

SB

52

(File 1)

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/25/95
SS intro: 2/9

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

Judiciary Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 52

Capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; authorizing an advisory vote on instituting capital punishment; etc.

and recommends:

- ☐ be replaced with _____ CS _____ (_____)
- ☐ adopt previous _____ CS _____ (_____)
- ☐ attached amendment(s)
- ☐ adopt Letter of Intent by _____ Committee
- ☐ further referral to the _____ Committee

Senate Bill:

☐ same title

☐ new title

House Bill:

☐ technical change

☐ new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Butler</i>	☒	<i>Al Adams</i>		☒	
<i>Lydia Green</i>	☒				
CHAIR: <i>John L. Taylor</i>	☒				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

☐ APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CS SSSB 52 (JUD)

Revision Date: 03/25/96

Dept. Affected: Alaska Court System

Title: Capital Punishment for Murder

BRU: Trial Courts

Component: _____

Sponsor: Sens. Taylor, Pearco

Requestor: Senate Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		0.0	0.0	0.0	0.0	0.0
1005 GF, Program Receipts						
1037 GF, Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$

None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen II, Staff Counsel
Agency: Alaska Court System

Phone: 284-6228
Date: 03/21/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 03/25/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSSSSB 52 (JUD)

Revision Date: March 18, 1996

Dept. Affected: Public Safety

Title: Capital Punishment for Murder

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Senator Taylor

Requestor: S. Finance

COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPTITAL EXPENDITURES						

CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

FULL - TIME						
PART - TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of State Troopers. The impact of this bill on the division is the possibility of troopers having to attend court proceedings that they do not currently have to attend.

Prepared By: Lt. Dan Lowden

Phone: 465-5505

Division: Alaska State Troopers

Date: March 18, 1996

Approved by Commissioner: *[Signature]*

Date: 3/19/96

Agency: Ronald L. Ote, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date:	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act authorizing capital punishment, classifying murder in the first degree as a capital felony..."</u>	BRU: <u>Criminal Division</u>
Sponsor: <u>Senator Taylor</u>	Component: <u>Criminal Division</u>
Requester: <u>Governor's Office</u>	COMPONENT SERIAL NO. <u>2085</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		481.0	1,006.5	1,462.9	1,462.9	1,462.9
TRAVEL		243.5	480.5	605.5	605.5	605.5
CONTRACTUAL		430.8	1,089.7	1,529.7	1,464.7	1,464.7
SUPPLIES		32.4	55.5	72.6	60.6	60.6
EQUIPMENT		56.0	64.5	58.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,243.7	2,695.7	3,728.7	3,593.7	3,593.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME		8.0	17.0	25.0	25.0	25.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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 the aggravating factor, or factors, was not outweighed by mitigating factors.

In 1994, the department's criminal division had 17 first degree murder cases (that could have been accepted for prosecution at this level) where aggravating factors were present that would justify the death penalty, had the bill already been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible.

Prepared by: <u>Richard I. Pegues, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/6/96</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>2/6/96</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

Overview

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 sufficient to justify the death penalty; whether mitigating factors exist that outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. As a result of this preliminary screening, between capital and noncapital charging, the department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

Thus, the department must be prepared to prosecute capital felonies on ten occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of six cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has repeatedly stated, "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the thirty-seven states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase, during sentencing proceedings, and during the appellate review, to rebut and overcome competency and psychiatric defenses to both the substantive-charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000, on the average. A lesser, but still significant, cost for experts is also required for appellate reviews.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counter part in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the

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ANALYSIS CONTINUATION:

date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally an average of 9.6 years elapses from the time a death penalty sentence is imposed and the time the sentence is carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although up to four bifurcated trials may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, three paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although only four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even for Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital

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ANALYSIS CONTINUATION:

felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, eight or more additional capital felonies are expected to go to trial, and 17 new capital felony offenses will occur. At this point, it will be necessary to add two attorneys, two paraprofessionals, and two legal secretaries to help handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated trials (10) should equal the number of new capital offenses (after screening), although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. Post-conviction capital felony appeals will have reached eight by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

- 1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting 10 first degree murder offenses, at a minimum.
- 2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- 3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- 4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- 5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.
- 6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.
- 7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate

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1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be nearly \$266,000 or less than one-half of the \$597,000 cost for the first Peel trial.

8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 60 or more capital felony defendants annually, within 10 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

9) Therefore, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary per annum.
- Expert witness fees, \$60,000 per case.
- Witness fees paid to others, \$6,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Expert witness fees, legal scholars for years two and three only, \$30,000 per year.
- Socio-psychiatric experts, \$25,000 in years two and three.
- Socio-psychiatric experts, \$50,000 by year four.
- Transcription/court reporter costs, \$30,000 per case.

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SSSB 52

ANALYSIS CONTINUATION:

Fiscal Analysis SSSB 52
Cost Summary (First Year - FY 98 - Capital Trials)

<u>OBJECT</u>	<u>Atty V</u>	<u>(2) Atty IV</u>	<u>(2) Assoc Atty I</u>	<u>P/A II</u>	<u>Sec I</u>	<u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>164.0</u>	<u>105.8</u>	<u>51.1</u>	<u>26.4</u>	<u>36.4</u>	<u>481.0</u>
	87.3	164.0	105.8	51.1	38.4	36.4	481.0
200- Travel							
Staff Travel & Per Diem	<u>7.5</u>	<u>15.0</u>	<u>10.0</u>	<u>5.0</u>	<u>3.0</u>	<u>3.0</u>	<u>43.5</u>
	7.5	15.0	10.0	5.0	3.0	3.0	43.5
300 - Contractual							
Communications, Copy	3.6	7.2	4.8	2.4	2.4	2.4	22.8
Office Space Leases	5.6	11.2	11.2	5.6	5.6	5.6	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	1.5	1.5	12.0
Westlaw	<u>1.2</u>	<u>2.4</u>	<u>2.0</u>	<u>1.2</u>	<u>0.0</u>	<u>0.0</u>	<u>7.2</u>
	11.9	23.8	21.4	10.7	9.5	9.5	86.8
400 - Supplies							
Office Consumables	1.8	3.6	3.6	1.8	1.2	1.2	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	0.0	7.2
New Position Supplies	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>12.0</u>
	4.5	9.0	9.0	4.5	2.7	2.7	32.4
500 - Equipment							
New Position Equipment	2.5	5.0	5.0	2.5	2.0	2.0	19.0
PC/Word Processing	<u>4.0</u>	<u>8.0</u>	<u>8.0</u>	<u>4.0</u>	<u>0.5</u>	<u>6.5</u>	<u>37.0</u>
	6.5	13.0	13.0	6.5	0.5	8.5	56.0
TOTAL	117.7	224.8	159.2	77.8	60.1	60.1	699.7

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

Fiscal Analysis SSSB 52
Cost Summary (Second and Third Years Additions -
FY 99 and 00 - Capital Trials)

OBJECT	Second Year					Third Year			
	Atty V	Atty IV	(2) Assoc Atty I	2 Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
100 - Salaries & Benefits	<u>87.3</u>	<u>82.0</u>	<u>105.8</u>	<u>72.8</u>	<u>347.9</u>	<u>82.0</u>	<u>51.1</u>	<u>36.4</u>	<u>169.5</u>
	87.3	82.0	105.8	72.8	347.9	82.0	51.1	36.4	169.5
200- Travel									
Staff Travel & Per Diem	<u>7.5</u>	<u>7.5</u>	<u>10.0</u>	<u>6.0</u>	<u>31.0</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	7.5	10.0	6.0	31.0	7.5	5.0	3.0	15.5
300 - Contractual									
Communications, Copy	<u>3.6</u>	<u>3.6</u>	<u>7.2</u>	<u>4.8</u>	<u>19.2</u>	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>
Office Space Leases	<u>5.6</u>	<u>5.6</u>	<u>11.2</u>	<u>11.2</u>	<u>33.6</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>
PC Network Maintenance	<u>1.5</u>	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>9.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	11.9	23.8	19.0	66.6	11.9	11.9	9.5	33.3
400 - Supplies									
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>
Law Library	<u>1.2</u>	<u>1.2</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>9.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	9.0	9.0	5.4	23.4	4.5	4.5	2.7	11.7
500 - Equipment									
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>5.0</u>	<u>0</u>	<u>14.0</u>	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>8.0</u>	<u>13.0</u>	<u>29.0</u>	<u>4.0</u>	<u>4.0</u>	<u>8.5</u>	<u>14.5</u>
	6.5	6.5	13.0	17.0	43.0	6.5	6.5	8.5	21.5
TOTAL	117.7	112.4	161.6	120.2	511.9	112.4	79.0	60.1	251.5

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

Fiscal Analysis SSSB 52
Cost Summary (Second and Third Years Additions -
FY 99 and 00 - Appellate Review Process)

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>Ally V</u>	<u>Assoc Ally I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>	<u>(2.0) Ally IV</u>	<u>P/A II</u>	<u>(2) Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>52.9</u>	<u>36.4</u>	<u>176.6</u>	<u>164.0</u>	<u>51.1</u>	<u>72.8</u>	<u>287.9</u>
	87.3	52.9	36.4	176.6	164.0	51.1	72.8	287.9
200- Travel								
Staff Travel & Per Diem	<u>3.5</u>	<u>2.5</u>	<u>0.0</u>	<u>6.0</u>	<u>7.0</u>	<u>2.5</u>	<u>0.0</u>	<u>9.5</u>
	3.5	2.5	0.0	6.0	7.0	2.5	0.0	9.5
300 - Contractual								
Communications, Copy	<u>22.4</u>	<u>22.4</u>	<u>2.4</u>	<u>47.2</u>	<u>44.8</u>	<u>22.4</u>	<u>4.8</u>	<u>72.0</u>
Office Space Leases	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>	<u>11.2</u>	<u>5.6</u>	<u>11.2</u>	<u>28.0</u>
PC Network Maintenance	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>3.0</u>	<u>1.5</u>	<u>3.0</u>	<u>7.5</u>
Westlaw	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>4.8</u>	<u>2.4</u>	<u>0.0</u>	<u>7.2</u>
	31.9	31.9	9.5	73.3	63.8	31.9	19.0	114.7
400 - Supplies								
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>	<u>3.6</u>	<u>1.8</u>	<u>2.4</u>	<u>7.8</u>
Law Library	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>	<u>2.4</u>	<u>1.2</u>	<u>0.0</u>	<u>3.6</u>
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>3.0</u>	<u>1.5</u>	<u>3.0</u>	<u>7.5</u>
	4.5	4.5	2.7	11.7	9.0	4.5	5.4	18.9
500 - Equipment								
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>	<u>5.0</u>	<u>2.5</u>	<u>4.0</u>	<u>11.5</u>
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>8.0</u>	<u>4.0</u>	<u>13.0</u>	<u>25.0</u>
	6.5	6.5	8.5	21.5	13.0	6.5	17.0	36.5
TOTAL	133.7	98.3	57.1	289.1	256.8	96.5	114.2	467.5

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

Fiscal Analysis SSSB 52
Cumulative Implementation Cost by Year

OBJECT	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Personal Services	481.0	828.9	998.4	998.4	0.0	176.6	464.5	464.5
200- Travel - Staff	43.5	74.5	90.0	90.0	0.0	6.0	15.5	15.5
Travel - Witness	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
300 - Contractual	86.8	153.4	186.7	186.7	0.0	73.3	188.0	188.0
Contractual - Outside Svc	344.0	688.0	860.0	860.0	0.0	175.0	295.0	230.0
400 - Supplies	32.4	43.8	46.5	42.0	0.0	11.7	26.1	18.6
500 - Equipment	<u>56.0</u>	<u>43.0</u>	<u>21.5</u>	<u>0.0</u>	<u>0.0</u>	<u>21.5</u>	<u>36.5</u>	<u>0.0</u>
TOTAL	1,243.7	2,231.6	2,703.1	2,677.1	0.0	464.1	1,025.6	916.6

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION:

Out-of-Pocket Costs - Capital Felony Trials

Year One (4 cases underway) (FY 98)

Witness travel and subsistence \$50,000 per case Xs 4 cases =	\$200,000
Expert witness fees \$60,000 per case Xs 4 cases =	\$240,000
Witness fees (witnesses of fact) \$6,000 per case Xs 4 cases =	\$24,000
Deposition/court reporter charges \$20,000 per case Xs 4 cases =	\$80,000

Year Two (8 cases underway) (FY 99)

Witness travel and subsistence \$50,000 per case Xs 8 cases =	\$400,000
Expert witness fees \$60,000 per case Xs 8 cases =	\$480,000
Witness fees (witnesses of fact) \$6,000 per case Xs 8 cases =	\$48,000
Deposition/court reporter charges \$20,000 per case Xs 8 cases =	\$160,000

Third Year (10 cases underway) (FY 00)

Witness travel and subsistence \$50,000 per case Xs 10 cases =	\$500,000
Expert witness fees \$60,000 per case Xs 10 cases =	\$600,000
Witness fees (witness of fact) \$6,000 per case Xs 10 cases =	\$60,000
Deposition/court reporter charges \$20,000 per case Xs 10 cases =	\$200,000

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS CONTINUATION.

Capital Felony Appeals

Year Two (4 cases underway) (FY 98)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000

Deposition/court report charges \$30,000 per case Xs 4 cases =	\$120,000

Year Three (8 cases underway) (FY 00)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000

Deposition/court report charges \$30,000 per case Xs 8 cases =	\$240,000

Year Four (14 cases underway) (FY 01)

Expert witness Socio-psychiatric experts \$50,000 per year Xs 1 =	\$50,000

Deposition/court report charges \$30,000 per case Xs 6 cases =	\$180,000

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOC	ION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	GENES	PER.SERV. COSTS	G. F. AMOUNT

03/011		ATTORNEY V		F	ANCHORAGE	A	XE AA 25A 12	66332	0	20933	87265.67	

**** JUSTIFICATION:

This senior level Attorney V position will be needed to oversee and head capital felony prosecutions, during the first year that capital felony law goes into effect. The substantial due process protections accorded to defendants by the U.S. Supreme Court, will require a three-fold increase in prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle those prosecutions, allocations to the Attorney V level is therefore recommended. This position will be required in FY 1998.

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
TOTAL COSTS	117665.67

87265.67

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS

87265.67

TOTAL FUNDING

87265.67

03/012		ATTORNEY IV		F	ANCHORAGE	A	XE AA 24A 12	61923	0	20100	82023.52	

**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial consideration and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1998.

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
TOTAL COSTS	112423.52

82023.52

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS

82023.52

TOTAL FUNDING

82023.52

03/013		ATTORNEY IV		F	ANCHORAGE	A	XE AA 24A 12	61923	0	20100	82023.52	

**** JUSTIFICATION:

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS

112423.52

82023.52

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS

82023.52

TOTAL FUNDING

82023.52

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03/014		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA	17A	12	38440	0	14412	52852.89	

**** JUSTIFICATION:

This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protection accorded defendants, in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	79552.89	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89
TOTAL FUNDING	52852.89

01/015		PARALEGAL ASST II	F	ANCHORAGE	A GG 2A	16A	12	36990	0	14157	51148.42	

**** JUSTIFICATION:

This paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness assistance and coordination, and assist with trial logistics. Allocation to the full working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	77848.42	51148.42

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51148.42
TOTAL FUNDING	51148.42

03/016		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A	10A	12	25127	0	11284	36411.80	

**** JUSTIFICATION:

This is one of two legal secretaries needed to provide office services support for three attorneys and three paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position will be required in FY 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	S	RAS BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT

03/017		LEGAL SECRETARY I	F	ANCHORAGE	A	CG	2A	10A	12	25127	0	11284	36411.80

*** JUSTIFICATION:

This is one of two legal secretaries needed to provide office services support for the three attorneys and three paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position is required in FY 1998.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	9500.00
SUPPLIES COSTS	2700.00
EQUIPMENT COSTS	8500.00
OTHER COSTS	0.00

TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80

TOTAL FUNDING	36411.80

03/018		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	66332	0	20933	87265.67

*** JUSTIFICATION:

This senior level Attorney V position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year eight additional trials should be underway and ten additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1999.

