across the alley. A framework of two-by-tens held the hangman's noose.

In all, three men walked the fatal distance between the two buildings, all of them in the 1920s. Two were Indians, one was a white foreigner. Their respective hangings were recounted several years later by Deputy Marshal Frank P. Young, a witness to all three executions.

In William Cashen's book, *Farthest North College President*, Young tells part of the story of the first execution. It involved a woodcutter, Mailo Segura, who shot and killed a mine owner, William Riley, at Flat City. Segura had cut several cords of wood for Riley and had not been paid for over two years. He demanded payment or at least a promissory note. Riley refused him the money and the I.O.U. One day Segura sought out Riley at his mine, found him alone — shot him three times in the back. Afterward, he confessed to the shooting. He was tried, found guilty and sentenced to death by Judge Charles Bunnell, the first president of the University of Alaska. The sentence was upheld by the circuit court of appeals in San Francisco.

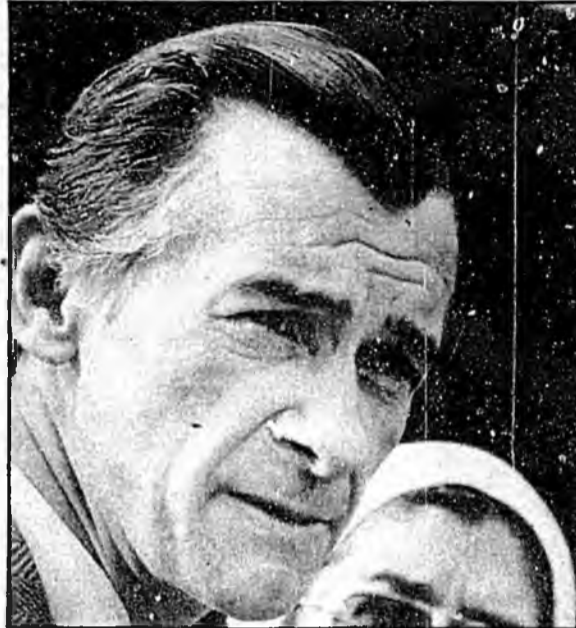
On the morning of his execution, Segura dressed himself in a brand new suit. He bid his guards and friends goodbye and walked quietly to the gallows with Young. Once on the scaffold he broke down, begging for mercy. He refused to stand up. Young said the deputies had to strap Segura to a wooden plank. This done, they balanced the board vertically on the scaffold, placed the noose around his neck, sprang the trap door. Young, standing beneath the scaffold, watched Segura hang at the rope for three minutes before a doctor could pronounce him dead.

The second execution in Fairbanks involved the hanging of a man from Shageluk, the first Native ever executed in Alaska under U.S. law. Fairbanks news stories referred to the Indian simply as "Old Hamilton." He had murdered the husband of his mistress, disemboweled the body, filled it full of rocks, sunk it in Shageluk Slough. Afterward Hamilton moved in with the dead husband's wife. A few weeks later, the corpse decomposed and rose to the surface for all Shageluk to see. Hamilton was questioned — and confessed.

On the day of execution, the chief deputy ordered Young to offer the condemned man a drink of whiskey. Hamilton accepted the offer. "He drank a full water glass of straight whiskey straight down," Young recalls. "Just before we took him out on the platform, he drank a second waterglass full."

Hamilton went to the gallows peacefully. Young took his position under the platform. The trapdoor was sprung and some of the onlookers turned their eyes away in horror. Hamilton had been decapitated.

The third and final execution in Fairbanks went more smoothly, but proved equally disturbing to Frank Young. It involved a Native, a man named Constantine Beaver. He had killed a companion during a drinking party and had quickly confessed. Young said Beaver was deeply repentant. He told the deputies that he



Bill Moffatt: "Our hope is that, if capital punishment is placed on the books in Alaska, it will never have to be used."

wanted to die. During the months he sat in jail, the Fairbanks deputies grew to like him. They openly hoped for a presidential reprieve from Herbert Hoover. But Hoover had other things on his mind in 1929; no reprieve came.

The morning of Beaver's hanging was "one of the saddest affairs I ever had to witness," Young said. He walked the condemned man to the gallows. According to a newspaper account, Beaver's composure was "little less than remarkable when the last minutes came. Although officers walked beside him and held him by the arms it was said he would have been able to walk unaided. When Beaver reached the death chamber he broke into a tribal chant which continued until the floor opened beneath him."

Said Young: "I left the Marshal's office shortly after that."

America in the 1920s and early '30s was statistically as violent as America is today. There were 9.7 homicides per 100,000 people in 1933, very near the present murder rate. There were an equally high number of executions, as many as 200 a year.

Then, in the late '30s, '40s and '50s, violent crime in America began to settle. The murder rate fell by half, never rising above 6.4 homicides per 100,000 from 1945 to 1960. The number of executions began to fall, too — from 152 (in 1947) to 82 (in 1950) to 49 (in 1959) to just two (in 1967).

Death penalties had fallen out of favor in Alaska, too. After a spate of executions in the '20s, there was only one legal hanging in each of the successive three decades. The last occurred in Juneau in 1950 with the execution of Eugene LaMoore, a black man convicted of murdering a popular Juneau storekeeper. The evidence of the trial indicated LaMoore wasn't the actual killer, but an accomplice. He had hit the grocer over the head in the course of a robbery; his partner, Austin Nelson, finished the job with a knife. Nelson, also black, had already been tried and executed. LaMoore went to the gallows on April 14 protesting his innocence to the end. His final

Sarah Lienhart: "It's becoming scary, because nowadays you can literally get away with murder. You can get away with a seven-year sentence. And I feel that if we begin to give these people the punishment they deserve, it's going to be a deterrent."

Edgar Paul Boyko: "We have Mr. Meese, our attorney general, saying an innocent suspect is a contradiction in terms — that if he was innocent he wouldn't be a suspect. It's that mindset ... that kind of arrogance that belongs to the Third Reich."

MAILO SEGURA IS HANGED AT FAIRBANKS . . . PAYS PENALTY FOR MURDER OF GEORGE RILEY AFTER COLLAPSING ON SCAFFOLD
Anchorage Daily Times, April 18, 1921

involving torture, rape or kidnapping; murders of two or more people; murders for hire; murders of a child, policeman or correctional officer; murders of the governor of Alaska or president of the United States; murders by a person with a prior murder conviction.

Against such evidence the judge and jury would have to balance certain "mitigating circumstances." These would include murders committed under duress, murders by people coerced by accomplices, murders provoked by the victims. The mitigating factors would argue for a milder punishment.

If both judge and jury agreed on the death penalty in any given case, the sentence would be reviewed automatically by the Alaska Supreme Court. If the judgment withstood the appeal process, the initiative calls for the convicted person to be executed in Alaska either by lethal injection or firing squad.