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS	117665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67

TOTAL FUNDING	87265.67

03/019		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	38440	0	14412	52852.89

*** JUSTIFICATION:

This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Eight new trials are expected to commence during the second year, and ten new offenses will have been committed. This position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position is required in FY 1999.

TRAVEL COSTS	5000.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS	80752.89	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89

TOTAL FUNDING	52852.89

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COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

*** FUNDING DETAIL:

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	DERES	PER.SERV. COSTS	G. F. AMOUNT
1004 GENERAL FUND RECEIPTS										52852.89	
TOTAL FUNDING										52852.89	
03/023		LEGAL SECRETARY I	F	ANCHORAGE	A	CG 2A 10A 12	25127	0	11284	36411.80	
**** JUSTIFICATION:											
This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. This process is expected to begin during the second year, when the first six convictions should be on appeal. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position is needed in FY 1999.											
TRAVEL COSTS										0.00	
CONTRACTUAL COSTS										9500.00	
SUPPLIES COSTS										2700.00	
EQUIPMENT COSTS										8500.00	
OTHER COSTS										0.00	
TOTAL COSTS										57111.80	36411.80
*** FUNDING DETAIL:											
1004 GENERAL FUND RECEIPTS										36411.80	
TOTAL FUNDING										36411.80	
03/025		ATTORNEY IV	F	ANCHORAGE	A	XE AA 24A 12	61923	0	20100	82023.52	
**** JUSTIFICATION:											
This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that ten of these trials will be underway in the third year, and ten new offenses will have been committed. An enormous amount of attorney time is required to handle these because of the heightened due process standards that are mandated for capital prosecutions. Those trials require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore recommended. This position will be needed in FY 2000.											
TRAVEL COSTS										7500.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										112423.52	82023.52
*** FUNDING DETAIL:											
1004 GENERAL FUND RECEIPTS										82023.52	
TOTAL FUNDING										82023.52	
03/026		PARALEGAL ASSY II	F	ANCHORAGE	A	CG 2A 16A 12	36990	0	14157	51148.42	
**** JUSTIFICATION:											
This Paralegal Assistant position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that ten trials will be underway at this point, and ten new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be required in FY 2000.											
TRAVEL COSTS										5000.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										79048.42	51148.42

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R D S C U	R&S BUDG	MOS	SALARY	PREM PAY	BENFS	PER.SERV. COSTS	G. F. AMOUNT

FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51148.42

TOTAL FUNDING	51148.42

03/02/ LEGAL SECRETARY I F ANCHORAGE A GO 2A 10A 12 25127 0 11284 36411.80

*** JUSTIFICATION:

This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that ten capital trials will be underway at this point, and ten new offenses will have soon committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
	=====	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80

TOTAL FUNDING	36411.80

03/020	ATTORNEY IV	F ANCHORAGE	A XE AA 24A 12	61923	0 20100	82023.52

*** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle post-conviction appeals. It is anticipated that six new convictions will be on appeal by the third year, bringing the total cases on appeal to 12. Capital penalty appeals have an average span of ten years. These appeals are heard in the Alaska Supreme Court, the U.S. District Court, the U.S. Court of Appeals and the U.S. Supreme Court. These appeals often move up and down, through the system, as each separate issue is argued. Full-working level legal expertise is necessary to handle this work, and allocation to Attorney IV is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
	=====	
TOTAL COSTS	128423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52

TOTAL FUNDING	82023.52

03/029	PARALEGAL ASST II	F ANCHORAGE	A GG 2A 16A 12	36990	0	14157	51148.42

... JUSTIFICATION:

This Paralegal Assistant II position will be required, during the third year of the capital felony law, to assist the preparation of appellate documentation and research. Six new appeals are expected in the third year, bringing the total to be handled to 12. These appeals have an average time span of ten years.

TRAVEL COSTS	2500.00
CONTRACTUAL COSTS	31900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
Enormous amounts of time must be spent researching the law, examining trial records, and preparing legal arguments, and briefs. A substantial documents and research effort will be required. Allocation to the											TOTAL COSTS	96548.42 51148.42
*** FUNDING DETAIL:											1004 GENERAL FUND RECEIPTS	51148.42
											TOTAL FUNDING	51148.42
03#030		LEGAL SECRETARY I	F	ANCHORAGE	A	CG 2A 10A 12		25127	0	11284	36411.80	
*** JUSTIFICATION: This Legal Secretary I will be required, during the third year the capital felony law is in effect, to handle a growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by six reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle this work. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 2000.											TRAVEL COSTS	0.00
											CONTRACTUAL COSTS	9500.00
											SUPPLIES COSTS	2700.00
											EQUIPMENT COSTS	8500.00
											OTHER COSTS	0.00
											TOTAL COSTS	57111.80 36411.80
*** FUNDING DETAIL:											1004 GENERAL FUND RECEIPTS	36411.80
											TOTAL FUNDING	36411.80
03#031		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE AA 17A 12		38440	0	14412	52852.89	
*** JUSTIFICATION: This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protection accorded defendants, in these cases, causes a far more onerous burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1998.											TRAVEL COSTS	5000.00
											CONTRACTUAL COSTS	10700.00
											SUPPLIES COSTS	4500.00
											EQUIPMENT COSTS	6500.00
											OTHER COSTS	0.00
											TOTAL COSTS	79552.89 52852.89
*** FUNDING DETAIL:											1004 GENERAL FUND RECEIPTS	52852.89
											TOTAL FUNDING	52852.89
03#032		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE AA 17A 12		38440	0	14412	52852.89	
*** JUSTIFICATION: This advanced paraprofessional position will be required, during the second year that the capital felony law is in effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The											TRAVEL COSTS	5000.00
											CONTRACTUAL COSTS	11900.00
											SUPPLIES COSTS	4500.00
											EQUIPMENT COSTS	6500.00

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B C U	S BUDG	R&S MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
heightened due process protection accorded defendants, in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1999.											OTHER COSTS	0.00
											TOTAL COSTS	80752.89
											52852.89	52852.89
											*** FUNDING DETAIL:	
											100% GENERAL FUND RECEIPTS	52852.89
											TOTAL FUNDING	52852.89
33		ATTORNEY IV		F ANCHORAGE	A	XE	AA 24A 12	61923	0	20100	82023.52	
**** JUSTIFICATION: This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle post-conviction appeals. It is anticipated that six new convictions will be on appeal by the third year, bringing the total cases on appeal to 12. Capital penalty appeals have an average span of ten years. These appeals are heard in the Alaska Supreme Court, the U.S. District Court, the U.S. Circuit Court of Appeals, and the U.S. Supreme Court. These appeals often move up and down, through the system, as each separate issue is argued. Full-working level legal expertise is necessary to handle this work, and allocation to Attorney IV is therefore recommended. This position will be needed in FY 2000.											TRAVEL COSTS	3500.00
											CONTRACTUAL COSTS	31900.00
											SUPPLIES COSTS	4500.00
											EQUIPMENT COSTS	6500.00
											OTHER COSTS	0.00
											TOTAL COSTS	128423.52
											82023.52	82023.52
											*** FUNDING DETAIL:	
											100% GENERAL FUND RECEIPTS	82023.52
											TOTAL FUNDING	82023.52
34		LEGAL SECRETARY I		F ANCHORAGE	A	GG	2A 10A 12	25127	0	11284	36411.80	
**** JUSTIFICATION: This Legal Secretary I will be required, during the third year the capital felony law is in effect, to handle a growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by six reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle that work. Allocation to the Legal Secretary I is therefore recommended. This position will be needed in FY 2000.											TRAVEL COSTS	0.00
											CONTRACTUAL COSTS	9500.00
											SUPPLIES COSTS	2700.00
											EQUIPMENT COSTS	8500.00
											OTHER COSTS	0.00
											TOTAL COSTS	57111.80
											36411.80	36411.80
											*** FUNDING DETAIL:	
											100% GENERAL FUND RECEIPTS	36411.80
											TOTAL FUNDING	36411.80

02/01/96

15:49:05.9

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 10

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	D U	S	R&S BUDG	MOS	SALARY	PREM PAY	BIENES	PER.SERV. COSTS	G. F. AMOUNT

03#035		ATTORNEY IV	F	ANCHORAGE	A	XE	AA	24A	12	61923	0	20100	82023.52	

*** JUSTIFICATION:

This Attorney IV position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year eight additional trials should be underway and ten additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases necessitate the full working level of legal expertise. Allocation to the Attorney IV level is therefore recommended. This position will be required in FY 1999.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 82023.52

TOTAL FUNDING 82023.52

03#036		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	25127	0	11284	36411.80	

*** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Eight new capital felony trials are expected to commence, and ten new offenses will be committed during the year. Legal documentation for these trials will be intensive. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1999.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36411.80

TOTAL FUNDING 36411.80

*** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	25	TOTAL PERSONAL SERVICES	1462942.24
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	2219742.24
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 25

FUNDING DATA: G.F. & G.F. MATCH:	1462942.24
OTHER FUNDS:	0.00

TOTAL FUNDING: 1462942.24

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date: _____
Title: "An Act authorizing capital punishment..."
Sponsor: Senator Taylor
Requestor: (S) JUD

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		770.4	1032.0	1638.7	1638.7	2496.3
TRAVEL		50.0	150.0	250.0	350.0	450.0
CONTRACTUAL		184.8	468.2	896.6	1256.6	1699.6
SUPPLIES		25.0	24.0	33.0	33.0	48.0
EQUIPMENT		54.0	18.0	40.5	-0-	40.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ()						

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1084.2	1692.2	2858.8	3278.3	4734.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME		12.0	16.0	25.0	25.0	38.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: (907) 254-4412
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 5/1/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS: (continued)

Introduction

This bill authorizes capital punishment for the crime of Murder in the First Degree if certain attendant aggravating factors are found to exist and are established by competent evidence. Prosecution is given discretion whether to seek the death penalty in a given case.

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 45. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

Of the ten cases which are projected to go to trial as capital cases, the Public Defender anticipates being assigned to seven, with the other three either involving private lawyers or attorneys secured through the Office of Public Advocacy (where the PD is unable to undertake representation because of legal conflict of interest).

Because the number of murders can vary significantly from year to year, predicting actual numbers of cases is difficult. It is not difficult, however, to predict a profound fiscal impact for the PD once the death penalty becomes law. The concept of "super due process", established by the U.S. Supreme Court as the required standard of practice for defending death penalty cases, necessitates that highly capable lawyers and support staff (in sufficient numbers) be in place to handle any and all cases of this nature.

Fiscal Impact

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system, including the courts, corrections, prosecution, public counsel services, and other related entities. Death penalty cases require greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is a consequence of the American jury system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. A commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. This is a result of the extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically utilized after a trial and sentencing:

1. Motion to modify the death sentence/reconsider before state trial judge;
2. Mandatory 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;

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

5. Appeal of unsuccessful post-conviction relief proceedings to the Court of Appeals;
6. Petition for hearing of post-conviction relief proceeding denial to the Alaska Supreme Court;
7. Petition for writ of habeas corpus in Federal District Court;
8. Appeal to the United States Court of Appeals if writ unsuccessful;
9. Rehearing in the United States Court of Appeals;
10. Writ of certiorari to the United States Court of Appeals;
11. Request for clemency/commutation to Executive Branch of government.
12. Emergency stays to the United States Supreme Court prior to execution.

Breakdown of Fiscal Impact

1. Personal Services. Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy.

Assuming that the Public Defender Agency handles six to seven capital cases per year, death penalty units will be established in its two largest offices; Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals.) The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

2. Travel and Contractual. Travel expenses will be necessarily high in that a team approach is being taken by this agency. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads, and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of vitiating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

Contractual expenditures for expert witnesses will be significant. As the Department of Law pointed out in a 1993 fiscal note related to a death penalty proposal, "recent cost studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000, on the average". This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

FISCAL NOTE

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BILL NO. SSSB 52

3. Supplies and Equipment. These expenses naturally accrue when additional staff are required. Estimates which follow are conservative projections without consideration of inflationary factors.

4. Training. Training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs which are conducted on a yearly basis related to these kinds of cases.

Conclusion

Due to the accrual of cases from year to year, once implementation of the death penalty occurs expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. There is the real likelihood that additional staff will have to be added to this agency beyond the third year of implementation of the capital crime law. Simply stated, this cost estimate very well might understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

Fiscal Impact--FY 98

Personal Services (100 Line) *

Anchorage - Trial Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	83.6
Associate Attorney I	
Salary & Benefits	53.8
Paralegal Assistant II	
Salary & Benefits	52.1
Investigator II	
Salary & Benefits	52.1
Legal Secretary I	
Salary & Benefits	37.0

Fairbanks - Trial Team

Attorney V	
Salary & Benefits	100.9
Attorney IV	
Salary & Benefits	94.7
Associate Attorney I	
Salary & Benefits	61.2
Paralegal Assistant II	
Salary & Benefits	53.9
Investigator II	
Salary & Benefits	\$ 53.9
Legal Secretary I	
Salary & Benefits	<u>38.3</u>

SUBTOTAL

\$ 770.4

* Using FY 96 salary schedule with no increases factored in.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$120.0
Additional office space for death penalty staff in Anchorage and Fairbanks P.D. offices	30.8
Communications	15.0
Printing	4.0
Depositions	10.0
Westlaw	<u>5.0</u>

SUBTOTAL \$ 184.8

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	10.0
New position supplies (one time)	<u>10.0</u>

SUBTOTAL \$ 25.0

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)	SUBTOTAL	\$ <u>54.0</u>

TOTAL FY 98 \$1084.2

Fiscal Impact-FY 99

(These costs are in addition to FY 98 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	83.6
Paralegal Assistant II	
Salary & Benefits	\$ 52.1
Legal Secretary I	
Salary & Benefits	<u>37.0</u>

SUBTOTAL \$261.6

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Travel (200 Line)

Staff travel, expert travel
and per diem.

SUBTOTAL

\$100.0

Contractual (300 Line)

Expert witness fees (based on accrual
of FY 98 and 99 cases)

\$240.0

Office space for Anchorage
appellate team

11.4

Training for Death Penalty Appellate Team

4.0

Communications

10.0

Depositions

5.0

Document production

5.0

Westlaw

8.0

SUBTOTAL

\$ 283.4

Supplies (400 Line)

Office consumables

\$ 3.0

Law library

2.0

New position supplies (one time)

4.0

SUBTOTAL

\$ 9.0

Equipment (500 Line)

New position equipment (one time)

SUBTOTAL

\$ 18.0

SUBTOTAL FY 99

\$ 672.0

FY 98 CONTINUING COSTS

\$1020.2

TOTAL FY 99 EXPENDITURES

\$1692.2

Fiscal Impact-FY 00

(These costs are in addition to FY 98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Attorney V (Additional death penalty trial attorney)

Salary & Benefits

\$ 88.9

Associate Attorney I

Salary & Benefits

53.8

Legal Secretary I

Salary & Benefits

37.0

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	\$ 100.9
Legal Secretary I (Trial support)	
Salary & Benefits	38.3

Appellate Team (Fairbanks)

Attorney V (Additional lawyer for death penalty appellate work)	
Salary & Benefits	100.9
Attorney IV (Additional lawyer for death penalty appellate work)	
Salary & Benefits	94.7
Paralegal Assistant II	
Salary & Benefits	53.9
Legal Secretary I (Appellate support)	
Salary & Benefits	<u>38.3</u>

SUBTOTAL	\$606.7

Travel (200 Line)

Staff travel, expert travel and per diem.	
SUBTOTAL	\$100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	\$ 360.0
Additional office space for new staff	25.4
Communications	20.0
Depositions	10.0
Document production	5.0
Westlaw	<u>8.0</u>

SUBTOTAL	\$ 428.4

Supplies (400 Line)

Office consumables	\$ 5.0
New position supplies (one time)	<u>8.0</u>

SUBTOTAL	\$ 13.0

Equipment (500 Line)

New position equipment (one time)	
SUBTOTAL	<u>\$ 40.6</u>

SUBTOTAL FY 00	\$1188.6

FY 99 CONTINUING COSTS	<u>\$1670.2</u>

TOTAL FY 00 EXPENDITURES	\$2858.8

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52Fiscal Impact-FY 01

(These costs are in addition to FY 98-99-00 costs which will be carried over from year to year.)