"Our hope is that, if capital punishment is placed on the books in Alaska, it will never have to be used," says Moffatt. But if it is used, he says, capital punishment would be less expensive than incarcerating a person for life.

Opponents of the death penalty dispute both points. They say that capital punishment has never been shown to be an effective deterrent to murder; they say it has shown itself to be more expensive than life imprisonment.

Since Gary Gilmore was executed by a firing squad in Utah eight years ago, 48 other Americans have been executed. The annual rate has increased sharply in recent years. Yet America's high homicide rate hasn't been appreciably reduced, opponents say. What's needed, some supporters answer, is to execute more convicted murderers more quickly.

Both sides point to the Dakotas as cases that argue their position. In 1939, South Dakota adopted the death penalty and its homicide rate fell 20 percent over the next decade. But North Dakota continued without the death penalty for the same 10 years and homicides dropped 40 percent.

Longtime Alaska trial lawyer Wendell Kay, an opponent of the death penalty, says capital crimes actually used to increase in England on the day of a public hanging. "They used to hang pickpockets," Kay says. "And when they did, others would pick the pockets of the crowd watching the hanging."

"Capital punishment is supposed to be a great deterrent to murder," he says. "It isn't."

Pettyjohn, in turn, says he'd be satisfied with the deterrent power of capital punishment if "even one rapist decides against killing his victim for fear of being executed."

Whether it's a deterrent or not, no one disputes the fact that an increasing number of Americans — Alaskans included — support the death penalty. A Gallup poll found that 72 percent of Americans supported capital punishment in 1983, compared to 45 percent in 1964. More recently, an Associated Press poll found that 74 percent of Americans support the death penalty "under certain circumstances." In Alaska, the Dittman Research group reported last February that 77 percent of Alaskans favor capital punishment for the specific crimes of killing a policeman or murdering for hire.

If it comes, the death penalty wouldn't be totally foreign to Alaska. Capital punishment was allowed here in territorial days. It was seldom used. Government records indicate there were only eight legal executions during Alaska's 92 years as a U.S. possession (though a few additional Alaskans were extradited, tried and executed in Oregon before Alaska gained its own court system). All of the executions were per-



Nancy Imlach: "I was raised to believe that murder, no matter who was doing it, was wrong. I never felt that the state had any more right to kill anybody than anybody else . . . I don't trust the court system to not make mistakes."

formed by public hanging. The last occurred in Juneau 35 years ago. The Territorial Legislature abolished capital punishment in 1957.

Pestinger (an attorney, former legislator and treasurer of Alaskans for Justice), Moffatt and Pettyjohn are hoping their initiative will make Alaska the 39th state to adopt a death penalty.

It also would make Alaska one of few states to permit the use of a firing squad, a means of execution sometimes criticized as bloody and unreliable. (Death penalty scholars note numerous cases in which every member of a firing squad, either deliberately or through a case of nerves, missed their mark slightly — leaving the condemned man to slowly bleed to death. Next to hanging, allowed only in Utah, shooting is the least popular choice of execution open to condemned men and women in the United States.)

Pettyjohn himself has changed his mind on the subject. A capital punishment bill he introduced last legislative session would have executed prisoners either by hanging or lethal injection. The idea behind hanging, he said at the time, was to offer condemned men "a traditional alternative."

Since then he's switched his preference to a firing squad. A hanging that isn't conducted properly can result in "a very prolonged and

Continued on Page O-8

State Sen. Jan Falk:

"It's a drastic step, but my constituents think something has to be done. There's too many mass murders."

Runnin' on empty

BY SATCH CARLSON

Some call it art; neighbors call it old junk cars

Mah hort, as we say in Country-Western Land, is broke. My neighbors, they do not understand me; their aesthetic sense have deserted them.

They do not understand my sculpture.

Well, art is a subjective phenomenon, I suppose. I have had people stare at my Picasso poster for some time before they asked, "What's that thing? Looks like a naked fat lady." Which it is, I think. Probably done during Picasso's Reubenesque period, back before the invention of Metrecal.

So I suppose I should not have been so hurt, so surprised, when the man from the borough came by. The man from the borough has a hard job; when my neighbors start complaining about the appearance of my place, then the man from the borough has to come out and bell the cat, so to speak. It is his job to come and tell me that my sculptural vision has failed.

These people think it's trash.

Well, that has often been a reaction to art. "Heck, a 5-year-old KID could do something better than THAT!" they will exclaim, these arbiters of taste above the 60th parallel. But that's usually when they're faced with the realities of public funding, looking at something that offends them in their very pocketbooks, like "Nimbus" in front of the Capitol or an experimental show at the Visual Arts Center.

One's home, you may have thought, is one's castle.

Mine seems to be under siege.

Probably it was the dead cars. When you start accu-

mulating dead cars around these parts, people have a reasonable fear that you are going to start running a salvage yard. I had been collecting certain moribund automobiles for the last year or so with a higher purpose in mind: It is my intention to weld them together into a rising memorial to all things Spenardian.

In fact, the name of the sculpture is "The Passion and Ascension of St. Spenard," a testimony to the agonies of northern survival and its characteristic attributes. I figured to tilt up two dead cars, nose to nose, identical models if I could get them. Then I would add some soft-sculpture figures, bodies in various postures in and about the automotive components of the sculpture, perhaps bearing realistic wounds.

To make some sort of political statement, I had thought to accompany the sculptural mass with a sign, a crudely lettered sheet of plywood reading, "A DRUNK DRIVER DID THIS!" Then I would surround the whole affair with about half an acre of beer bottles, which I had been collecting for some time, as you never can tell when you might need them.

But my neighbors have changed all that!

Once I got over the shock of being visited by The Man from the Borough, my first reaction was to hire a team of wolverines and get rid of everything on my property that didn't fit in with the natural aspects of the sylvan wilderness that constitutes this subdivision. I figured I would hire me a landscape architect to bring my property more into line with the prevailing standards. I would buy myself

some airplane floats to sit in the front yard, or rent a few tractor-trailer rigs for the driveway in order to emulate the fellow down the hill. After all, I don't really want to offend these people, because they are, after all, my neighbors.

On the other hand, this is not an area noted for its neighborly ways.

I have owned this piece of dirt for nigh unto 15 years, you see, and I have met only a couple of people in these parts. There are the people living next door, and they are quiet and gracious and keep to themselves. I do not think they are the ones who complained to the borough, because they seem to be the kind of neighbors who could bring up such a delicate matter as their misunderstanding of these great heaps of debris in my yard over a neighborly cup of coffee or something.

There is also Wayne Anthony Ross, who lives down the road a piece in a fudor castle. He is the one who bailed me out of a snowbank a while back. I do not think W.A.R. would complain about me to the borough. I think if W.A.R. had any complaint he would make it in person, perhaps driving me into the ground by way of emphasis.

Maybe it was the people with the chickens.

There are these people around here who see themselves as gentleman farmers, you see, and there is a rooster who occasionally wakes me from a sound slumber. Put I do not complain, because I appreciate the sculptural possibilities of a chicken.

Maybe it was somebody with a dog.

Most of these people own dogs, you see, and the job of the dogs is to run around biting joggers and raiding my garbage cans. When they are not doing these things, the dogs are allowed to take a break by harmonizing with one another. I never complain about these irritating dogs, because they, too, may be art. To somebody, anyway.

So I have not decided whether to pursue my original artistic intent or to plant Astroturf. But I'm really worried about what these people will do when the flamingos arrive.

□ Satch Carlson's column did not arrive this week. This old column appeared in *We Alaskans* June 10, 1983.

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Death: The Ultimate Penalty

Alaska makes the choice

By GEORGE BRYSON

There is a simple plywood chair. Behind it is a wall protected by sandbags. The guards walk the man to the wall and strap him in the chair.

A doctor listens to the man's heart with a stethoscope. He marks its center with a bull's-eye — a black, cloth circle about the size of an apple that he pins to the man's shirt. The prisoner stares forward.

There is nothing to see. The opposite wall is shielded from view by a canvas enclosure. Behind it six Alaska state troopers stand armed with .30 caliber rifles. One of the six rifles contains a blank, so no trooper will be certain of having fired the fatal shot.

The state commissioner of public safety asks the man if he has anything to say. He does not. A black cloth sack is slipped over his head. Rifle barrels extend through slits in the canvas. The black hood shields everything from the man's sight. He cannot see his executioners; they cannot see his eyes. The commissioner gives the order. The rifles thunder in unison.

The man jerks violently, involuntarily. Nerves and muscles contract at the sudden loss of blood. After a minute has passed a doctor walks to the chair to check the man's heart for a pulse. There is no heart left to check — it has been shot away. The doctor declares the man dead. □

Fritz Pettyjohn, Sam Pestinger and Bill Moffatt are three men with a mission. Their goal is to return the death penalty to Alaska. Their plan is to gather enough signatures on their petitions to qualify a capital punishment initiative for the

ballot. Their hope is to do all this in time for next year's general election.

Pettyjohn, an Anchorage lawyer and Republican state legislator, says his group — Alaskans for Justice — will easily get the 22,000 signatures needed to qualify an initiative for the ballot. The only question is when. The group has a year to secure enough signatures to make the 1988 election; it has only until December to make the deadline for next year's election.

"I think we can do it," Pettyjohn says. "We're getting calls from a lot of people who want to circulate it. There's a lot of enthusiasm."

Alaskans for Justice already has about 500 supporters circulating its petitions, Pettyjohn says. They're canvassing shopping malls, city streets, neighborhood meetings — wherever they can find people who favor the death penalty. On a recent weekend, the petitioners worked the crowd on hand to greet Vice President George Bush.

Most of the group's sponsors (a list of 100 official supporters is required by law) are Republicans. Alaskans for Justice secretary Bill Moffatt said about a dozen legislators, all of them Republicans, have signed on as sponsors. Among them is state Sen. Jan Faiks, R-Anchorage. Faiks says she believes the death penalty will help prevent violent crime in Alaska. "It's a drastic step," she says, "but my constituents think something has to be done. There's too many mass murders."

If it's approved, the new law would give a judge — with the recommendation of a jury — the power to sentence a person to death for murders with certain "aggravating circumstances." The initiative defines these as murders

SECTION IV: THE DEATH PENALTY: SHOULD IT BE ADOPTED?

INTRODUCTION

The second subject that the Prosecution Committee was asked to address is the proposed change in Alaska criminal law providing for capital punishment. This subject was raised in the last legislative session by Senate Bill 119 and by House Bill 163. In addition, there is a death penalty initiative drive sponsored by a group known as Alaskans for Justice. They hope to put the question directly to the voters on the 1986 ballot.

As one might expect, the information on this subject is voluminous. However, when all of the articles, editorials, studies, and statistics are distilled and separated from their excess verbiage, the arguments pro and con are always the same.

There is no single subject matter guaranteed to raise more emotional fervor than the concept of taking a convicted felon's life as punishment for his or her crimes. There is a universal tendency for those in favor of capital punishment to express concern for the safety of the community and the rights of the victims. The tendency of those opposed to capital punishment invariably is to focus on the plight of the criminal.

For the reasons discussed below, this committee, although divided, finds in favor of the community and the innocent victim and supports the death penalty as proposed. This endorsement is based upon the assumption that the statute in question can pass Constitutional muster. It also is assumed that all procedural safeguards will be afforded the accused and that the ultimate penalty will be reserved for crimes which represent the ultimate affront to human decency.

HISTORY

Historically, the use of capital punishment has been seen at some point in all societies since man walked the earth. The methods used and the justifications for employing the death sentence are as numerous and as varied as the human imagination can conceive.

In the United States, according to the U.S. Justice Department Statistics Bureau, between 1930 and 1972, 3,859 executions were carried out under civil authority. Of this total, about 3,829 were carried out by 42 states and the District of Columbia. The remainder took place under federal jurisdiction.

Then in 1972 a highly divided United States Supreme Court handed down its landmark decision in *Furman vs. Georgia*, 408 U.S. 238 (1972). That decision had the effect of invalidating the capital punishment statutes which existed in most states. In 1975, however, the Supreme Court approved death penalty legislation which had been enacted in Florida, Georgia, and Texas. By 1980 approximately 37 states had capital punishment laws in effect.

Anchorage Chamber of Commerce Crime Commission

(Eighteen provide for electrocution, ten for lethal gas, four for hanging, and four for lethal injection. Utah permits the condemned prisoner the choice of hanging or firing squad.) As of June 30, 1984, there had been about 20 executions pursuant to these statutes.

THE ALASKA PROPOSAL

Senate Bill 119 and House Bill 163 were introduced in the last legislative session which would make capital punishment a part of Alaska's criminal justice system. Both bills generally follow the form which has cleared Constitutional hurdles in other states. They are virtually identical in form with the exception of methodology.

Basically, under both bills, capital punishment would be available for mass murder, murder involving torture, contract murder, and murder of a law enforcement officer. The Senate bill specifies execution by firing squad or by lethal injection at the election of the Commissioner of Corrections. The House bill specifies hanging or lethal injection at the election of the prisoner.

The initiative drive proposed by Alaskans for Justice proposes the death penalty for situations where:

1. The defendant "manifested deliberate cruelty to another person involving rape, kidnapping or torture by mutilation."
2. The defendant killed two or more people other than his accomplices.
3. The defendant had a prior conviction for murder.
4. The defendant knowingly directed the offense at the President of the United States or the Governor of Alaska.
5. The defendant killed a law enforcement or correctional officer who was acting in the line of duty.
6. The defendant killed a child nine years old or younger during the commission of the offense.