Personal Services (100 Line) SUBTOTAL .0

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc.

SUBTOTAL \$100.0

Contractual (300 Line)

Expert witness fees, office space, communications, Westlaw, etc.

SUBTOTAL 360.0

Supplies (400 Line)

Office, law library

SUBTOTAL 8.0

SUBTOTAL FY 01 \$ 468.0

FY 00 CONTINUING COSTS \$2910.3

TOTAL FY 01 EXPENDITURES \$3278.3

Fiscal Impact-FY 02

(These costs are in addition to FY 98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)Anchorage - Trial Team

Attorney V

Salary & Benefits \$ 88.9

Attorney IV

Salary & Benefits 83.6

Associate Attorney I

Salary & Benefits 63.8

Paralegal Assistant II

Salary & Benefits 52.1

Investigator III

Salary & Benefits 59.2

Legal Secretary II

Salary & Benefits 39.1

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)		
Salary & Benefits	100.9	
Investigator II		
Salary & Benefits	53.9	
Legal Secretary I (Trial support)		
Salary & Benefits	38.3	
Attorney V (Additional lawyer for death penalty appellate work)		
Salary & Benefits	100.9	
Attorney IV (Additional lawyer for death penalty appellate work)		
Salary & Benefits	94.7	
Paralegal Assistant II		
Salary & Benefits	53.9	
Legal Secretary I (Appellate support)		
Salary & Benefits	<u>\$ 38.3</u>	
SUBTOTAL		\$ 857.6

Travel (200 Line)

Staff travel, expert travel and per diem.		
SUBTOTAL		\$ 100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	360.0	
Additional office space for new staff	30.0	
Training for staff	10.0	
Communications	20.0	
Depositions	10.0	
Document production	5.0	
Westlaw/CD Rom	<u>8.0</u>	
SUBTOTAL		\$ 443.0

Supplies (400 Line)

Office consumables	\$ 5.0	
New position supplies (one time)	<u>10.0</u>	
SUBTOTAL		\$ 15.0

Equipment (500 Line)

New position equipment (one time)		\$ 10.5

SUBTOTAL FY 02	\$1466.1

FY 01 CONTINUING COSTS	<u>\$3278.3</u>

TOTAL FY 02 EXPENDITURES	\$4731.4

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

BUDGET BACKGROUND

TRAVEL EXPENDITURES:

Round trip fares between the following locations are used as the basis for computing estimated travel by attorneys, support staff, witnesses and experts: (per diem expenses additional)

Anchorage -	Dillingham	\$ 466	Fairbanks -	Fort Yukon	\$156
	Unalaska	1014		Barrow	650
	St. Paul	1106		Galena	216
	Kodiak	386		Wainwright	530
	Cordova	224		Pt. Hope	600
	Valdez	200			
	Bethel	694			
	Nome	580			
	Kotzebue	580			
	Fairbanks	406			
	Junau	444			
	Sitka	470			
	Ketchikan	588			
	Seattle	986			
	Washington, DC	1678			
	Kennai	130			

OFFICE SPACE FOR ADDITIONAL EMPLOYEES

Attorney V	175 sq. ft.	@ \$1.75	= \$306/mo x 12	= \$3672/yr
Attorney IV	175 sq. ft.	@ \$1.75	= \$306/mo x 12	= \$3672/yr
Assoc. Attorney I	122 sq. ft.	@ \$1.75	= \$213/mo. x 12	= \$2556/yr
Paralegal II	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr
Investigator II	68 sq. ft.	@ \$1.75	= \$119/mo x 12	= \$1428/yr
Legal Secretary I	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr

OFFICE EQUIPMENT FOR ADDITIONAL EMPLOYEES (one time)

Desk, chairs, table, bookshelves, PC/word processing - \$4500 each

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date: _____
Title: Capital Punishment for Murder
Sponsor: Sens. Taylor Pearce
Requestor: _____

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		375.9	375.9	375.9	375.9	375.9
TRAVEL		142.2	142.2	142.2	142.2	142.2
CONTRACTUAL		511.8	511.8	511.8	511.8	511.8
SUPPLIES		7.0	7.0	7.0	7.0	7.0
EQUIPMENT		31.7				
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ()						

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

Estimate of any current year (FY 96) cost: \$ None

Positions

Full-Time		4.0	4.0	4.0	4.0	4.0
Part-Time		3.0	3.0	3.0	3.0	3.0
Temporary		1.0	1.0	1.0	1.0	1.0

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System
Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 264-8228
Date: 02/06/96
Date: 02/06/96

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Alaska Court System
Fiscal Analysis
SSSB 52

Personnel Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	48,300	29,779	78,079
Pro Tem Judge, Fairbanks Trial Courts, 50% vested, PPT, 6 months	24,501	14,933	39,434
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	36,672	14,835	51,507
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,835	51,507
Bailiff, Statewide, range 6A, NPP, 24 months	38,184	3,647	41,831
			<u>431,183</u>

Offset cost of existing caseload -

Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect five trials and to incur approximately 5 months of trial. The proposed legislation will result in approximately 39 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

	(55,300)
Net personal services	<u>375,883</u>

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use 50% vested pro tem judges, which are among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for two non-permanent bailiffs, which will serve in the designated trial site.

Travel

Jury sequestration costs - transportation, meals and lodging	126,000
10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

See offset note in personnel services.

	(16,200)
Not travel	<u>142,200</u>

Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day	386,100
and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day	
Contractual security guard to staff metal detectors	10,000
Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page	150,000
Freight for high security equipment kit	1,000
Total contractual service	<u>587,100</u>

Offset cost of existing caseload -

See offset note in personnel services.

	(75,300)
Not contractual services	<u>511,800</u>

See additional note on contractual costs on the next page.

Alaska Court System
Fiscal Analysis (continued)
SSSB 52

The Department of Law expects to prosecute 10 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials.	<u>7,000</u>

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks	6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site.	25,000
	<u>31,720</u>

Total estimated costs	<u><u>\$1,068,603</u></u>

ALASKA CANNOT AFFORD THE DEATH PENALTY

Attorney General Botelho estimates the cost of obtaining a single execution in Alaska at \$5 MILLION -- that's HALF the ANNUAL PROSECUTION BUDGET!

* * * * *

Previous prosecutor, defender, and court estimates have conservatively predicted that 6 capital cases a year would cost taxpayers \$18.8 MILLION for the first four years alone. This estimate does NOT include costs of constructing, maintaining and staffing a death row/execution facility.

* * * * *

Alaskans can expect to spend well in excess of \$50,000,000.00 on the death penalty before even one person is executed!

POPULAR OPINION TOTALLY WRONG:
Executions Cost MUCH MORE Than Prison!

Q: Which do you believe costs more --
the death penalty or life in prison without parole?

74% life in prison costs more

21% death penalty costs more

5% unsure

THE TRUTH: It costs MILLIONS and MILLIONS MORE
to execute JUST ONE murderer than to keep him in
prison for life.

NORTH CAROLINA: \$2.16 Million MORE

CALIFORNIA: \$15 Million /execution
6 x MORE than prison

TEXAS: \$2.3 Million /execution
3 x MORE than prison

FLORIDA: \$3.2 Million /execution

*** MOST costs are at the TRIAL level,
NOT the result of appeals. ***

POPULAR OPINION TOTALLY WRONG:
Convicted Murderers Stay In Prison!

Q: If a person is convicted in Alaska of 1st degree murder and sentenced to life, how long do you think that person will be in prison before being paroled or released back into society?

Public opinion of years
before parole / release:

1 - 9 yrs = 37%

10 - 14 yrs = 23%

15 - 20 yrs = 18%

21 - 30 yrs = 6%

31 - 40 yrs = 2%

41 - 50 yrs = 1%

51+ yrs = 1%

never released = 3%

don't know/unsure = 9%

THE TRUTH: Law requires
NO RELEASE for 20 yrs

78% of Alaskans
believe in a crime
risk that does NOT
and can NOT exist!

THE TRUTH: ALASKA IS
ALREADY TOUGH ON CRIME

The average sentence for
murder-1 = 80 - 90 yrs

HALF of those sentenced for Murder-1 receive 99 yrs. Composite sentences in the aggravated cases, for which the death penalty is proposed, always exceed 99 yrs and/or include parole restrictions, resulting in terms of natural life without any possibility of parole.

THE TRUTH: The death penalty makes
NO contribution to public safety.

RECEIVED MAR 13 1995

Dustin Fraser
1319 Mountain View Dr.
Kodiak Ak 99615
March 7, 1995

Senator Robin Taylor, Chairman
Judiciary committee
Senate
State Capital, Room 30
Juneau, Alaska 99801-1182

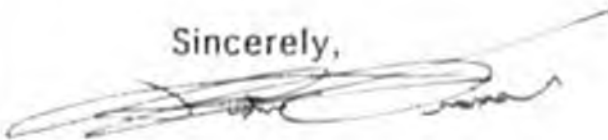
Dear, Robin Taylor

I am a citizen of Kodiak. And I am writing in regards to SB 52 Capital Punishment For Murder.

I think there should be capital punishment for murder . It would clean up the streets, if you take away the people that cause the crime there will be no murder. But there is only one problem with SB 52 ,that is that the people who get the death penalty are on death row to long. Most are on death row for six years or more. If you pass this bill you should ask for sorter time on death row.

Thank you for taking the time to read my leader. I hope you pass this bill. thanks again.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dustin Fraser', with a long horizontal flourish extending to the right.

Dustin Fraser

RECEIVED MAR 13 1995

Linda MacMillan
3530 Wingate Circle
Anchorage, Alaska 99508
(907)277-2209

Senator Robin Taylor
Senate
State Capitol
Juneau, Alaska 99801-1182

Re: Senate Bill 52, "Capital Punishment for Murder"

Dear Mr. Taylor

I am saddened to see that you have proposed legislation to enact capital punishment in the State of Alaska.

I recently read several essays for and against capital punishment. Both sides persuasively argue the merits of the deterrent value, economic cost, and reinforcement of societal norms. However, everyone agrees it is wrong to kill an innocent person.

Proponents believe they can establish a process that would prevent loss of an innocent person's life. I do not believe this is possible. The proposed measures to short-circuit the appellate process in order to minimize cost and assure a quick execution reinforce my belief.

Any process for administering capital punishment is based on the assumption that all parties involved (police, attorneys, judges, and jurors) are honest, competent, and objective in performing their duties. We are all fallible humans capable of making errors, exercising prejudices and committing moral wrongs.

The bill assumes the accused will have equality of representation. Even now the quality of representation provided to indigents is inferior to that of the State. If the legislature enacts capital punishment, I doubt it will also address the shortcomings of the Public Defender System. It is unlikely to increase staff, equalize pay, lighten case loads or expand investigative resources.

Many citizens of Alaska want capital punishment because they fear crime and are frustrated with their inability to combat it. They view capital punishment as a solution even though they lack objective evidence that it is. It is unfortunate we are willing to commit moral wrong because it makes us feel better.

I thank you for your time to read my letter, and I pray that you will be guided by God's light in dealing with this issue.

Sincerely,



Linda MacMillan

RECEIVED MAR 30 1995

To: Senator Robin Taylor and President Pearce

Fm: Nels A. Anderson, Jr. *Nels A. Anderson Jr.*

Subject: SB 52, Capital Punishment

Date: 3-27-95

I oppose SB 52, not strictly on moral grounds, but on the fact that too many Natives will be killed by passage of such legislation. You know that Natives make up a disproportionate number of inmates in our jails in relation to their percentage of Alaska's total population.

On this fact alone, it is clear that Natives will bear the greatest burden of this legislation. I am not saying that this legislation is ant-Native. I am saying that you need to look at why so many Natives are in jail before you adopt legislation that may kill so many indigeneous people.

When I was in the legislature, I discovered that there was a disparity in sentencing. A study funded by legislation that I sponsored in the late seventies showed that Natives and other minorities were getting harsher sentences than whites for the same crime.

This revelation caused the entire justice system to examine itself and order a complete top to bottom cross cultural training exercise to excise any bias that the justice system was not aware of. The result was that sentences for crimes leveled out regardless of race.

No study has been done since that was done in the early 70s. It is time to do one again before SB 52 is passed to make sure that the people who are in our justice system are not sentencing Natives and minorities more harshly than whites. If a study is not done now and it is found later that disparities exist due to bias, then the state would suffer a very serious judicial, political and social setback in its long term survival as a place where all races can live together in harmony.

I urge you to please conduct such a study and hold your bill in abeyance until you see the results of a disparity in sentencing study. Please contact Dave Gray who is on staff with Rep. Mockle's office. He is familiar with the study that was conducted and could be very helpful in researching the earlier legislation.

Thank you for your consideration.

cc. Bush Caucus

Speaker Phillips

Rep. Sanders

FORUM / LETTERS

Reinstating death penalty wrong choice for Alaska

By JULIE KITKA

On Oct. 15 of last year, 1,200 delegates to the annual Alaska Federation of Natives Convention voted to oppose reinstatement of the death penalty in Alaska. Since then, two capital punishment bills have been introduced in Juneau, confronting each of us with a profound issue of morality.

Here is why we oppose this legislation so strongly:

Capital punishment is biased by race. Alaska is no exception to this national pattern. From 1900 to 1957, when the territory had a death penalty, seven of the nine people hanged were Alaska Natives or other minorities. No Caucasian person has been put to death here since 1903.

Each of the minority people executed was unable to afford adequate legal representation, was summarily tried and convicted and lacked the political connections to seek commutation of sentence. In Alaska, as elsewhere, the death chamber is reserved, almost exclusively, for poor people and minorities.

If you doubt criminal sentencing is biased by race and class, look at who is in jail in our state. Alaska Natives constitute about 16 percent of the total population and only 13.5 percent of those old

enough to be sent to prison. Yet 32 percent of the state's inmate population is made up of Eskimos, Aleuts and Indians. Native people know that fact, have consistently pointed out the inequities of our criminal justice system and have no illusions about who will die if a death penalty is reinstated in Alaska.

Capital punishment is irreversible while justice is fallible. Between 1973 and 1993, more than 1,300 Americans received death sentences that were later overturned on appeal. At least 23 other people were "mistakenly" executed and subsequently proved innocent. Proponents of capital punishment don't deny these facts; they just dismiss them as the inevitable cost of doing business.

Capital punishment wastes precious resources. It costs some states six times as much money to execute one person as it does to keep him or her in prison for life. The departments of Law and Corrections have estimated that reinstating capital punishment will cost Alaska more than \$21 million in the first four years, and the price tag will go up from there.

If that is to be paid, where should we take it from in the budget? From education? Health? Roads and bridges? Public safety?



In a time of severe fiscal restrictions, is death one of our top priorities and how much are we willing to pay for that luxury?

Capital punishment doesn't deter crime. Extensive research comparing murder rates in death penalty states vs. those without a death penalty shows

no significant deterrent value. Most killings occur between people who know each other, resulting from violent explosions of emotion, often influenced by substance abuse. Such acts are only marginally influenced by abstract consequences in the law.

Capital punishment di-

minishes us all. If the death penalty doesn't do what it says it does, why do many people support it? Because it panders to rage in a time of economic fear and racial animosity. Its real achievement is to provide an outlet for social hatreds by making "justice" out of revenge. Per-

haps the worst result of capital punishment is what it does to us.

Killing human beings as punishment for killing human beings will never work — because everyone knows that the truth is what we do, not what we say. The real message that the death penalty sends throughout the culture is that, if the reasons are good enough, the taking of human life can be justified. But that is what every killer silently tells himself, and no society can afford to take ethical cues from its own worst elements.

If what we really want is the reduction of violence in America, we are going to have to deny the satisfaction of inflicting it. Otherwise, individuals will continue to mimic society's values by killing one another, the law will continue to execute them for it and we will all remain locked in a self-perpetuating dance of death.

"It is the deed that teaches, not the name we give it."

Felony murder and capital punishment are not opposites which cancel each other out — but similars

that breed their kind."
—George Bernard Shaw

Julie Kitka is president of the Alaska Federation of Natives.



NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.

National Office

Suite 1600
99 Hudson Street
New York, N.Y. 10013-2897 (212) 219-1900 Fax: (212) 226-7592

execution update**January 30, 1996**

Total number of executions since the 1976 reinstatement of capital punishment (there were no executions in 1976):

318

'77	'78	'79	'80	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96
1	0	2	0	1	2	5	21	18	18	25	11	16	23	14	31	38	31	56	5

gender of defendants executed

total number 318

Female 1 (.31%)
Male 317 (99.68%)

gender of victims

total number 426

Female 186 (43.66%)
Male 240 (56.34%)

race of defendants executed

White 175 (55.03%)
Black 124 (38.99%)
Latino 17 (5.34%)
Native American 1 (.31%)
Asian 1 (.31%)

race of victims

White 350 (82.16%)
Black 55 (12.91%)
Latino 14 (3.29%)
Asian 7 (1.64%)

defendant-victim racial combinations**White Defendant and**

White Victim 242 (56.81%)
Black Victim 5 (1.17%)
Asian Victim 2 (.47%)
Latino/a Victim 5 (1.17%)

Black Defendant and

White Victim 100 (23.47%)
Black Victim 49 (11.50%)
Asian Victim 2 (.47%)
Latino Victim 1 (.23%)

Latino Defendant and

White Victim 9 (2.12%)
Latino Victim 7 (1.64%)
Asian Victim 1 (.23%)

Native American and

White Victim 1 (.23%)

Asian Defendant and

Asian Victim 2 (.47%)

Contributions are
deductible for U.S.
income tax purposes.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part
of the National Association for the Advancement of Colored People
(NAACP) although LDF was founded by the NAACP and shares its
commitment to equal rights. LDF has had for over 30 years a separate
Board, programs, staff, offices and budget.

Regional Offices

Suite 301
1275 K Street, N.W.
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375 West Ninth Street
Los Angeles, CA 90015
(213) 626-2020
Fax: (213) 626-2021

6/9/95 A15

Abroad at Home

ANTHONY LEWIS

'A Culture of Rights'

BOSTON

Until a few years ago South Africa was an extreme example of a country that exalted the power of the state. Today it makes the rights of the individual the society's highest value.

That extraordinary change was dramatized this week by a decision of the country's new Constitutional Court. It held the death penalty unconstitutional.

The 11 judges were unanimous in that conclusion. Each wrote a separate opinion, and there was drama in their diversity: black and white, Afrikaner and English. What they said had much meaning for other countries, not least for America today.

"The test of our commitment to a culture of rights," Justice Pius Langa wrote, "lies in our ability to respect the rights not only of the weakest but also of the worst among us."

Americans used to pride themselves on having "a culture of rights," but public fear is taking a toll. At President Clinton's urging, for example, the Senate has just passed a bill that ignores the Constitution in order to get at suspected terrorists.

Acting Justice Sydney Kentridge, a lawyer who sat as a replacement for an absent judge, quoted Winston Churchill, speaking in the House of Commons as Home Secretary in 1910:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civiliza-

Constitutionalism
in South Africa.

tion of any country. A calm, dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the state — a constant heart-searching by all charged with the duty of punishment. . . . These are the symbols which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it."

The mood and temper of the American public today, and of politicians, are far from Churchill's ideal. With President Clinton's agreement, Republicans in Congress are about to cut off appeals in death cases: appeals that often show innocence or a denial of constitutional rights.

The President of the South African court, Justice Arthur Chaskalson, wrote the main opinion. He found that the death penalty violated a clause of the new South African Constitution forbidding "cruel, inhuman or degrading treatment or punishment." That was so, he said, because among other things death sentences were imposed so arbitrarily:

"At every stage of the process there is an element of chance. The outcome may be dependent upon factors such as the way the case is investigated by the police, the way the case is presented by the prosecu-

tor, how effectively the accused is defended, the personality and particular attitude toward capital punishment of the trial judge. . . ."

Justice Chaskalson added that defendants in capital cases very often had lawyers provided for them who were inexperienced and had grossly inadequate funds to prepare a defense. That is notoriously true of capital cases in the United States.

The court considered, and rejected, the argument that executions deter violent crime. The real deterrent was the likelihood of being caught, where Justice John Didcott said the odds in the criminal's favor were "rather high."

Lawyers arguing for the death penalty had urged the Constitutional Court to leave the issue to politics and public opinion. But Justice Thole Madala said the court could not canvass public attitudes; its duty was to safeguard individual rights, popular or not. Two of the judges quoted a statement that Justice Robert H. Jackson of the American Supreme Court made in the Flag Salute Case in 1943:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities. . . . One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights . . . depend on the outcome of no elections."

American constitutional ideas have swept much of the world. How strong are they now at home? □

SIX FALSE CLAIMS ABOUT THE DEATH PENALTY

"Most People Want A Death Penalty..." WRONG

When given reasonable alternatives, most Americans do NOT favor the death penalty. A bipartisan national opinion poll was released in March, 1993. Based on interviews with 1,000 registered voters, the poll established that most people would choose a life sentence without possibility of parole and restitution to the victim, over a death sentence. Only 41% preferred the death penalty when offered this alternative.

"Innocent People Are Not Sentenced To Death Row..." FALSE

Hundreds of completely innocent people have been convicted of capital crimes in this century. 23 Americans have been wrongfully executed, their innocence proven when it was too late. Since 1973, at least 48 people have waited on death row, finally to be released on significant evidence of their innocence.

"Capital Punishment Saves Taxpayers' Money..." NO WAY

The minimum additional cost to taxpayers of trying just 6 capital cases a year, for the first four years, is a staggering \$18,800,000. Costs will increase after the start-up period, because more people will be in the death case system. Alaska cannot afford the death penalty.

"Death Sentences Are Fairly Imposed..." NOT TRUE

Minority group citizens comprised 45% of the 318 Americans executed since 1976. If the death penalty returns to Alaska, it will fall unfairly on Alaskan Natives, and other minorities. In territorial days, white people committed up to 75% of Alaska's murders. Yet, 10 of 13 executed were non-white, more than half were Native.

"Executions Reduce Crime Rates..." DISPROVEN

Homicide rates in states with the death penalty are no lower than in similar states without it. Every credible study has shown the threat of death is no deterrent. Indeed, Death Penalty states sometimes have a higher murder rate than comparable states without the penalty.

"Victims' Families Always Favor Death Sentences..." NO THEY DON'T

Many victims' families have spoken against the vengeance of the death penalty.. The Journey of Hope, a 17 city tour against the death penalty during the summer of 1993, included 100 speakers from Murder Victims For Reconciliation. In 1995, the Journey of Hope was held in California. Marietta Jaeger, mother of murdered 7 year old: "In my case, my own daughter was such a gift of joy and sweetness and beauty, that to kill someone in her name would have been to violate and profane the goodness of her life. The idea is offensive and repulsive to me."

P.O. Box 69
Kasilof, AK 99610

February 6, 1996

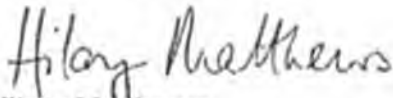
Senate Judiciary Committee:
Senator Robin Taylor
Senator Lyda Green
Senator Mike Miller
Senator Johnny Ellis
Senator Al Adams

Dear Senators:

I wish to express my firm opposition to the reintroduction of the death penalty in Alaska. There are many reasons for my view that it is immoral, ineffective and far too costly. It is immoral because whether it is given as a sentence or not usually depends on the wealth of the defendant; it is immoral because it disproportionately affects minorities; it is immoral because it is irreversible in the case of wrongful conviction. It is ineffective as a deterrent as many studies have shown; homicide rates in states which have the death penalty are no lower than in states which do not have it. It is extremely expensive; defense attorneys will demand a much higher burden of proof, and prosecution attorneys will have to provide much more substantial evidence if the death penalty is the possible outcome, so trials will be much more expensive. Every lawyer I have spoken to opposes the death penalty. The cost of incarceration in Alaska stands at about \$37,000 per year. Estimated costs for a death penalty trial and appeals stands at about \$2,000,000 - 54 years of incarceration. It is also very expensive in terms of the amount of time each case takes.

Finally, even if a majority of citizens support the death penalty, that does not make it morally right. A majority of people in this country supported slavery at one time. I urge you all to oppose reintroduction of the death penalty in Alaska. It is immoral, ineffective and far too expensive for this state.

Yours sincerely,


Hillary Matthews

Killings, Legal and Otherwise, Around the U.S.

0. 71:68 44 94 77

THE popular notion that politicians are a disservice to the public appears to be as timely as ever in New York, where Governor Mario Cuomo's friends have turned to hissing their disapproval. They're not alone in the Commonwealth in so opinion; and here's one politician who strongly disagrees with the would-be critics: a columnist from Ohio.

The 1941-42 season began - when the heavy rain followed the weekend of the 1st. That was the main period of the death week - but the heavy rain was late in the afternoon of the 2nd. The 3rd was a fine day and the 4th was a fine day. The 5th was a fine day and the 6th was a fine day. The 7th was a fine day and the 8th was a fine day. The 9th was a fine day and the 10th was a fine day. The 11th was a fine day and the 12th was a fine day. The 13th was a fine day and the 14th was a fine day. The 15th was a fine day and the 16th was a fine day. The 17th was a fine day and the 18th was a fine day. The 19th was a fine day and the 20th was a fine day. The 21st was a fine day and the 22nd was a fine day. The 23rd was a fine day and the 24th was a fine day. The 25th was a fine day and the 26th was a fine day. The 27th was a fine day and the 28th was a fine day. The 29th was a fine day and the 30th was a fine day. The 31st was a fine day and the 32nd was a fine day. The 33rd was a fine day and the 34th was a fine day. The 35th was a fine day and the 36th was a fine day. The 37th was a fine day and the 38th was a fine day. The 39th was a fine day and the 40th was a fine day. The 41st was a fine day and the 42nd was a fine day. The 43rd was a fine day and the 44th was a fine day. The 45th was a fine day and the 46th was a fine day. The 47th was a fine day and the 48th was a fine day. The 49th was a fine day and the 50th was a fine day. The 51st was a fine day and the 52nd was a fine day. The 53rd was a fine day and the 54th was a fine day. The 55th was a fine day and the 56th was a fine day. The 57th was a fine day and the 58th was a fine day. The 59th was a fine day and the 60th was a fine day. The 61st was a fine day and the 62nd was a fine day. The 63rd was a fine day and the 64th was a fine day. The 65th was a fine day and the 66th was a fine day. The 67th was a fine day and the 68th was a fine day. The 69th was a fine day and the 70th was a fine day. The 71st was a fine day and the 72nd was a fine day. The 73rd was a fine day and the 74th was a fine day. The 75th was a fine day and the 76th was a fine day. The 77th was a fine day and the 78th was a fine day. The 79th was a fine day and the 80th was a fine day. The 81st was a fine day and the 82nd was a fine day. The 83rd was a fine day and the 84th was a fine day. The 85th was a fine day and the 86th was a fine day. The 87th was a fine day and the 88th was a fine day. The 89th was a fine day and the 90th was a fine day. The 91st was a fine day and the 92nd was a fine day. The 93rd was a fine day and the 94th was a fine day. The 95th was a fine day and the 96th was a fine day. The 97th was a fine day and the 98th was a fine day. The 99th was a fine day and the 100th was a fine day.

Both murders can be meaningfully done above two
feet, some many foreign defendants come later -
which much more, but might say it just the same.

The above information was obtained from the files of the
 FBI and is being furnished to you for your information.
 The information was obtained from the files of the FBI
 and is being furnished to you for your information.
 The information was obtained from the files of the FBI
 and is being furnished to you for your information.

The first \$100 of the \$200 donation will go toward the purchase of a new computer monitor for the library's desktop system. The remaining \$100 will be used to purchase additional books and materials for the library's collection.



1. The above conditions can occur since the detection of a defect is not a simple task and a high error rate is

found at these two sites the former was used at the same period the latter at a later date. The latter was destroyed in a 1929 fire at the Adams property and the ground is still in need of after the 1930s and a good amount of a ditch was built in the area. The latter was

As it and other basic government services are equally threatened as the nation as a whole is not the only country apparently and apparently free would market and money — and is estimated to be — a strong indicator that the government is not a real state.

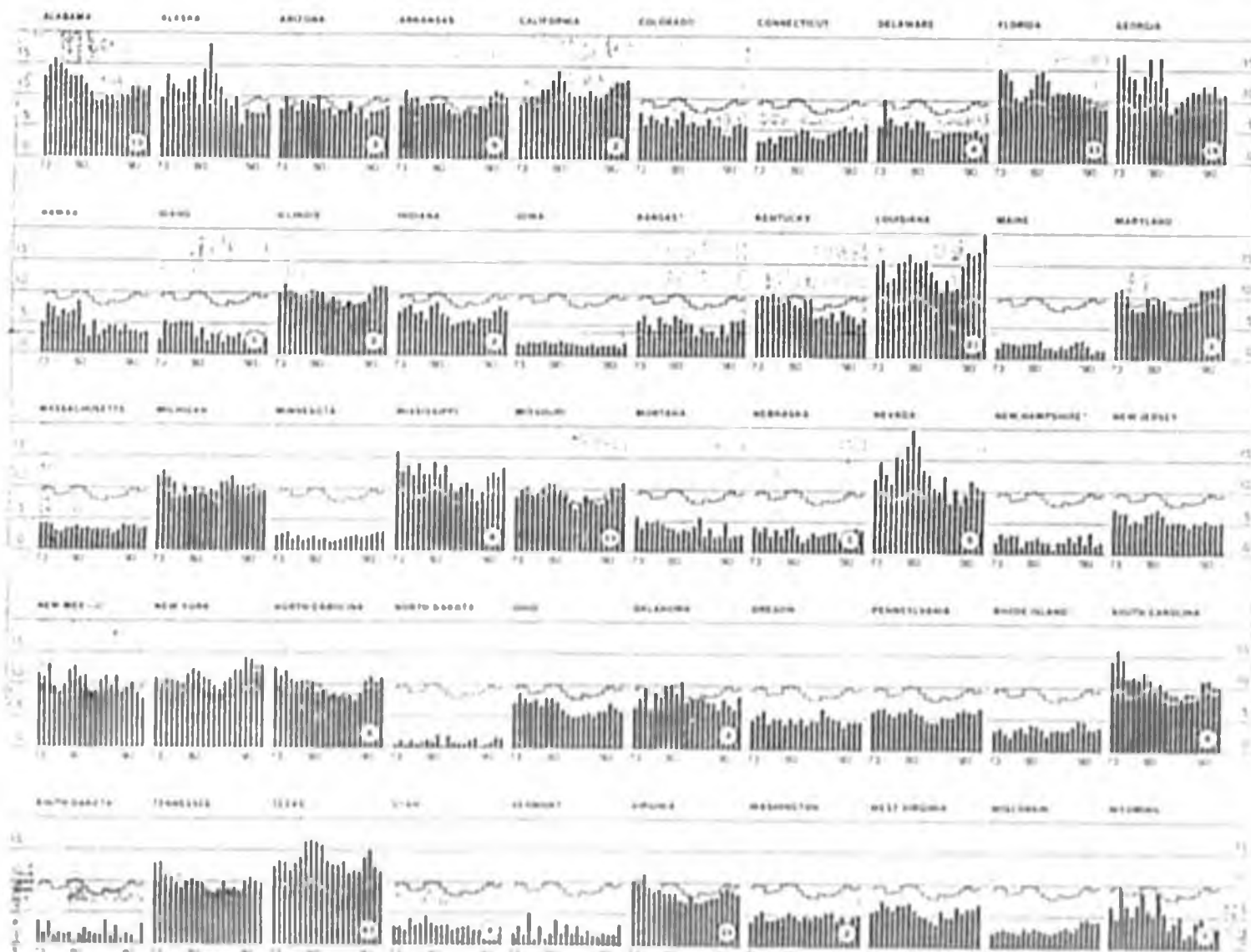
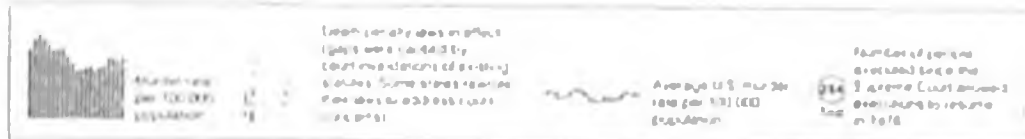
Richard J. Carter, director of the North Carolina State Highway Patrol, says that from the past few years he has not seen any more of the type of car that was involved in the crash. He says that the car was a 1964 Ford Mustang, a two-door coupe, and that it was a dark color. He says that the car was a 1964 Ford Mustang, a two-door coupe, and that it was a dark color.