The initiative proposes to give the condemned prisoner a choice between the firing squad or lethal injection.

Anchorage Chamber of Commerce Crime Commission

THE TRADITIONAL ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

Those in favor of the death penalty traditionally advance three arguments. They are:

1. Retribution of society, for itself and on behalf of the victim, for the crime committed by the accused.
2. Deterrence of other potential criminals by example.
3. Social reform as a part of advising members of society as to what is to be considered acceptable behavior.

Opponents of capital punishment argue the following:

1. The possibility of error in the criminal justice system may send an innocent party to his death.
2. The death penalty as administered in the past has resulted in racial discrimination.
3. The manner in which the death penalty is handled often appears to be arbitrary.
4. Imposition of the death penalty is a cruel and unusual act.
5. Most persons subjected to the death penalty are provided with unfair legal representation.
6. The death penalty is too extreme compared to the less restrictive alternative of life imprisonment.
7. The cost of execution ultimately is greater than life imprisonment.
8. There is no deterrent effect to capital punishment since it is carried out too infrequently and since "violence begets violence."

The rationale of the arguments on both sides is self evident. We should note that each of these concepts has been addressed in-depth by the nation's top jurists, and the death penalty continues to prevail with the appropriate legislation. The opposing arguments consistently have been found to have no logical or legal foundation. This is true so long as the requisite procedural safeguards protect the accused's rights before conviction. However, some of the opposing arguments justify being addressed here in a summary fashion.

First, it is unreasonable to argue that society has a right to retribution up to but not including the death penalty. If that right exists, then there must be some relationship between the defendant's conduct and the penalty created. There are some crimes which can only result in the death penalty if retribution is to be a viable concept at all.

Anchorage Chamber of Commerce Crime Commission

Second, in view of world history it is a fallacy to contend that capital punishment is cruel and unusual. This argument also fails to consider the cruel and unusual act which the defendant committed to justify consideration of execution in the first instance.

Third, in deference to those opposed, we could find no reliable statistics that there was a deterrent effect on other members of the criminal population by the use of capital punishment. However, capital punishment certainly deters the subject at hand from further violent conduct. The death penalty also relieves society from the threat of escape or parole and curtails the expense of maintaining the individual for the rest of his or her life. We note the historical fact that serious offenders have been released from incarceration for one procedural reason or another while presumably serving a life sentence.

Finally, the question of costs must be considered. Admittedly there are additional expenses leading up to execution. These would include the costs of courts and attorneys during trial, sentencing, appeal, retrial, and reappeal, etc. However, the statistics reflect that these expenses are going to exist when, as now, an individual is convicted of a serious felony and faces only a life sentence.

It must be noted that Alaska would incur certain start-up expenses for a capital punishment program. The fiscal note prepared by the Department of Corrections to support Senate Bill 119 suggests that construction of a 12-bed death row facility would cost approximately \$137,000 per bed for a total of \$1,644,000. Then there would be maintenance costs for the facility which are projected to hit the \$1 million mark by year 1989. While this sounds expensive, one must consider what would be done with the individual if he or she were sentenced to life. We cannot conclude that it is any less expensive to build facilities to house inmates for life without even considering the cost of their continued maintenance. At least, with a death row facility, there will be occasional vacancies as sentences are carried out.

POSITION TAKEN BY VARIOUS SECTORS OF THE COMMUNITY

The Prosecution Committee made an attempt to ascertain the position of various members of the community. We found the following:

1. The Executive Branch of the state government, specifically the Governor and his Cabinet, apparently have taken no formal position on the death penalty. However, informally the government is thought to be opposed to capital punishment. Thus, when queried, there was a party line taken by the Department of Public Safety and the Department of Law. Although the position was informal, we can only conclude that these branches of government are not in favor of adopting capital punishment.

Victor Krumm, District Attorney for the Third Judicial District, adopted that informal party line as a member of the Department of Law. Mr. Krumm did state that certain members of his own staff are so violently opposed to capital punishment on a philosophical basis that he would not be able to assign them a capital case if the statute were to be enacted. However, if there were a valid state statute calling for capital punishment, he assured us that it would be enforced.

Anchorage Chamber of Commerce Crime Commission

2. Since most members of the law enforcement community noted the political nature of this subject, there was great reluctance to comment on a formal basis. There also was a desire expressed by most members of the law enforcement community to maintain distance between their function and the ultimate disposition of the criminal. The president of the Alaska Association of Chiefs of Police and both the president for the local chapter and the state-wide Alaska Peace Officer's Association indicated that their organizations had taken no formal position. Each agreed to poll their members as soon as practical. Our investigation showed, almost without exception, however, that persons involved in law enforcement endorsed the death penalty on a personal basis.
3. According to a recent American Bar Association poll, 68 percent of the lawyers surveyed favored capital punishment. We could find no statistics which accurately reflected the position of the majority of Alaska lawyers.
4. Reliable and informative statistics on the position of the general public in Anchorage and in Alaska generally were not available.

JUSTIFICATION FOR RECOMMENDING THE DEATH PENALTY

FBI crime statistics show Alaska to be one of the most violent states in the country. While serious crime declined generally in the United States for the third straight year in 1984, Anchorage saw a 4.9 percent increase. We have more than our share of mass murders and mayhem. With the great influx in population, that type of conduct must be resisted or it will continue. While the execution of one murderer might not deter the next potential criminal, we need to let the violent element of society know that we will take them on, one at a time if necessary, to protect our lives and those of our families. As a result, the Prosecution Committee supports adoption of the death penalty in Alaska.



Official Business

Alaska State Legislature

Senate

Senator Paul Fischer

file

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator Bettye Fahrenkamp, Chairman
Senate Hess Committee

FROM: Senator Paul Fischer *P.F.*

DATE: February 13, 1986

SUBJECT: Senate Bill 119

I appreciate your agreeing to hear Senate Bill 119 within the next several weeks. I will not be submitting a new Capital Punishment bill as was previously planned.

It appears that I will be unable to be present for the HESS committee meeting on Tuesday, February 27, 1986. As such, I would appreciate it if the bill was not heard on this day. I'd like to suggest Tuesday, February 4, 1986. Please let me know if this is not acceptable.

Again thank you for your efforts. I realize your HESS committee will be taxed for time with the added confirmation hearings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill 119
Title : "An Act Authorizing Capital Punishment"

Sponsor : Senator Paul Fischer
Requestor : Senator Paul Fischer
Date of Request : _____

FISCAL DETAIL

Agency Affected : Department of Corrections
BRU : Operations

Components : Spring Creek Correctional Center

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES			458.6	972.2	1030.6	1092.4
TRAVEL			3.6	6.3	6.7	7.8
CONTRACTUAL			4.2	8.9	9.4	10.0
SUPPLIES			3.6	7.5	8.1	8.6
EQUIPMENT			2.8	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	472.8	995.0	1054.8	1118.8

CAPITAL	-0-	2095.3	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	2095.3	472.8	995.0	1054.8	1118.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2095.3	472.8	995.0	1054.8	1118.8

POSITIONS :

FULL-TIME	-0-	-0-	18	18	18	18
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : William W. Ladwig
Division : Administrative Services

Phone : 465-3376
Date : 12-11-85

Approved by Commissioner : [Signature]
Agency : Department of Corrections

Date : 12-11-85

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS

A. Assumptions:

Enactment of Senate Bill No. 119 would change the State law to permit capital punishment for the crime of murder in the first degree. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 6 to 7 years. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two additional fixed guard posts to be created and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 Correctional Officers II plus 1 Supervisor Correctional Officer III for each post.
4. Inflation is estimated at 6% per year.
5. The unit will be available for occupancy January 1988.

B. Estimated Costs

1. Capital Expenditures
 - a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
 - b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

Analysis (continued)

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$305.08 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building.

<u>Area Identification</u>	<u>Square Footage</u>	
Secure Control Room	120	
20 cells w/commodes @ 80 sq. ft. per cell	1600	
Day room/Dining area	300	
Shower Rooms (Male, Female)	140	
Counseling/Attorney Room	120	
Secure visiting room	90	
Sallyport	75	
Hot cart/storage	80	
Exercise area (inside)	80	
Execution chamber/anteroom	600	
Net Area	<u>3,205</u>	sq. ft.
	x 1.6	net to gross area factor
Gross Area	<u>5,128</u>	sq. ft.
	x \$305	
	\$ <u>1,564,040</u>	bldg. cost 10/81
	22,767	secure outdoor rec. yard
	\$ <u>1,586,807</u>	bldg. & yard
	476,042	30% admin/ overhead factor
	<u> </u>	
Total Projected Cost	<u>\$ 2,062,849</u>	

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1988 due to time needed for construction so funds are included for only six months of FY88.

Position Title Correctional Officer II			No. of Positions 15	Range/Step 13B	Barg. Unit GGU	Gov.	Approv.	Disapp.														
Time Status PFT	Staff Months 90	RP Number	Location Anchorage		Election District	Leg.																
Type of Expenditure			Justification																			
1	2	3	<p>This facility, even though attached to an existing institution, would require two additional fixed guard posts and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week will require 5 Correctional Officers II. Three added posts will require 15 CO II for one-half of FY88 as follows.</p> <table> <tr><td>\$18,014</td><td>for salaries</td></tr> <tr><td>7,095</td><td>benefits</td></tr> <tr><td><u>25,109</u></td><td></td></tr> <tr><td>200</td><td>travel (staff training)</td></tr> <tr><td>200</td><td>standard (\$400 each per year)</td></tr> <tr><td>150</td><td>equipment</td></tr> <tr><td><u>\$25,659</u></td><td></td></tr> </table>						\$18,014	for salaries	7,095	benefits	<u>25,109</u>		200	travel (staff training)	200	standard (\$400 each per year)	150	equipment	<u>\$25,659</u>	
\$18,014	for salaries																					
7,095	benefits																					
<u>25,109</u>																						
200	travel (staff training)																					
200	standard (\$400 each per year)																					
150	equipment																					
<u>\$25,659</u>																						
Salary	270,210																					
Benefits	106,425																					
Premium Pay																						
Other																						
Total Personal Services		376,600																				
Travel		3,000																				
Contractual																						
Commodities		3,000																				
Equipment		2,300																				
Other																						
Total Cost		384,900																				
Receipt Code	Funding Source																					
	Federal Receipts	1002																				
	G. F. Match	1003																				
	General Funds	1004	384,900																			
	I-A Receipts	1005																				
	Program Receipts	1028																				
	CIP Receipts	1061																				
	Other																					
For B&M Use Only																						
Key Number _____																						

**Request For
New Position**

Agency Department of Corrections
 BRU Operations
 Component Hiland Mountain C.C.

Page 4 of 5
 Revised Date 12/2/85

FY 87

Position Title Correctional Officer III			No. of Positions 3	Range/Step 15A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 18	RP Number	Location Anchorage	Election District	Leg.			
Type of Expenditure			Justification					
		Amount	Three Supervisory Correctional Officer III will be required to fill the compliment for the three added posts in addition to the fifteen Correctional Officer II.					
1	2	3	One-half year costs for these positions are as follows:					
Salary	58,770		\$19,590 salary					
Benefits	23,271		7,757 benefits					
Premium Pay			27,347					
Other			200 travel (staff training)					
Total Personal Services		82,000	200 commodities @ standard \$400 each per year					
Travel		600	150 equipment					
Contractual			\$27,897					
Commodities		600						
Equipment		500						
Other								
Total Cost		83,700						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		83,700					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Corrections
 BRU Operations
 Component Hiland Mountain C.C.

FY 87

Page 5 of 5
 Revised Date 12/2/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 119
 Title: "An Act authorizing capital punishment..."
 Sponsor: Sen. P. Fischer
 Requestor: Sen. P. Fischer
 Date of Request: 2/6/85

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution, OSPA

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING				138.2	173.0	181.7
100 PERSONAL SERVICES				35.0	36.8	38.6
200 TRAVEL				109.8	115.3	121.1
300 CONTRACTUAL				9.5	6.3	6.6
400 SUPPLIES				14.5		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING				307.0	331.4	348.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND				307.0	331.4	348.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Please see attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 2/21/85
 Approved by Commissioner: Norman C. Gorsuch Date: 2/21/85
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death.

The Department of Law estimates that three or four first degree murder convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates it will probably attempt to obtain the death penalty in one or two additional first degree murder cases, where it may not be successful. Although the bill provides for a straight forward appeals process to the Alaska Supreme Court, capital sentences will result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues that are available to defendants in capital cases in the federal

court system. That system includes original applications to the U.S. District Court, appeals from these proceedings to the U.S. Circuit Court of Appeals, and further appeals from both state and federal proceedings to the U.S. Supreme Court. Typically, appeals move both up and down through the federal system on remands for rehearings and additional fact finding. Consequently, it should be expected that years can pass before a capital sentence is carried out.

Based on these considerations, at least two full-time attorneys, together with support elements, will be required to handle sentencing trials, and the appeals that result from death sentences. The department also estimates that constitutional law experts will also be required to defend against challenges to the state's method of execution under the cruel and unusual punishment doctrine. Such challenges should be expected during the first one or two years after the provisions of this bill go into effect.