Longer growth periods, for example, and longer periods of dormancy or dormancy in the soil, are also possible. The growth of the plant is also affected by the soil conditions, and the soil conditions are also affected by the growth of the plant. The growth of the plant is also affected by the soil conditions, and the soil conditions are also affected by the growth of the plant.

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Murder and the Death Penalty: A State-by-State Review

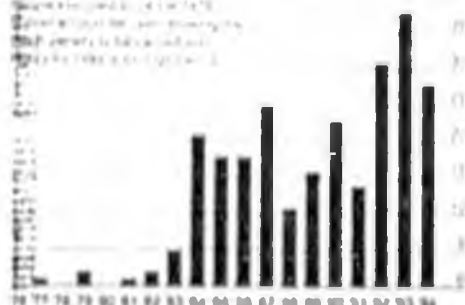
U.S. DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY



Page 4 of 4

The Pace of Executions: Since 1976.

1. The first step is to identify the problem.
 2. The second step is to define the problem.
 3. The third step is to analyze the problem.
 4. The fourth step is to develop a solution.
 5. The fifth step is to implement the solution.
 6. The sixth step is to evaluate the solution.
 7. The seventh step is to monitor the solution.
 8. The eighth step is to maintain the solution.
 9. The ninth step is to improve the solution.
 10. The tenth step is to document the solution.



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and Through History

பெரிய அளவுக்கு இவ்வாறு பணியாற்றியவர்கள் 1997-98 ஆம் ஆண்டுக்கு முன்பாகவே இருந்தனர். அதற்குப் பின்னர் இவ்வாறு பணியாற்றியவர்களின் எண்ணிக்கை குறைந்து கொண்டே வந்திருக்கிறது. இது குறித்து கருத்து தெரிவித்திருக்கிறார் டி.வி.எஸ்.எஸ்.சி.யின் தலைவர் டாக்டர் சி.வி.சுப்பிரமணியன். இவரின் கூற்றுப்படி, இவ்வாறு பணியாற்றியவர்களின் எண்ணிக்கை 1997-98 ஆம் ஆண்டுக்கு முன்பாகவே குறைந்து கொண்டே வந்திருக்கிறது. இது குறித்து கருத்து தெரிவித்திருக்கிறார் டி.வி.எஸ்.எஸ்.சி.யின் தலைவர் டாக்டர் சி.வி.சுப்பிரமணியன்.



The Price of a Death Penalty Sentence

1. *do* is a strong mood marker, marking the speaker's position in the hierarchy of the social group. It is used to indicate the speaker's position in the hierarchy of the social group. It is used to indicate the speaker's position in the hierarchy of the social group.

The average (over all 4 years) mean change in the number of primary and secondary lesions was 0.02 and 0.01, respectively. The average (over all 4 years) mean change in the number of primary and secondary lesions was 0.02 and 0.01, respectively.

and a significant, strong negative trend was found. This is consistent with the hypothesis that the degree of political liberalization is inversely related to the degree of corruption.

1998-2000	2001-2003



UNIVERSITY OF ALASKA ANCHORAGE

1211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

FAX # (907) 786-7777

TO: Senate Judiciary Committee DATE: 2-7-96
TIME: (AK TIME)
TOTAL PAGES:
FAX #: 465-3922 (including this page)

FROM: Nancy M. Schafer

SUBJECT OF FAX: testimony on the death penalty

MESSAGE:

The Death Penalty Bill
remarks
Nancy E. Schafer

I testified last year that Alaska does not need a death penalty. We are too small a state, the penalty is too costly in terms of court processes and corrections requirements, and there is no evidence that the existence of a death penalty statute deters other murderers. Indeed there are some researchers who found a "brutalizing effect" of the death penalty in some states, with homicides and suicides rising after executions.

I would like to make two points today. One is whether Alaska criminals are more likely than those in other states to be rational and thoughtful and the other is an effort to address what I see as a problem of arithmetic that many of us seem not to notice.

I will speak to the second of these first.

People regularly argue that the high cost of court processes required by the Supreme Court in death penalty cases will be offset by other savings. They can even give a figure to those savings - the cost per prisoner per year. This is a spurious argument.

How do we determine our per prisoner cost? We take the total cost of prison operations and divide by the number of prisoners in the institution. What goes into this total cost? Electric bills, food, personnel, clothing, programs, heating costs, etc. Many of these are fixed costs. The warden's salary does not go down proportionately when a prisoner disappears, nor does the electric bill. The front gate must be staffed twenty-four hours a day whether there are 100 prisoners or 90 and the cost is the same. However the fewer prisoners there are the greater the per prisoner cost. So removing prisoners doesn't "save" money. Perhaps the total food bill will go down a little-- but the per prisoner cost increases.

And what about the superior Alaska criminal? I don't think he exists. I realize that those who favor the death penalty do so on faith. They believe, in spite of all evidence to the contrary, that criminals are intelligent rational beings who do not lose their tempers, who think carefully about their actions, and who will be deterred by the existence of severe penalties. My experience with criminals just won't allow me to believe this.

FAX

Date

2/6/94

Number of pages including cover sheet

4

TO: Senator Robin Taylor

FROM: Richard Friedman

Friedman, Rubin & White

1227 W. 9th Avenue
Second Floor

Anchorage, AK 99501

Phone

Fax Phone

907 465-3922

Phone

907-258-0704

Fax Phone

907-278-6449

CC:

REMARKS:



Urgent



For your review



Reply ASAP



Please Comment:

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LAW OFFICES OF
FRIEDMAN, RUBIN & WHITE

Richard H. Friedman
Jeffrey K. Rubin
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February 6, 1996

Senator Robin Taylor
State Capitol
Juneau, AK 99801

Dear Robin:

I understand you are holding hearings on a death penalty bill. I cannot resist sharing some of my experiences and observations with you.

A few years ago I was appointed to represent a defendant in the federal "mail bombing" case which I am sure you have heard about. I believe this was the first Alaska death penalty case in over 35 years. I sought out, and then accepted the appointment out of curiosity. In some ways a death penalty case is the "Mount Everest" of criminal defense practice.

I wish I could say I came away from the experience with deep philosophical and moral insights about right and wrong, crime and punishment, or truth and justice. I did not. Instead, I was left with an overwhelming sense of appalling waste. The easiest--but by no means the most extreme--example is the arraignment; it took five days.

If you put yourself in the shoes of any of the participants in these proceedings, it is easy to see why things get out of hand. If you are the prosecutor, you have convinced yourself, your superiors and the public that the defendant is a worst offender who deserves to die. A conviction is no longer a victory, nor is a lengthy prison term. Anything less than a death sentence is a failure. Statistically, in cases in which a death penalty is sought, the odds are against securing such a sentence and having it upheld on appeal. Accordingly, the prosecutor does every

Senator Robin Taylor

February 6, 1996

Page 2

"I", crosses every "T" and spares no expense or effort in preparing and presenting his case. Innocent beyond a reasonable doubt is no longer enough; the prosecutor attempts to present a perfect case.

The lawyer charged with defending a death penalty client does the same. Any stone unturned, any motion unfiled, any mistake that is made could result in the client's death. No expense or effort is spared. The trial judge knows that every move he makes will be closely scrutinized by the Appellate Courts. (I have heard that the California Supreme Court Justices spend approximately 50 percent of their time reviewing death penalty appeals.) He takes all the time needed, and more.

The result, at the trial level, is an incredibly wasteful process, severely disruptive to the rest of the court system. Everything else gives way to the death penalty case.

I will let others debate the moral or legal issues; there is no doubt in my mind that the death penalty is terrible public policy. It is particularly troubling that all this time and effort will be expended on many cases in which the death penalty will ultimately not be imposed. (This is what happened in the mail bombing case.) In other words, all this time, money and effort will be expended and those favoring the death penalty will not even get what they bargained for. What they will get, unless the budgets of the public defender, district attorney and court system are increased dramatically, is a severely crippled judicial system. Everyone who needs to use the court system will be adversely impacted.

There is something else that happens in a death penalty case that is difficult to describe, but I will try. In a routine murder case there are a few headlines when the crime is committed, when the trial is held, and when the sentence is imposed. The defendant is then put in jail and forgotten. In a death penalty case, the proceedings are longer and more drawn out, the prospect of the death penalty makes everything appear more dramatic, and in the end, the

Senator Robin Taylor
February 6, 1996
Page 3

defendant becomes some sort of perverse celebrity. My impression is that many of them appear to enjoy this sort of recognition and notoriety. I truly believe we would all be better off if they were simply thrown in jail and forgotten.

Robin, I have written you this letter knowing that you support the death penalty and knowing that there are probably strong pressures upon you to make this a political issue. I truly believe, however, that if you could see first-hand the effect of the death penalty on the court system, you would agree that whatever merits the death penalty has are outweighed by the dysfunction it will cause our judicial system. There is a reason most prosecutors, police chiefs, and judges oppose the death penalty--and it is not that they are soft on crime.

I hope you will consider these comments as you review the legislation before you. Needless to say, if you think there is any other helpful information I can provide, either formally or informally, please do not hesitate to get in touch with me.

Sincerely,



Richard H. Friedman

RHF:jc

February 26, 1996

RECEIVED

FEB 27 1996

Senator Jim Duncan
The Alaska State Senate
The Capital Room 119
Juneau, Alaska 99801

Ans'd.....
Re: The Death Penalty

Dear Jim:

Bills that would restore use of the death penalty in Alaska are pending in both houses of the Legislature. As you are my elected representative in the Senate, please let me offer my views on this matter. I will send copies of this letter to other members.

First of all, I sincerely hope that the idea of an "advisory vote" on the death penalty will not go forward. I should think it obvious that *advice* on this matter should come from members of this body to their constituents, rather than the other way around. The information you and they need to have is more readily available to you than to them. The death penalty is a controversial, emotionally charged issue. Misinformation rules the opinions of many people. It would be unfair to your constituents to ask them to vote on such a matter without the Legislature having first conducted an objective, searching, authentic inquiry.

I express the views in this letter as a private citizen, but not without some background in the field of criminal justice. For three years, beginning early in 1979, I served as *Director* of Corrections in Alaska. (This was before the days of cabinet-level corrections in our state.) Over a period of about forty years I have had a variety of other roles in the field, including employment at seven different federal prisons.

I brought to Alaska substantial experience in dealing with murderers and other violent criminals in confinement, but no direct experience with the death penalty. And I had not focused much attention on the subject until 1980 when I was asked (by my boss, Helen Bierne, then Commissioner of HSS) to develop a position paper on a death penalty bill then under consideration by the Legislature. I took this assignment very seriously. The research I did included everything from reviewing scholarly studies, to lengthy telephone conversations with state officials outside who had conducted executions, to reading every newspaper and magazine article I could find on the subject. Moreover, I went to my Bible concordance in order to study every passages of scripture I could find that might have a bearing. From that time, sixteen years ago, until now, I have tried to keep informed with respect to the death penalty question.

The experiences I have described here led me to become an implacable opponent of the death penalty. I am convinced that the Territorial Legislature exercised wisdom in abolishing the practice in Alaska almost forty years ago, and I am convinced that to again resort to its use would be an egregious mistake. It would bring with it a great potential for harm in terms of capriciousness, unfairness and destructive conflict among the racially diverse people of our state. The death penalty hampers good law-enforcement and would interfere with the orderly prosecution of offenders. It is destructive to the families of murder victims, virtually requiring them to remain in a state of bitterness and uncertainty for the many long years of the unavoidable death penalty appeal process.

Unless we choose to ignore the overwhelming consensus among criminologists and others qualified to evaluate empirical studies, we surely know by now that the death penalty has no more value as a deterrent than long-term imprisonment. Indeed, while there may be no single incontrovertible study or demographic comparison to prove it, the weight of the evidence strongly suggests that individuals who are predisposed to violent crime are *more likely to be incited than deterred by executions*. (This is not surprising to me as I know something about the bizarre thought processes of especially brutal, vicious murderers.) With respect to this matter, the highly respected study conducted by Professors Pierce and Bowers of Northeastern University should be of particular interest.

I may not have the most current figures, but the last time I looked at F.B.I. Uniform Crime Report numbers on this matter, murder rates in states without the death penalty were 4.8 murders per 100,000 population, while states using the death penalty had an average murder rate of 7.4 murders. Canada abolished the death penalty in 1976; the murder rate in that country has fallen since that time. The most death penalty prone states in the U.S.A., Florida and Texas, have both seen a significant growth in the rate of murders since the Supreme Court (in *Gregg v. Georgia*) permitted them to resume executions in 1977. Some of the more courageous public figures in those states are beginning to acknowledge that they have squandered millions on the death penalty that could have been more usefully employed in responsible law enforcement and crime prevention.

The evidence goes on and on, all the way back to the classic study by Robert Rantoul. After a hundred years no social scholar has been able to refute his findings- an increase in the rate of murder after a period of more frequent use of the death penalty. There is no single contemporary proof that could be called irrefutable, but everything leans in one direction. Arguments for the death penalty based on deterrence fail utterly. The death penalty does not even deter the individual who is executed for many years after sentencing. A penalty along the lines of the ninety-nine year sentences typically given to aggravated

murderers here in Alaska is much more efficient to administer and far less expensive.

I am confident that you, and others who will read a copy of this letter, are fully aware that the death penalty is the most exorbitantly expensive of all criminal sanctions, far more expensive than life imprisonment. The appeal process required by the "death is different" concept, which emerged from the Gregg v. Georgia decision, is a major reason for the high cost of a death penalty prosecution. The simplistic solution so often offered is a speed-up of the process by reducing the defendant's avenues and opportunities for appeal. The problem here, as you undoubtedly know, is that the Rehnquist court has gone as far as it can go in this regard. And yet the average cost of a successful death penalty prosecution continues to be several millions of dollars.

In order to "streamline" the process, the Supreme Court has removed appeal rights from defendants that most citizens- if they knew about them- would find profoundly unfair. While guilt "beyond reasonable doubt" remains the standard for conviction, the Supreme Court has managed to insulate itself from having to consider new information that might provide an abundance of reasonable doubt.

I have been coming to the State Capital Building to talk with legislators about pending death penalty bills from time to time over the past twelve years. I have always been treated courteously but I have yet to hear a serious attempt by supporters of capital punishment to lay out a reasonable argument for restoring the practice in Alaska. Could it be that this is all just a matter of elective politics? It should not be. It is true that from 75% to 80% of the American public are said to support the death penalty. But we need to understand that the same studies that appear to reflect such strong support for the death penalty, almost invariably show that a substantial majority of respondents, when given a choice, would prefer long-term confinement over the death penalty. Much of the public have been victimized by the myth that murderers typically serve only a few years in prison.

Many folks support the death penalty because of a sense of moral outrage; their view is that certain murderers "deserve" to die. Who can argue with that? The problem is that there is no way to sort out who most deserves to die. The one person executed here in the United States, out of a thousand who are prosecuted for murder, isn't at all likely to be the one who committed the most reprehensible crime. The "just deserts" idea simply doesn't work. The wisdom of the Holy Scriptures again comes to the fore. "Vengeance is mine, saith the Lord, I will repay."

Last year the Constitutional Court of South Africa threw out the death penalty, which leaves the United States as the only advanced society in the western world where state sanctioned killing of human beings is still lawful. I don't believe most

Alaskans or most Americans enjoy the idea of being in company with the likes of Iraq, Libya, Iran and Red China on this question. They will like it even less when they come to realize how capricious, how racially, culturally and economically biased it is, how it hampers good law enforcement and drains the criminal justice resources of jurisdictions that use it, and how cruel it ultimately is to the families of murder victims.