Fiscal note costs include witness travel and subsistence (\$20.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0), which is a new required expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

Cost Summary

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100</u> - Salaries & Benefits (10 months - first year)	56.5	56.5	25.2	138.2
<u>200</u> - Travel				
Witness travel and subsistence for sentencing trials	10.0	10.0		
Travel instate for sentencing trials and out-of-state trial to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court.	7.5	7.5		
	<u>17.5</u>	<u>17.5</u>	<u> </u>	35.0
<u>300</u>				
Communications, copy & document production	3.0	3.0	2.0	
U.S. Supreme Court and U.S. Court of Appeals brief printing	15.0	15.0		
Expert witness	30.0	30.0		
Office space leases	4.1	4.1	2.2	
WP Maintenance			1.4	
	<u>52.1</u>	<u>52.1</u>	<u>5.6</u>	109.8
<u>400</u> - Commodities				
Office consumables	1.0	1.0	1.0	
Law Library	1.0	1.0		
New Position Supplies	1.5	1.5	1.5	
	<u>3.5</u>	<u>3.5</u>	<u>2.5</u>	9.5
<u>500</u> - Equipment				
New Position Equipment	1.5	1.5	1.5	
Word Processor			10.0	
	<u>1.5</u>	<u>1.5</u>	<u>11.5</u>	14.5
TOTAL	131.1	131.1	44.8	307.0

Costs beyond FY 88 have been adjusted to increase annual period from 10 months to 12 months, eliminate single-time new position costs, and add a 5% inflation factor.

1.	POSITION TITLE ATTORNEY IV				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary 4,464 X 10		44,640							
6.	Benefits @ 15.61%		6,983							
7.	Supplemental Benefits Max		2,680							
8.	Fixed Benefits 219.35 X 10		2,194							
9.	TOTAL PERSONAL SERVICES		01		56,497					
10.	Travel		02		17,500					
11.	Contractual		03		52,100					
12.	Commodities		04		3,500					
13.	Equipment		05		1,500					
14.	Other									
15.	TOTAL COST				131,097					
	RECEIPT CODE		FUNDING SOURCE							
16.			Federal Receipts 1002							
17.			G.F. Match 1003							
18.			General Funds 1004		131,097					
19.			I-A Receipts 1005							
20.			Program Receipts 1028							
21.			Other							
FOR B&M USE ONLY										
KEY NUMBER _____										

This is the first of two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.

REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

Page 1 of 1
Revised Date _____

FY 86

1.	POSITION TITLE ATTORNEY IV				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2		3				
	PERSONAL SERVICES									
5.	Salary	4,464 X 10		44,640						
6.	Benefits	@ 15.61%		6,983						
7.	Supplemental Benefits	Max		2,680						
8.	Fixed Benefits	219.35 X 10		2,194						
9.	TOTAL PERSONAL SERVICES			01	56,497					
10.	Travel			02	17,500					
11.	Contractual			03	52,100					
12.	Commodities			04	3,500					
13.	Equipment			05	1,500					
14.	Other									
15.	TOTAL COST				131,097					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		131,097						
20.		I-A Receipts 1005								
21.		Program Receipts 1020								
		Other								
FOR O&M USE ONLY KEY NUMBER _____										

This is the second of two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.

**REQUEST FOR
NEW POSITION**

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

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Revised Date _____

FY 86

1.	POSITION TITLE LEGAL SECRETARY I			RANGE/STEP 10B	DARG. UNIT G	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This Legal Secretary position is needed to provide office services support for the two attorneys who will handle capital punishment trials and appeals that arise from death sentences. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs at both the state and federal levels, requiring full-time secretarial support.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary 1.893 X 10		18,930						
6.	Benefits @ 15.61%		2,955						
7.	Supplemental Benefits 6.13%		1,160						
8.	Fixed Benefits 219.35 X 10		2,194						
9.	TOTAL PERSONAL SERVICES		01	25,239					
10.	Travel		02						
11.	Contractual		03	5,600					
12.	Commodities		04	3,500					
13.	Equipment		05	11,500					
14.	Other								
15.	TOTAL COST			45,839					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		45,839					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR BGM USE ONLY									
KEY NUMBER _____									

**REQUEST FOR
NEW POSITION**

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

Page 1 of 1
Revised Date _____

FY 86

Introduced: 2/1/85
Referred: Health, Education &
Social Services, Judiciary
and Finance

BY PETTYJOHN, JENKINS, SHULTZ
TAYLOR, MARROU AND GRUENBERG

1 IN THE HOUSE

2 HOUSE BILL NO. 163

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
8 establishing sentencing procedures for capital felo-
9 nies."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 11.41.100(b) is amended to read:

12 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
13 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

14 * Sec. 2. AS 12.55 is amended by adding a new section to read:

15 Sec. 12.55.115. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)
16 In every case in which the jury has returned a verdict or finding
17 imposing the death penalty, the defendant shall be considered to have
18 made an application for modification of the verdict or finding under
19 Criminal Rule 35. In ruling on the application, the judge shall
20 review the evidence, consider, take into account, and be guided by the
21 aggravating and mitigating circumstances referred to in AS 12.55.180 -
22 12.55.181, and shall make a determination as to whether the jury's
23 findings and verdicts that the aggravating circumstances outweigh the
24 mitigating circumstances are contrary to law or the evidence present-
25 ed. The judge shall set out the reasons for these findings.

26 (b) A judgment of conviction of a capital felony for which a
27 sentence of death is imposed is subject to automatic review by the
28 supreme court within 60 days after imposition of the sentence. This
29 time limit may be extended by the supreme court. A review under this

1 section has priority over all other cases and the case shall be heard
2 in accordance with rules adopted by the supreme court. The review
3 shall include a determination of whether

4 (1) the sentence was imposed under the influence of pas-
5 sion, prejudice, or other arbitrary factor;

6 (2) the evidence supports the finding of an aggravating
7 factor under AS 12.55.180; and

8 (3) the sentence is excessive or disproportionate to the
9 penalty imposed in similar cases, considering both the crime and the
10 defendant.

11 (c) If the supreme court upholds a judgment of conviction and
12 sentence of death, the court shall specify the time of execution and
13 the correctional facility in which the execution shall take place.

14 * Sec. 3. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of a capital felony [MURDER IN THE
16 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
17 at least 20 years but not more than 99 years or shall be sentenced to
18 death.

19 * Sec. 4. AS 12.55 is amended by adding new sections to read:

20 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)
21 When, after a trial by jury, a defendant is convicted of a capital
22 felony, the court shall conduct a separate sentencing proceeding
23 before the trial jury as soon as practicable. If a jury trial has
24 been waived, or if the defendant pled guilty, the sentencing proceed-
25 ing shall be held before a jury impaneled for the purpose.

26 (b) In the sentencing proceeding evidence may be presented as to
27 any aggravating or mitigating factor that the court considers to have
28 probative value regardless of the admissibility of the evidence under
29 the exclusionary rules of evidence, provided the defendant has an

1 opportunity to rebut hearsay statements. The state and the defendant
2 or the defendant's counsel shall be permitted to present oral argu-
3 ment. This subsection does not authorize the introduction of evidence
4 secured in violation of the Constitution of the State of Alaska or the
5 Constitution of the United States.

6 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The jury,
7 after considering the evidence shall enter a sentence of death or a
8 term of imprisonment in accordance with AS 12.55.125(a). If the jury
9 enters a sentence of death, it shall make written findings of

10 (1) aggravating factors that exist to justify the sentence;
11 and

12 (2) mitigating factors considered by the jury.

13 (b) A judgment of conviction for which a sentence of death is
14 imposed is subject to automatic review under AS 12.55.115.

15 Sec. 12.55.180. AGGRAVATING FACTORS. The death sentence may not
16 be imposed unless at least one of the following aggravating factors is
17 found to exist and is not outweighed by mitigating factors:

18 (1) the defendant's conduct during the commission of the
19 offense manifested deliberate cruelty to another person in that it
20 involved torture or an aggravated battery;

21 (2) the defendant's conduct created a risk of imminent
22 physical injury to three or more persons, other than accomplices;

23 (3) the defendant has a prior conviction for a felony that
24 involved the use of violence to a person;

25 (4) the defendant committed the offense pursuant to an
26 agreement that the defendant either pay or be paid for the commission
27 of the offense, or for other pecuniary gain;

28 (5) the defendant was on release for another felony charge
29 or conviction having assault as a necessary element;

1 (6) the defendant knowingly directed the conduct constitut-
2 ing the offense at an active officer of the court or at an active or
3 former judicial officer, prosecuting attorney, law enforcement offi-
4 cer, correctional employee, or fireman during or because of the exer-
5 cise of official duties;

6 (7) the defendant was a member of an organized group of
7 five or more persons, and the offense was committed to further the
8 criminal objectives of the group.

9 Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not
10 be imposed if mitigating factors are found to outweigh aggravating
11 factors. All mitigating factors shall be considered including the
12 following:

13 (1) the defendant committed the offense under some degree
14 of duress, coercion, threat, or compulsion insufficient to constitute
15 a defense, but which significantly affected the defendant's conduct;

16 (2) the conduct of a youthful defendant was substantially
17 influenced by another person more mature than the defendant;

18 (3) the defendant acted with serious provocation from the
19 victim;

20 (4) the defendant assisted authorities to detect or appre-
21 hend other persons who committed the offense with the defendant.

22 * Sec. 5. AS 22.07.020(a)(1) is amended to read:

23 (1) criminal prosecution, except prosecution for a capital
24 felony for which a death sentence is imposed;

25 * Sec. 6. AS 22.07.020(b) is amended to read:

26 (b) Except for appeals of a death sentence, the [THE] court of
27 appeals has jurisdiction to hear appeals of sentences of imprisonment
28 imposed by the superior court on the grounds that the sentence is
29 excessive or too lenient and, in the exercise of this jurisdiction,

1 may modify the sentence as provided by law and the state constitution.

2 * Sec. 7. AS 33.30 is amended by adding a new section to read:

3 Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. (a) The
4 commissioner shall establish a procedure for the execution of a sen-
5 tence of death ordered by the state supreme court, at the time and
6 place legally appointed.

7 (b) The punishment of death shall be inflicted either by hanging
8 by the neck until death is pronounced by a licensed physician or, at
9 the election of the defendant, by continuous, intravenous administra-
10 tion of a lethal dose of sodium thiopental until death is pronounced
11 by a licensed physician.

12 (c) A death sentence shall be carried out within a state correc-
13 tional facility.

14

MAR 1 1986

3211 Providence Drive
Anchorage, Alaska 99508
(907) 786-1810

SCHOOL OF JUSTICE

March 5, 1986

The Honorable Bettye M. Fahrenkamp
Chair, Health, Education and Social Services
Alaska State Senate
Room 125, Capitol Building
Pouch V (MS 3100)
Juneau, AK 99811

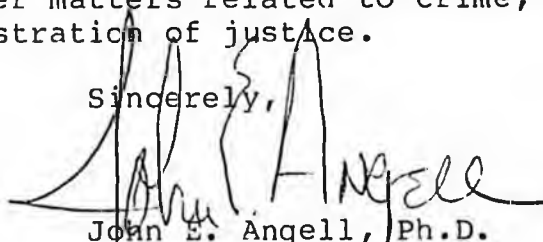
Dear Senator Fahrenkamp:

Commissioner Endell asked me to prepare and send to you the enclosed summary of arguments against instituting a death penalty.

I have also included a rather out-of-date brochure which contains information about our Justice Center operation that may be of interest to you.

Please feel free to contact me or any of the School of Justice faculty if we can provide additional information related to the death penalty or other matters related to crime, criminology, penology or the administration of justice.

Sincerely,



John E. Angell, Ph.D.
Dean

JEA:pb
Enclosure

SUMMARY OF ARGUMENTS
AGAINST INSTITUTING
A DEATH PENALTY

Compiled
By

School of Justice
University of Alaska, Anchorage
Anchorage, Alaska 99508

February 1986

DEATH PENALTY
OPPOSITION ARGUMENTS

There is extensive literature related to the death penalty. Public opinion over a period of time on the issue seems to be somewhat volatile having fluctuated back and forth over the past fifty years between a majority opposed to use of the death penalty and a majority in favor of it. A 1981 national poll by ABC News - Washington Post (ABC News, 6-8-81) provides the following explanations which are given as a basis for their positions by the opponents and supporters of the use of capital punishment.

1. Why do you favor the death penalty?

- | | |
|--|-----|
| ° Revenge - eye for eye | 42% |
| ° It deters crime | 35% |
| ° Prison does not rehabilitate - murderer
may get out and do it again | 22% |
| ° Criminals get off too much | 9% |
| ° Other | 11% |
| ° Don't know | 4% |

2. Why don't you favor the death penalty?

- | | |
|---|-----|
| ° Taking another life won't solve anything | 38% |
| ° Moral-religious reasons | 33% |
| ° Legal system is not equitable | 11% |
| ° Life in prison with no parole is more effective | 10% |
| ° Death penalty not a deterrent to murders | 10% |
| ° People can be rehabilitated | 8% |
| ° Other | 25% |
| ° Don't know | 2% |

The arguments frequently used to oppose the death penalty include:

- ° Capital punishment is wasteful of public funds and resources. It requires a disproportionate expenditure of time and energy

by courts, prosecutors, defense attorneys, juries, court-rooms, correctional personnel and institutions. Special detention facilities are required for those facing a death penalty charge; unique security and surveillance methods require additional correctional staff; special facilities, equipment and correctional personnel are needed to perform executions.

Prisoners sentenced to death are encouraged to and facilitated in exhausting every imaginable avenue of relief and the state must foot both the appellant actions and the government's response. Procedural, substantive, and sentence appeals are made in state courts; habeas corpus petitions are filed in federal courts, multiple appeals are made for U. S. Supreme Court review, more post conviction requests for review are filed in state and federal courts, and various requests are made for sentence commutation. Such actions are far more extensive than for a person sentenced to life and those accused of murder are accorded especially conscientious, time consuming scrutiny by all involved. Consequently, based on research elsewhere, the costs per execution exceed the costs of maintaining a convicted person in an institution for life.