I furthermore believe most Alaskans will be unhappy to learn that according to an unchallenged study conducted by Stanford University researchers, twenty-four innocent persons have been executed in the United States during the life-time of some of us, that hundreds of others have been saved by eleventh hour appeals, and that uncounted others have been put to death without all of the relevant facts being known. The death penalty is *irreversible*. This is perhaps the strongest argument against it.

If you, or any other member of the Legislature who might read a copy of this letter, have questions about the points I have made here; if you would like to discuss the matter with me, or if there is any way I might be of help to you, please don't hesitate to call me.

Sincerely yours,

cc: Members, Alaska State Senate



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Judiciary
COMMITTEE NAME Committee

COMMITTEE ON SB # 52 JUD DATED 2/6/96
BILL/SUBJECT

*Act providing for an advisory
vote on the issue of the death penalty

I am opposed to this bill which seeks to place before Ak the question of whether they support or oppose the death penalty. The primary reason I am in opposition is NOT so much that I oppose the death penalty in SOME cases, but rather I feel the general voting public would not react to this question in an educated manner, but rather an emotional one; thereby not considering the relevant facts. On an emotional basis, I for one might check off "yes" I am for the death penalty. But now after having heard all the VERY relevant facts around this issue (that it occurs disproportionately in minorities, that it serves often to entrap a possible innocent person into a "lesser" life sentence, that it is costly, etc.) I would vote "NO" I don't believe in the death penalty. Unfortunately, an "eye for an eye" is the living philosophy of many humans. This however flies in the face of other human values we deem "desirable" (forgiveness, truth, REAL justice, compassion). As far as my stance on the death penalty, I feel efforts should be made toward channelling energy + resources to finding more humanistic options to deal w/ capital offenders, and we should, as a society, be worrying more about what DRIVES a person to murder - randomly - rather than ~~and~~ and how to prevent that.

I say NO to SB 52 JUD and No to the death penalty.

SIGNED

TESTIFIER

myself
REPRESENTING (OPTIONAL)

PO Box 82985 Fairbanks Ak 99705 (907) 479-0829
ADDRESS/PHONE NUMBER

CHENA RIDGE MONTHLY MEETING

Hidden Hill Friends Center
2602 Goldhill Road
Fairbanks, AK 99709-2016
(907) 479-4796

MINUTE OF CONCERN

Regarding the Adoption of the Death Penalty (Capital Punishment)

Chena Ridge Monthly Meeting of the Central Alaska Friends Conference (Quakers) affirms our faith's opposition to capital punishment in Alaska or in any other state.

We believe that God would have us take no human life, either in war or in retribution for a crime, for there is that of God in each person which can convert and redeem each person.

In our view, alleged public support for capital punishment does not diminish the cruelty of execution nor warrant the taking of human life.

We oppose capital punishment because it violates the gospel we proclaim, and promotes the evils of vengeance and injustice through the agencies of government intended to advance righteousness and justice. We believe the Christian way to deal with crime is to seek the redemption and rehabilitation of the offender, to promote penal reform, and to work more diligently at the task of preventing crime.

As capital punishment is abolished, we recognize that society must be protected against release from prison of those whose unredeemed spiritual life or condition of physical or mental health would endanger others.

Punishment by death is inflicted most often upon the poor, and particularly upon racial minorities who do not have the means to defend themselves that are available to wealthier offenders. A minority person convicted of a capital offense is much more likely to pay the extreme penalty than a white person convicted of the same crime.

We note the irony of the significant additional cost incurred by the correctional and judicial systems in pursuing and carrying out executions, drawing public funding away from where it is most needed: the state's crime prevention and law enforcement efforts. In addition, the inherent arbitrariness of modern executions undermines our society's respect for the law, inevitably leading us into a disintegration of public consensus.

For all these reasons, we urge our state officials to resist the temptations of demagoguery and to lead us to a more humane and civil future.

The preceding minute of concern was approved by Chena Ridge Friends Meeting in Session for Business, October 4, 1994.



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Judiciary
COMMITTEE NAME

COMMITTEE ON SB 52 (substitute) DATED 2/7/96
BILL SUBJECT

I am opposed to the reinstitution of the death penalty in Alaska on its merits: ineffective deterrent; discriminatory application to detriment of minorities and poor people; exorbitant cost to government; and finally on moral grounds as a denigration of the concept of the sacredness of human life.

I am opposed to putting the question of re-instituting the death penalty before the voters. Doing so would distort the election process by opening up opportunities for demagoguery and polarization of non death penalty related electoral issues, making death penalty a "litmus test" for candidates for political office. We have far more important issues to deal with in November.

SIGNED Michael Welsh
TESTIFIER

REPRESENTING (OPTIONAL)

P.O. Box 82933 Fairbanks, AK 99708 458-0118
ADDRESS/PHONE NUMBER



DIOCESE OF JUNEAU

OFFICE OF THE DIOCESAN ADMINISTRATOR

RECEIVED

FEB 21 1996

Ans'd.....

419 SIXTH STREET
JUNEAU, ALASKA 99801
FAX # 907/463-3237
TELEPHONE 907/586-2227

February 16, 1996

The Honorable Robin Taylor
Alaska State Legislature
State Capital (MS3100)
Juneau, Alaska 99801-1182

Dear Robin,

Last week I sat in on the hearings on SSSB52. I had hoped to testify, but the Committee ran out of time. Nonetheless, I was appreciative of the manner in which you conducted the hearings. While it is clear that you support the Capital Punishment Bill, you gave each person wishing to testify both courtesy and attention. That was very refreshing.

It is my hope that hearings on SSSB52 will be continued at a future date. In the event that they are not, allow me to register my opposition to the Bill. I have two concerns: First, I believe that the question of Capital Punishment is a moral question. Moral questions are not resolved by popular vote. In 1860, in Virginia, slavery would certainly have received the support of the majority of citizens of Virginia. That did not make slavery morally right. By the same token, a vote on Capital Punishment in this state will say nothing about its moral rectitude.

Secondly, if this question is placed before the voters, I and others in my position will feel compelled to oppose it vigorously. As a practical matter, this means that resources earmarked for charitable works such as plugging holes in the safety net, will be diverted and used to oppose this proposition. It is a terrible waste of scarce resources, especially given that the vote will provide you with no additional information regarding the moral content of the Capital Punishment Bill.

Finally, for your information I enclose an article on Capital Punishment written by Bishop Kenny before he died.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael P. Nash".

Reverend Michael P. Nash
Diocesan Administrator

CAPITAL PUNISHMENT

Every time I read in the paper that someone in the U.S. has been executed, I feel something, tear inside me. Anguish, anger, bewilderment all collide inside my soul. When the report includes a picture, a human face, the ache is all the more intense.

This is not to say that I read reports of murders or other acts of human violence without feeling. Often I am horrified at the brutality one person can bring upon one or several other human beings. Truly my heart goes out to the loved ones, the families of victims of murder or assassination. I remember my own heartrending when a young cousin of mine was savagely bludgeoned to death in his own home. I remember how shattering was the experience of John Kennedy's slaying. Memories of a stunned widow standing with her two little children before the coffin of the fallen president still bring tears to my eyes.

But for all the horror and revulsion, the anger and pain I know when confronted with a violent criminal act, there is a fundamental difference in my reaction to that punishment we call "capital." A shooting or stabbing, a rape or kidnapping, even an act of torture performed by one individual or a gang, terrifying and disgusting as these might be, remain the senseless isolated acts of individuals. Crazy or coldly calculating, the perpetrator, is acting on his or her own.

Capital punishment, public execution, is an act of the community. It is something we do. We are the responsible agents acting with full awareness and complete deliberateness. We know exactly what we are doing and we freely will it. Be it by gas or electricity, asphyxiation or lethal injection, it happens in our name.

With all my being I oppose capital punishment. I abhor what it says about us and does to us as human beings. It is inconceivable to me how a society as civilized, as brilliant, as advanced as ours can treat human beings guilty of criminal acts with no more wisdom, restraint or sensitivity than darkest of ages. To say our executions are more refined because they are, as anyone can now, quick and painless, is a sham. To kill, to snuff out human life, is--no matter what the method--the most extreme and ultimate act of violence.

Without a doubt a society has the right and obligation to protect itself. Also, without a doubt, there are certain individuals who are truly a menace to others. But surely there are other ways for safeguarding the public than public execution. To meet violence with violence, to seek a life for a life only continues the cycle of brutality and gives justification to our basest instincts. In a sense, the more horrible the crime, the greater the need to respond with patience, gentleness and forbearance so that responsible and reasonable people might teach the less wise a different way to react to wrongs. Every time the executioner's ax falls, we demean and lower Ourselves.

Bishop Michael Kenny (March 16, 1984)

2/13/96

RECEIVED
FEB 26 1996
Ans'd.....

Dear Senator Jaylor,

When I was young my mother taught me hurting people was wrong. I now find myself wondering if our society says this is a value we uphold, why we are proposing to kill people who hurt people, in order to punish them.

As a proponent of capital punishment, I know you're aware of the reasons against the death penalty.

Why is it OK ^{for the state} to kill people if we teach our children we shouldn't do this? It doesn't make sense to me, but it must make sense to you. Could you please explain this to me? Sincerely, John

FAX

To: Senator Robin Taylor, Chm. Senate Judiciary Committee

FAX # 465-3922

From: Ruth G. Benson
1551 Farmers Loop
Fairbanks, Alaska 99709
Phone: 907-479-6912
FAX: 907-455-6912
March 5, 1996

Dear Senator Taylor:

I am writing in opposition to SB 52. I believe that it is impossible to educate voters sufficiently with a simple ballot proposition about a complex issue such as the death penalty. Furthermore, solutions to difficult, complex questions are the prerogative of legislators, who are elected to learn as much as they can about these issues and arrive at their best solution with the most possible information at hand.

I believe that our system of representative government is in jeopardy when the Legislature attempts to escape difficult decisions by offering them to the voters who, on the basis of ignorance of the full range of implications, social as well as financial, may be the least qualified citizens to make them.

Please reconsider your proposal to put the death penalty to a vote. I believe it is a bad idea, and extremely ill-advised for such a volatile issue.

Yours sincerely,

Ruth G. Benson

Eleven days into this year, Archie Dixon entered the state prison in Mansfield, Ohio, a capital murderer sentenced to die by lethal injection for the 1993 kidnapping, robbery and murder of Christopher Hammer, a man he had buried alive.

At the sentencing trial, Dixon's lawyer asked the court not to impose the death penalty but to opt for life imprisonment, on the grounds that the 22-year-old Dixon had been abused by his adoptive parents. That plea did not sway either judge or jury.

But it is still far from clear who the winner of the argument was. In Ohio, the difference between a death sentence and a life sentence can be very hard to determine. True, the state has a death penalty. At the moment, there are more than 150 death-row inmates hiding their time at Mansfield Correctional Institute, theoretically waiting for their capital sentences to be carried out.

But the state has not executed anyone since 1963. Every year it sends new recruits to the special security unit at Mansfield—last year 17 of them arrived, fresh from sentencing. Nearly a quarter of the inmates who are supposed to be awaiting execution have now been there a decade or more. Many of them can scarcely remember what it was like not to be waiting to die.

They are not the only people at Mansfield whose memories are a little rusty. Although lethal injection is the official method of execution in Ohio, it has never once been used. The state's last execution, 33 years ago, was done with an electric chair. On the day when Ohio finally carries out a death sentence, the prison system staff will need to read the manuals carefully to make sure that it knows how to do the job.

That day may arrive this year. Or it may not. Three months ago, the state was moving toward execution of John Glenn, a resident of death row for the past 14 years who had been sentenced at the age of 20 for shooting and killing a sheriff's deputy who was holding Glenn's brother in custody.

But on December 27, a U.S. court of appeals set aside Glenn's death sentence on the grounds that, during his sentencing hearing, Glenn was not adequately represented. His lawyers, the court ruled,

LONG LIFE ON DEATH ROW

Most states now have a death sentence. But in many of them, a lot more criminals are entering death row than leaving it.

BY PENELOPE LEMOV

should have offered more evidence about the brain damage Glenn suffered before birth. At the moment, it looks as if Glenn will never receive the punishment that a jury ordered for him in 1982.

Thirty-eight states have the death penalty in America, and the majority of them differ from Ohio only by degree. They are much more efficient at sentencing criminals to death than they are at carrying out the sentence. In 1995, it is true, there were 56 executions in the United States, more than twice the 1991 figure. And the number will increase again this year. Pennsylvania, which had left its death penalty unused almost as long as Ohio had, finally executed two prisoners in 1995, and Governor Tom

Ridge has signed more death warrants—31—in his first two years in office than the previous governor signed in his whole term.

On the other hand, the number of people who arrive at the nation's death row units has been averaging 280 a year for the past seven years. America's total population of sentenced capital criminals is now over 3,000. At that rate, it will take until the year 2050 to execute them all. Meanwhile, new ones will be sentenced every year, and so the population will almost certainly grow before it shrinks. At the present rate, more of these criminals will die from old age than from gas, electricity or lethal injection.

THERE ARE SEVERAL REASONS why 34 years have passed since the last execution in Ohio. One is that for nine years, from 1972 to 1981, Ohio had no legal statute imposing capital punishment. In 1972, the U.S. Supreme Court ruled state death penalty laws unconstitutional because of their discriminatory character. Four years later, the court voted to allow the death penalty under more strictly defined circumstances. Some states put new statutes in place quickly, but Ohio was not able to enact a constitutionally acceptable law until 1981, several years later than most. John Glenn had the misfortune to commit his crime shortly after the new death sentence became law.

He also had the misfortune to miss another escape hatch. In 1991, just before leaving office, Governor Richard F. Celeste, who opposed the death penalty, committed to life imprisonment the sentences of three women and four men who had been on death row since the early 1980s. That, in effect, set back the execution clock a few more years. Only now is a new batch of death row inmates finally exhausting its various appeals.

Among those who find this situation frustrating is Ohio's attorney general, Betty Montgomery. When prisoner Glenn had his execution sentence canceled in December, Montgomery called it a "glaring example of the compelling need to streamline the appeals process." The victim's family has been waiting for over 14 years for justice to be served, she said. Montgomery ordered her staff to file an appeal of that decision.

Montgomery started out as a county prosecutor, then served in the state Sen-

ate, where she developed a reputation as a crime fighter. But she is not, she insists, a rabid proponent of capital punishment. "There are valid arguments both ways on the death penalty," Montgomery says. "That's not the question here." Her complaint is that a state that sentences someone to death and then fails to carry out the sentence is mocking its own criminal justice system. "The death penalty is the law in Ohio," she argues, "and it is not being enforced."

Montgomery has been spearheading efforts to put a stop to what many other attorneys general and prosecutors around the country target as the underlying fault: an overly complex appeals process that death-row prisoners use to postpone and, if they're successful, subvert the implementation of their sentence. Although the average case takes eight to 10 years to make the rounds of appeals, some drag on for as long as 15 years. Montgomery wants to streamline that process so that the law can be enforced as intended and the justice system can maintain a plausible link between crime and punishment.

To that end, she helped draft a referendum, passed overwhelmingly by Ohio voters in 1994, that removes one entire round in the state appeals process. Appeals now go directly to the state Supreme Court, without the usual intermediate stop at the court of appeals—a step California, Florida and Tennessee are also taking. In addition, Montgomery helped write a law, passed by the legislature in 1995 and based on similar laws recently enacted in Texas and California, that forces death-row prisoners to make their appeals within a more limited time period—about six months after they've lost their first, and automatic, appeal—and then all at once, instead of sequentially, as they usually do.

These changes have not been without controversy. Some state judges object to them either because they diminish overall court scrutiny or because they increase the state Supreme Court workload and bog down the court system. Without the appeals court to eliminate



The defense bar has moved beyond any reasonable use of due process, says Ohio Attorney General Betty Montgomery.

frivolous appeals, one state Supreme Court justice argues, the Supreme Court will have to spend too much time on death penalty cases, and that will mean less time for other matters.

For David Bodiker, a public defender who heads Ohio's Death Penalty Resource Center, the reasons are less complicated. The reforms, he believes, are just plain wrong. "I don't think there is an egregious amount of time being squandered by the court system in dealing with death-penalty matters," he says. "Most of the delays are the natural consequence of a law that needs to be carefully imposed with extreme sensitivity and considerable due process." As Bodiker sees it, the tension between speed and accuracy should always be resolved in favor of accuracy.