Since those facing execution automatically receive higher priority handling by prosecutors, courts and corrections, other work by these agencies is postponed. The prosecution of other laws will suffer and the civil matters in courts are delayed. Hence the death sentence unduly burdens the criminal justice system.

- Capital punishment may actually stimulate intentional murder because it provides incentives for (1) deranged publicity seekers such as John Hinkley or terrorists who seek wide public attention, (2) suicidally-inclined persons who will commit murder in an effort to obtain state assistance with self-destruction, and (3) happenstance murderers who will be tempted to eliminate police officers and witnesses who can bring about their arrests and subsequent convictions and executions.
- Imprisonment for life is as effective as the death penalty in deterring capital crimes. The theory that the death penalty is more effective is founded on wish, not fact. The country's best researchers have failed to find substantive evidence of a deterrence advantage for capital punishment. The one researcher, an economist, who has claimed to have found evidence of a minor deterrent resulting from capital punishment, has been discredited by major flaws in his research design and statistical methods. One possible reason the death penalty is not an effective deterrent may lie with the necessary procedural safeguards and inherent discrepancies in conviction and sentencing processes. Under the American system of justice, death sentences cannot be consistently and promptly employed. It is not uncommon for two accomplices in a capital offense to receive different sentences if they are tried separately. In Texas recently a

murderer who actually committed the homicide received a life sentence while his accomplice who personally killed no one was executed. Consequently, only a small proportion of all murderers is sentenced to death and even fewer executed.

- Most homicides are the result of impulsive acts committed by people who either cannot or do not care about the consequences to themselves. In fact, research supports a conclusion that the same circumstances which precede the commission of suicide also surround many homicides. Those who actually plan homicides expect to, and usually do, escape detection. It is difficult to imagine how people in either of these groups will be deterred any more by threat of death than by threat of life in prison.
- Juries are often more reluctant to arrive at a guilty verdict in a case involving the death penalty than in a case in which the maximum penalty is life in prison.
- Despite its safeguards the criminal justice system regularly makes mistakes. On occasion, such as with Johnny Ross, the Louisiana 16-year-old who was awaiting execution in the early 1980s when a private investigator found his blood type did not match that of the murderer, some innocent people who are sentenced to death are released before execution; however, frequently they are not. One study has purported to document 75 instances in America since the turn of the century when innocent people have been executed.
- The death penalty tends to be an instrument of totalitarian, despotic governments rather than democratic societies. The trend among the most respected countries in the free world has been toward the abolition of capital punishment. Some claim that imposition of the death penalty is inconsistent with the fundamental values of American democracy, and the state should not arrogate unto itself the power to ceremoniously, with premeditation, kill a citizen in the names of all other citizens.
- Capital punishment is an unnecessary penalty. It is a barbaric relic of more primitive days when slavery, branding and mutilation were commonplace. It receives its greatest support from the uneducated. Alternative, less cruel penalties which effectively satisfy the legitimate goals and needs of the society are available in place of the death penalty.
- The worst and most dangerous criminals are rarely the ones executed. The death penalty is applied discriminately at best and randomly at worst. It is imposed almost exclusively on racial minorities, the poor and the uneducated. Those who receive it normally have had long histories of being abused children, having mental disorders, and having been socially rejected and economically deprived. The socially connected and economically well-heeled are almost never awarded a death penalty. Despite the frequently discussed instances of

planned mob murders, no members of organized crime have been executed and none are on death row. No one has ever been charged or prosecuted for the planned murder of Neil MacKay's former spouse. If Alaska had the death penalty and if Mr. MacKay were responsible for the death of his former brother-in-law as charged, the probability of his receiving the death penalty is very low because he is not likely to be convicted. In fact, few of those who have been responsible for killings in Alaska would be subject to the death penalty because they cannot be identified and charged or because of barriers such as the mental state of the offender.

- ° The death penalty denies due process in that it forever deprives the executed person of the benefits of new evidence or a new law that might affect a conviction. It is impossible, given the arbitrariness of the criminal justice processes and the criminal procedure where death is a possible penalty, to repair moral and constitutional defects in death penalty laws by shifting between mandatory and discretionary sentences and unfettered and guided judicial discretion. Some accused will still be deprived of their lives as a result of denial of equal protection of the law and unequal provision of due process.
- ° Executions by government give citizens the unmistakable message that human life is not sacred and that violence is legitimate when it is thought justified by pragmatic concerns. The beer parties and cheering crowds organized to celebrate at the time of executions in Texas, Florida and other states where executions have occurred in recent years document the consequence of this message. Some people are not only accepting the legitimacy of the intentional taking of human life, killing, they consider executions to be occasions for enjoyable merrymaking.
- ° Attention focused on the death penalty detracts from a concern with the causes of interpersonal violence and reduces the efforts of society to control it. Enactment of a death penalty gives the populace and legislators a sense of security in the belief that the problems of violent crime have been effectively addressed. This false security diverts attention away from efforts to identify the fundamental causes of crime and to prevent violent crime. Society will consequently suffer the burdens of violence longer.
- ° The social value of those who have been convicted of murder is lost. For example, the Bird Man of Alcatraz was a convicted Alaskan. If he had been executed rather than sentenced to life his contributions to ornithology would not have been made.

In addition to the preceding, the existence of the death penalty does not result in a reduction in fear of crime among citizens in jurisdictions where it is a legal punishment. In fact, it appears citizen fear of crime is heightened in areas

where executions occur with some regularity. Consequently, one can anticipate that once a death penalty is enacted, public anxiety about violent crime will increase and there will be greater public pressure to widen the range of criminal deviancy for which the punishment will be the death penalty. Such a pattern can be found throughout history.



Official Business

Alaska State Legislature

Senate

SENATOR PAUL FISCHER

Pouch V
State Capitol
Juneau, Alaska 99811

To: Senator Bettye Fahrenkamp, Chairman
Health and Social Services

From: Senator Paul Fischer *PF*

Date: March 14, 1986

Subject: Senate Bill 119, capital punishment

I would like to have Senate Bill 119 scheduled for one of the following dates:

Tuesday, March 25, 1986

Thursday, March 27, 1986

Tuesday, April 1, 1986

Thursday, April 3, 1986

I have informed interested members of the public of your agreement to hear the legislation. I need to have a commitment on one of these dates so I can get the word out.

Also, I would like to suggest a teleconferenced hearing. If this meets your approval, please let me know as early as possible. I will be satisfied with either a simple hearing or a teleconferenced hearing.

Please let me know which date you choose.

Thank you.

*Betty - I have an idea for a CV which
might meet your approval.
Paul*