Public defenders and capital-punish-

**To defense lawyers,
the tension between
speed and accuracy
should always be
resolved in favor
of accuracy.**

ment opponents all over the country are making the same argument, and making it more insistently as campaigns such as Betty Montgomery's gain strength. "The American criminal justice system as designed by our founders and constitution is not intended to run smoothly or quickly," says Nathan Schaye, an Arizona-based defense lawyer and chairman of the death penalty committee for the National Association of Criminal Defense Lawyers. "It's intended to provide fail-safe measures to ensure any errors are found."

Before the 1960s, executions in this country frequently took place within weeks of conviction. In a disturbing number of cases, evidence emerged after the execution that proved the convict innocent. The present system of multi-layered appeals and judicial reviews of the trial and sentencing record grew out of that situation. When it allowed states to have death penalties again, the U.S. Supreme Court also charged them with making a "fair and reasonable determination" about who merits the irrevocable punishment.

As the ability of prisoners to find new grounds for appeal progressed, so too did attempts to curtail their unlimited access to courts, often by setting deadlines for the filing of appeals or by refusing to hear new evidence, no matter how exoneratory, if it was filed past a certain date. But every move the criminal justice system made to speed things up was met by a counter-strategy on the part of defense attorneys. So the net result of all the new rules was to slow the process down in virtually every state.

Today, in the words of Columbia University law professor James Liebman, "we have the worst of both worlds. A lot of review takes place, but the process takes literally a decade to get through, at the end of which people are still being executed who should not be executed and some who should be executed are not."

In Betty Montgomery's view, the defense bar has moved beyond any rea-

sonable use of due process and has simply perfected delay for its own sake, missing an issue, taking it through the appeals process, losing, then raising another issue, losing it and raising still another, virtually ad infinitum. The key, she says, is to call a halt to the dawdling. "We're saying, raise them all at once within a reasonable time frame or lose them."

Bodiker, the Ohio public defender, admits that neither he nor his clients on death row have been in any hurry to file appeals, or to bundle them and work quickly toward a final decision. On the other hand, he points out, not all the delays are instigated by death row inmates and their lawyers. Some are created by courts and prosecutors.

As the system now stands, federal judges in effect review state prosecution of a case from the original trial through sentencing and appeals. That kind of scrutiny takes time, and the courts are under no deadline to move cases along. In John Glenn's case, for instance, a state court took 14 months to deny one of his appeals, a federal court took a year and a half to decide another point.

In Ohio, as in all the other death penalty states, some of the cases occur in small counties that may see only one capital prosecution in 40 years. These counties lack the staff and experience to work through the complications of such a case quickly. Meanwhile, in some of the bigger, more experienced counties, where prosecutors understand the system, they fight vigorously against defense requests for examination records and other documents, and that adds to the delay. Perhaps the best example is the case of convicted killer John Byrd. During the 11 years it took for his appeals to wend their way through the Ohio system, at least three years were eaten up by the prosecutor's fight to have Byrd's legal counsel disqualified.

Altogether, roughly 40 percent of death-penalty petitioners have their convictions or sentences overturned, either during the state appeals process or by federal judges. It's not that most of them are found innocent and freed from prison. What happens is that 40 percent get either a new trial on the facts of the case or a new hearing on whether the death sentence was warranted or was applied appropriately. One-third of the states with the death penalty forbid it for those who are mentally retarded or deranged, so many appeals cases attack

THE DEATH ROW CENSUS

As of February 1, 1990, 38 states had the death penalty on the books

STATE	INMATES ON DEATH ROW	EXECUTIONS SINCE 1976
Alabama	135	12
Arizona	119	4
Arkansas	35	11
California	422	2
Colorado	4	0
Connecticut	5	0
Delaware	14	7
Florida	340	36
Georgia	104	20
Idaho	20	1
Illinois	161	7
Indiana	51	3
Kansas	0	0
Kentucky	27	0
Louisiana	44	22
Maryland	13	1
Mississippi	56	4
Missouri	93	17
Montana	6	1
Nebraska	10	1
Nevada	79	5
New Hampshire	0	0
New Jersey	11	0
New Mexico	3	0
New York	0	0
North Carolina	154	8
Ohio	150	0
Oklahoma	138	6
Oregon	14	0
Pennsylvania	197	2
South Carolina	58	5
South Dakota	2	0
Tennessee	102	0
Texas	399	104
Utah	11	5
Virginia	57	31
Washington	13	2
Wyoming	0	1

Source: Death Penalty Information Center

the death sentence on this ground.

In Ohio, at the moment, Wilford Berry, a prisoner on death row in Mansfield for the past five and a half years, is refusing to make any more appeals. Berry, who killed the owner of a haberdashery while he was robbing the store, is demanding to be executed. During his sentencing trial, he insisted that he felt no remorse for his crime and that the jury should sentence him to death before he killed again. His lawyers are continuing to fight his execution on the grounds that he is insane.

Defense lawyers argue, of course, that states should speed things up not by short-circuiting the appeals process but by working harder to avoid errors at the trial court level. Nathan

Schaye, the Arizona defense lawyer, claims that about two-thirds of the death-penalty convictions that courts reverse are overturned on the basis of incompetent trial-court defense. In his view, the solution is higher standards, including better pay for defense lawyers. In Arizona, at the moment, the funding for death-penalty defense is \$70 an hour. "It costs \$40 an hour just to operate a law firm," Schaye complains.

The official American Bar Association standard for death-penalty defenses is two experienced lawyers at every stage of the process, with expert witnesses and investigators available. About half the states with the death penalty meet at least part of that standard—two lawyers. Several, including Colorado, Indiana, New York and Ohio, also require that experienced attorneys be part of the team.

To Betty Montgomery's way of thinking—and to that of most prosecuting attorneys—the public defense bar doesn't need any more help than it already gets. "Prosecutors feel prepared to death with their motions," she says. "Two to three people come up to defend a case while in some small counties, the state of Ohio has only one to two prosecutors to handle the case."

Not long ago, Montgomery set up a capital punishment resource center within the attorney general's office. The center offers support and legal assistance to county prosecutors so that they can deal more effectively and efficiently with death-penalty trials and appeals. One of its programs is to counter the pleas and petitions crafted by Bodiker's Death Penalty Resource Center to make sure prisoners are adequately represented.

Meanwhile, the two sides continue to battle it out. Not long ago, the Ohio Death Penalty Resource Center won a retrial for a condemned killer, Carroll Dean Pless, who had originally waived his right to a jury trial. The court found that the way the waiver took place did not meet the letter of the law. "It's a super technicality," Bodiker admits. "He must not have known that Pless was on death row since 1992, stalked and killed his victim. On the other hand, there is at least some question whether he would have received the death penalty had he been represented by counsel. And it's only fair," Bodiker argues, "that that case be addressed. I don't at all wish to see more cases to the jury box."

14020 Venus Way
Anchorage, AK 99515

RECEIVED
MAR 11 1996
Ans'd.....

March 6, 1996

Senator Robin Taylor
Chair of the Senate Judiciary Committee
State Capitol
Room 30
Juneau, AK 99801-1182
Fax 465-3922

14020 Venus Way - Anchorage

Dear Senator Taylor

The Senate Judiciary Committee today demonstrated the profound contempt that the members have for the people of Alaska in the way that the teleconference on Senate Bill 52, the death penalty advisory vote, was held today.

Like a lot of other people from all over the state, I wanted to speak to the committee members about this idea for an advisory vote. I am a legal historian, I have spent two years studying the history of capital punishment in Territorial Alaska, research funded by the Alaska Humanities Forum and the National Endowment for the Humanities, and that history has something to say about whether an advisory vote will be helpful.

I came to the teleconference that was scheduled some two weeks ago, and had prepared my testimony, and sat there for two hours, and then learned that there wasn't time to hear from me or most of the other people there, and that another hearing time would be set.

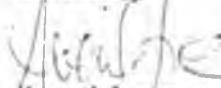
I was informed that the continuation of the hearing would be held today. I polished my testimony, and shifted around my work and my domestic responsibilities, and arrived at the Anchorage LHO at 1 p.m. I waited there with some other people who had carefully written out their testimony, a Vietnam veteran, a high school student, and a public defender. As time passed, other people trickled in, people who had restructured their day to speak to you.

The hearing opened. We could barely hear, so I asked the lady manning the telephone to improve the volume. I sat down again. I still couldn't hear. But hearing didn't matter any more, because the "hearing" was over. From start to finish, it must have lasted 120 seconds. When it was over, no, a single person had spoken from any LHO in the state, not a word of testimony was received. We had to have the phone monitor call to Juneau to see what had happened, since none of us could hear it. We were told that the committee substitute had been voted out of committee.

The committee has acted in a way that shows disdain and contempt for the people who responded to your invitation to be heard. The arrogance of this cavalier door slamming astounds and saddens me. The irony, of course, is that the bill itself calls for an advisory vote from the people of Alaska. But there is no real desire to hear from the people who care about it enough to go to all the trouble we've been through.

I protest. Is this my democracy?

Sincerely,


Averil Lerman

cc Senator Al Adams
Senator Johnny Ellis
Senator Mike Miller
Senator Lyda Green
Senate President Drue Pearce

Death penalty law forces prosecutor to question beliefs

By RICK HAMPSON
The Associated Press

NEW YORK — When the state brought back the death penalty, Robert Johnson — who once convicted an innocent man of murder — was the only district attorney to call a news conference and say he'd never seek it.

On Monday, as a fine policeman was buried and a ruthless ex-convict faced murder charges, the Bronx prosecutor faced an ultimatum from the political establishment: Change your mind about capital punishment or get off the case.

Officer Kevin Gillespie died Thursday night in a wild, running gunfight between police and three parolees who allegedly stole a BMW and robbed several people.

After police stopped the trio on the borough's main boulevard, more than 40 shots were fired. The one that killed Gillespie, police say, was fired by Angel Diaz.

At Gillespie's funeral, with Johnson in attendance, the slain officer's partner said the 33-year-old father of two "did the right thing, not only Thursday night, but every day. I would like the Bronx district attorney to do the right thing, too." Most mourners rose in applause.

Johnson was joined in the pews by Gov. George Pataki, who has talked of replacing him with a special prosecutor in the case, and Mayor Rudolph Giuliani, who has complained

about Johnson's "personal ideology."

Over the weekend, Gillespie's brother said his relatives "expect the Bronx district attorney to push aside his personal beliefs. We expect him to pursue the maximum punishment allowable by law."

Johnson's stand became even lonelier when Bronx Borough President Fernando Ferrer, a fellow Democrat who has long opposed capital punishment, advocated it in the Gillespie case: "There comes a time in this society when the line must be drawn. That time is now."

Johnson has said the death penalty won't deter crime and will tie up an already overburdened court system. He was overwhelmingly re-elected last year after a campaign in which his position on capital punishment was discussed at length.

Johnson's office said Monday that he hasn't ruled out the death penalty in all cases — "he never said never," according to spokesman Steven Reed — and has not decided how to charge Diaz or his alleged accomplices.

But in adopting the anti-death-penalty policy, he raised a swarm of ethical, legal, pragmatic and political questions with no clear-cut answers.

Can an elected district attorney, sworn to uphold the laws of the state, refuse to pursue one of them? Is he elected to follow his



New York Gov. George Pataki holds his hand over his a church Monday in Seaford, N.Y.

conscience or to abide by the will of the Legislature? If he believes that a jury in his jurisdiction will not vote for the death penalty, would he be wasting limited resources on an expensive, lost cause? And can another elected official, the governor, remove the district attorney from the case and appoint a special prosecutor for the sole purpose

of asking for the penalty?

The philosophical question of any prosecutor's right to which crimes to prosecute, who to charge, what sentencing to offer, all decisions based on a complex, long set of factors.

New York became

No retrial for rapper

The Associated Press

LOS ANGELES — Prosecutors said Monday they won't retry rapper Snoop Doggy Dogg and his former bodyguard on volun-



Gov. George Pataki holds his hand over his heart as the coffin of slain police officer Kevin Gillespie is carried into Monday in Seafood, N.Y.

ED BAILEY / The Associated Press

or to abide by the Legislature? Does that a jury in dictation will not the death penalty. be wasting limitations on an expensive? And can elected official, the remove the disney from the case int a special prosecutor the sole purpose

of asking for the death penalty?

The philosophical foundation of any prosecutor's office is discretion — the prosecutor's right to choose which crimes to investigate, who to charge and what sentencing deals to offer, all decisions that are based on a complex, shifting set of factors.

New York became the

38th state with the death penalty on Sept. 1, 1995, when a bill signed by Pataki, a Republican, took effect. The law allows execution of anyone convicted of killing a police officer, judge, prison guard or crime witness, as well as those who kill for money or while committing a violent crime.

The decision on whether

to seek the death penalty rests with local prosecutors. Most said they would use it, or said nothing.

But Johnson told reporters at the time that "it is my present intention not to utilize the death penalty provisions of the statute," and to instead seek life in prison without parole for the worst crimes.



STEWART / The Associated Press
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We Care for Kids



Children & HealthCare Week March 18-22

Providence Alaska Medical Center joins the Association for the Care of Children's Health, local physicians, and hundreds of health care providers around the nation in celebrating Children and HealthCare Week. This week is dedicated to educating the community about the special needs of children in the health care setting. It is our belief that providing compassionate, emotional support for the family and hospitalized child is a vital part of good medicine.

"Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty" is a report assessing the exorbitant costs associated with the death penalty. Every state that has studied its death penalty system has concluded that the death penalty is many times more expensive even than life imprisonment without parole.

"When the State Kills: The Death Penalty: A Human Rights Issue," a publication produced by Amnesty International that documents the death penalty as it is used throughout the world and the human rights abuses that inevitably accompany it.

"The Death Penalty: The Religious Community Calls for Abolition," which contains statements from every major denomination in the United States condemning the death penalty.

I have also included for your information several articles published on the question of whether the death penalty provides any deterrent value to preventing homicide and all reputable studies establish that it does not. In fact, there is a growing body of research that indicates that the death penalty may in fact increase violent crime. Death penalty states actually have a slightly higher rate of criminal homicide than non death penalty states.

Simply put, Alaska cannot afford the death penalty. Our current system of justice, especially in rural Alaska, cannot absorb the additional costs associated with the imposition of a death penalty. Although Alaska is fortunate to have an excellent public defender system, many of the offices in rural Alaska are composed of only one or two attorneys who carry very high caseloads. It would be impossible for these attorneys to handle their caseloads while adequately trying to represent clients charged with capital offenses. Death penalty trials are bifurcated trials: first there is a guilt phase and then if the person is convicted there is a separate jury trial to determine punishment. Each of these trials can take months, literally tying up the resources of the police, prosecutor, public defender and court system. In rural Alaska where there is typically only one superior court judge, that judge could very well be occupied full-time for many months on a single capital case which would pre-empt any other civil or criminal case pending. It is not an exaggeration to say that the imposition of the death penalty would literally bring the justice system in rural Alaska to a standstill. The Alaska Native Community recognizing many of these problems has come out strongly against passage of the death penalty in Alaska. I have enclosed for you resolutions passed by the Alaska Federation of Natives and the Alaska Inter-Tribal Council at their most recent conventions.

Besides dominating the court systems in rural Alaska, states that have the death penalty are finding that much of the appellate court time is spent hearing death cases. The appeals process in capital cases typically lasts at least ten years. Defendants

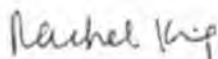
appeal their convictions through both the state and federal systems, usually each case is appealed all the way to the Supreme Court of the United States. This would put a drain on the Alaska appellate courts. Both Florida and California report that their appellate courts are spending half of their time on death penalty appeals, again pre-empting civil and other criminal matters.

Lastly, the cost of corrections is increased as it costs more to maintain a death facility, even one in lamentably poor condition, than a regular facility. The state of Alaska already cannot afford the costs of housing its current inmate population. It will not be able to absorb the additional costs of a death facility.

When all these factors are considered there is simply no compelling reason to establish a death penalty in Alaska. We are asking you to re-consider your position on SB 52 and HB 45.

Thank you for taking the time to read this information. Please do not hesitate to contact us if you have any questions or would like additional information.

Sincerely,



Rachel King, Esq.
Executive Director
Alaskans Against the Death Penalty



Chicago Tribune

Chicagoland
North

Saturday, November 7, 1992

50¢ Newsstand 40¢ Home Delivery

140th Year — No. 513 — Chicago Tribune — Saturday

Saturday



Keenan out: He either jumped or was pushed, but Mike Keenan (above) is out

From Page 1

Death—his own—was killer's goal

By Rot Karwath

Lloyd Wayne Hampton is blunt about it. He killed a man in 1990 to get the death penalty.

Days before he is to die early Wednesday by lethal injection in the Stateville Correctional Center near Joliet, Hampton said he wants death-penalty opponents—"meddlers" he calls them—to stop trying to block his execution, which would be only the second performed in Illinois since 1962.

Hampton said he is getting what he deserves and what he wanted

Feb. 8, 1990, when he tortured, smothered and stabbed Roy E. "Jasper" Pendleton to death in Downstate Troy. Pendleton, a 69-year-old retired janitor, had let Hampton into his motel room to use the bathroom.

"I had given up trying to make it," Hampton said in a telephone interview from his constantly monitored cell not far from Stateville's execution chamber.

"I was at a point in life where I was sick of being out there, sick of being in here all my life. What was I going to do out there? I decided

I either had to put myself in a position of being killed by somebody else or committing suicide.

"At that point, I had strong beliefs about not killing myself, about someone taking his own life. So I put myself in a position to have the state kill me."

Told that death-penalty opponents have raised his reasoning as evidence that he is mentally incompetent to waive court appeals of his death sentence, Hampton said the "meddlers" are wrong.

"I never knock those people," he said. "They do what they be-

lieve in. I don't expect them not to do their job."

"But there is no doubt in my mind, or really in anyone else's mind, that I am competent. The judge had no doubt. The state Supreme Court had no doubt. There is no doubt about it."

Hampton maintained that there was another reason he killed Pendleton. Less than a year out of a California prison where he served 2 years for assault, he said he was passing through southwest Illinois when he was hired to kill Pendleton.



Lloyd Wayne Hampton

The man who hired him, an unnamed former Illinois inmate, said Pendleton was a "snitch" who had helped send him to prison, Hampton

See Hampton, pg. 8

Hampton

Continued from page 1

ton said. It's a story that the Illinois courts have refused to believe, saying there is no evidence that Hampton was hired to commit the murder.

Hampton declines to "rat on" the man he said hired him. But he said he also made sure to commit other crimes while killing Pendleton—torturing him by turning his eyelids with a cigarette and stealing some of Pendleton's belongings—to ensure that he got the death penalty.

When he was arrested a day later in Pendleton's car, Hampton said he had given up on life. Born Nov. 13, 1953, in Memphis, Texas, he already had served more than a dozen years in Texas and California prisons for assault, burglary and prison escape.

Hampton also said he killed two other men, both in Texas, a story that Illinois authorities say might be true.

But Hampton has declined to provide details, apparently believing that doing so might delay his execution.

Hampton acknowledged that he had a troubled childhood, having been abandoned by his mother and beaten by his father.

He ran away from home at 15 and bounced from jobs in oil fields, construction and occasional stints as a country music singer.

"Look, a bad or terrible childhood can be a reason for why you do something. But it is never an excuse," he said.

"If you know the right things to do and willingly choose to go the wrong way, that is not your childhood."

He said of death-penalty opponents, "They always say stuff like that. 'Look at the poor little guy. He got his nose broke by his dad when he was a child.' But I don't buy that."

Though he has warned outsiders not to file appeals in his behalf, Hampton could put off his own

"Death-penalty proponents say it's a deterrent. But only an idiot thinks that executing me will deter any future criminals. It only deters the one being executed."

Lloyd Wayne Hampton

execution by expressing a desire to talk to his lawyer about a federal court appeal.

That action could come right up to the minute that he is to be wheeled on a gurney into the execution chamber.

Since being moved to Stateville from the Menard Correctional Center in southern Illinois, Hampton has spent his final days writing letters to family and friends, watching TV and wasting

group opposed to the death penalty, said Friday that it will formally ask Gov. Jim Edgar to halt Hampton's execution and commute his sentence to life in prison.

The group will file a clemency petition Monday with the Illinois Prisoner Review Board. The review board will hear the group's appeal, based on moral opposition to the death penalty, at 2 p.m. Tuesday in Springfield. It then will make a recommendation to Edgar.

Edgar aides have said the governor is prepared to allow the execution to proceed, but he will hear any last-minute appeals.

Meanwhile, Hampton declined a last meal, asking only for coffee and a cigarette.

"What is the point of gobbling down a last meal?" he said. "If they order one for me, why, I'd probably give it to my visitors later."

He expects a sister, one of his siblings, and some friends to visit before his execution. He said he feels sympathy for Pendleton's friends and relatives, but not for Pendleton.

Hampton also has abandoned hope that his execution will send a message to others who would commit crimes.

"Kids these days, especially in big cities, they already are hardened," Hampton said. "They don't pay attention to people like me. To them I am a fool who got caught."

"Death-penalty proponents say it's a deterrent. But only an idiot

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10-19-91 Courier-Journal

Teen killed friend hoping for execution, affidavit says

By DAVID GOETZ
Staff Writer

An Orange County, Ind., teenager told police he killed his 12-year-old friend Tuesday so the state would execute him for murder, according to court documents.

Lemuel E. Hickman, 15, said he apologized to his friend, Dexter Eickelberger, as he beat the Throop Elementary School sixth-grader to death with a fallen tree limb.

An autopsy report said the boy died of massive head injuries.

Hickman was in Orange Circuit Court yesterday for his first hearing on a charge of murder. The court waived juvenile jurisdiction Thursday and he was charged as an adult.

If found guilty Hickman cannot be sentenced to death because he is not yet 16. His maximum sentence would be 60 years in prison.

According to an affidavit filed with the murder charge, Hickman confessed to the crime twice, first to a sheriff's deputy and later, under questioning, to Indiana State Police Detective Doyle Cornwell.

Cornwell said in the affidavit that Hickman told him he had attempted suicide several times but was too "chicken" to go through with it. He thought if he did something "really bad," the court would send him to the electric chair and "that'd be it."

According to the affidavit, Hick-

man said the boys were playing at Hickman's home about five miles south of Paoli around 6 p.m. when Dexter said he had to go home.

Hickman offered to show Dexter a new trail through the woods and as the two walked along, Hickman picked up a piece of wood and began to hit his friend. The 12-year-old asked what he was doing, the affidavit said, and Hickman allegedly replied, "I'm sorry, Dexter."

The slight, blue-eyed, tousle-haired youth listened attentively yesterday as Circuit Judge David T. Rojahn explained his rights and entered a preliminary plea of not guilty on his behalf. He answered "yes sir" and "no sir" to the judge's questions. His mother, Gloria Hickman, watched the proceedings.

Rojahn ordered Hickman held without bond in the Orange County jail under a 24-hour suicide watch and ordered a psychological evaluation of the Paoli High School freshman. Jail matron Janice Blanton said Hickman is being held in a 14-by-14-foot glass enclosure in the staff area of the jail, in constant view of the police dispatcher.

"He's very quiet, reads a lot, mostly his Bible," Blanton said. "The school is sending his schoolbooks." Hickman also asked for his radio, which he received, and some "books on computers," Blanton said.

Some tales from the gallows: Deterrence? What deterrence?

By Walt Espy

The writer has documented over 14,000 legal executions in the United States as a research specialist for the Capital Punishment Research Project at the University of Alabama Law Center in Tuscaloosa.

One of the arguments most frequently advanced by those who advocate the death penalty is its value as a deterrence to others who would commit capital crimes. This is a conclusion that cannot be substantiated statistically. Historical fact supports the opposite view — that there is little if any deterrent value in capital punishment.

The trend away from public executions, where great crowds would gather to watch a fellow being strangled at the end of a rope, to conducting them privately in the presence of only a few invited and official witnesses, was accelerated by evidence that instead of creating respect for the law, these state-sanctioned spectacles of death led to acts of violence or other illegal activity by those witnessing them.

Certainly if there is a deterrent value, its impact should be felt most keenly by those who have lost relatives to the executioner.

Yat Martin Heed, in a jealous frenzy, killed his wife in Kansas City, Mo., on Sept. 16, 1893, and was hanged for the crime on Jan. 4, 1894. And five years later, on March 30, 1899, his son, James, was hanged from the same gallows for the murder of his girlfriend, the motive also being jealousy.

Today Gerald A. Gallego Jr., is under sentence of death by asphyxiation (in the gas chamber, that is) by two states, California and Nevada. Aided and abetted by his wife, prosecutors said, he killed two young women in a search for the perfect "sex slave." It is ironic, to say the least, that on March 3, 1955, his father, Gerald A. Gallego Sr., became the first person to die in Mississippi's gas chamber when he was executed for the murder of a policeman.

The younger Gallego was 14 years old when his father died — an age when the execution should have made a profound and lasting impression.

It has been demonstrated by these and numerous other cases that the progeny of executed felons were not deterred by the executions of their sires or older siblings.

When George Speed, a black man, was hanged at Fayetteville, Ga., on Oct. 8, 1875, for the rape of a white girl, his half-brother,

Clarke Edmondson, was among the witnesses. That very night, another white girl was assaulted and, when he was arrested and questioned, Edmondson confessed his guilt. On Oct. 17, he was taken from the jail and lynched on the same gallows from which his brother had been legally hanged nine days previously.

Nicholas Vianna, a former choirboy, killed a man during an armed robbery that had netted him a few cents over \$5. When he went to his death in the electric chair in Chicago on Dec. 9, 1920, his last words were: "I hope my death does more good than my life. I hope it teaches my kid brother to go straight."

Eight years later, the younger brother, Paul Vianna, was sentenced to the penitentiary for an armed robbery that had netted him only \$8.32. Fortunately, his victim had not resisted and was not killed.

Newsweek magazine devoted much of its Oct. 17, 1983, issue to the case of James David Autry, who had just narrowly missed execution by lethal injection for the murder of a convenience-store clerk and one other person over a six-pack of beer. The magazine gave an excellent insight into the sad, disturbed, and deprived childhood of James and his younger brother, Robert, each of

whom was possibly the only person who ever really loved or cared for the other.

James Autry's luck finally ran out and he was executed at the Texas State Prison on March 14, 1984. Three months later, the younger brother was arrested and charged with the mutilation-murder of a 59-year-old invalid woman. He now awaits trial for his life on this capital charge.

If there were a deterrent value in executions, whether they be public or private, one would expect those closest to, and most aware of, capital cases and their penalties to be deterred by them.

Not so George Swearingen, who, as sheriff of Cumberland County, Md., had served as a hangman and was fully aware of the horrors of slow strangulation at the gallows. Convicted of the Oct. 2, 1829, murder of his own wife, he was later hanged from his own scaffold.

J. Samuel McCue, Mayor of Charlottesville, Va., was an eminent attorney-at-law who had a long and successful practice before the courts of Virginia. His experience and knowledge of the laws on capital crimes did not deter him from murdering his wife. Following a trial and conviction, he was hanged on Feb. 10, 1905, in the city where he had served as chief magistrate.

Another Virginian, Frank J. Coppola, was electrocuted on Aug. 10, 1962, following his conviction for the extremely brutal murder of a Newport News woman during the course of a robbery in her home. He was a former policeman whose training assuredly encompassed an awareness of the penalty for committing a capital crime, but this did not deter him, either.

There can be no doubt that the execution of an individual serves as a limited deterrence in that he or she will certainly never again transgress against any laws of society, capital or otherwise. However, when we consider that this particular sentence of the law has always been and probably always will be applied in a capricious and haphazard fashion, the fact that there is virtually no general deterrent value should become obvious. One person convicted of an offense may be sentenced to die and be executed, while his crime partner, equally guilty but more fortunate in the selection of a trial jury, may, though convicted, receive only a prison sentence.

Such basic unfairness in any system that offers a punishment with the finality of the death sentence, in my opinion, completely negates any question of deterrence.

Research disputes execution deterrence

Press news services

ATLANTA — Publicized executions have caused short-term increases in murders, according to a researcher.

Sociologist William Bowers of Northeastern University reviewed past studies of whether executions have deterred other murders. He found mistakes in the data of studies that claimed to show lower homicide rates after publicized executions.

One of the longest studies, conducted from 1907 to 1963 in New York, revealed an average of two extra murders in the month following each execution. Bowers called the finding significant.

"The deterrence findings are not true," he said yesterday at the annual meeting of the American Psychological Association.

A group of panelists at the convention, discussing other research on capital punishment, said juries in death penalty trials often do not understand instructions from judges and decide cases based on incorrect assumptions.

The panelists, all of whom opposed the death penalty, agreed that findings from psychology and sociology are unlikely to sway or reverse court decisions on the death penalty.

Several panelists criticized the way that juries are instructed to decide between life and death.

Jury instructions are the "weakest link in the trial process," said Lorelei Sontag of the University of California at Santa Cruz.

Ms. Sontag, a doctoral candidate, is interviewing 30 jurors who served in 10 different death penalty cases in California. Half of the jurors voted for the death penalty and the other half voted for life imprisonment.

She said few jurors understand terms that are crucial to such cases so they usually based their decisions on the defendant's "lifestyle" rather than the facts of the case.

(Chicago Tribune/distributed by
Knight-News-Tribune)

February 8, 1996

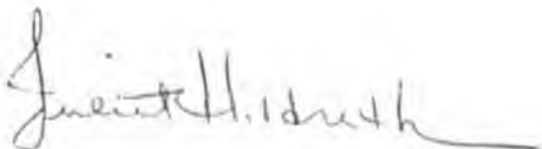
Julie Hildreth
9110 Terl Circle
Anchorage, AK 99507

Senator Robin Taylor
State Capitol
Juneau, AK 99801

Dear Senator Taylor,

I am sending the enclosed recent anti-death penalty advertisement.
I spotted the ad in the lifestyles/gourmet food and cooking section
in the Anchorage Daily News.

Sincerely,

A handwritten signature in dark ink, appearing to read "Julie Hildreth", with a long horizontal flourish extending to the right.

Julie Hildreth

enclosure

FOOD

ANCHORAGE DAILY NEWS

F4 Anchorage Daily News — Wednesday, February 7, 1996

DON'T KILL FOR ME



I Oppose The Death Penalty

"The death penalty will not help law enforcement do its job. During my career as a Police Officer and Homicide Detective, I did not see one defendant in a murder case who would have been deterred from his crime by the death penalty. Killers don't think they're going to get caught, or just can't think past the act of murder itself. Jurors always hold the prosecution to a higher burden of proof in capital cases. Mark Furman, Rodney King and Ruby Ridge are names that impact a gaping wound on the credibility of law enforcement—names that will contaminate jurors' minds and further skew the burden of proof demanded of the prosecution. Why risk a murderer going free?"

Sgt. J. H. HARRIS (Retired)

Anchorage Police Department

Sponsored by The League Of Amnesty International, The Human Rights Organization
900 Alameda from the LUSA 900 Alameda Fund, c/o P.O. Box 302296, Anchorage, Alaska 99502-2296

SB-52

Robert Anderson
P.O. Box 2625
Kodiak, AK 99615
907-486-8391

I would like to go on record as being strongly in favor of Senate Bill 052.

I believe that the issue of whether the State of Alaska should include capitol punishment for murderers should be decided by the citizen voters of this state. Simple as that. Let the voters decide!

I would question the motives of anyone who opposes letting the citizens decide how they want to deal with violent criminals.

In any criminal case it is the "People" versus the accused. It is only proper then, that in a true democracy, the "People" should decide this matter.

I urge this body to pass this bill so that we can vote on it.

Robert C. Anderson

Sent by:

Kawerak, Inc.

P.O. Box 948

Nome, Alaska

99762

Distributed by:

SENATOR AL ADAMS

STATE CAPITOL

JUNEAU, ALASKA 99801-1182

KAWERAK INCORPORATED

Resolution 94-09

OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS, the Kawerak, Inc. is concerned with equitable treatment of Alaska Natives within the criminal justice system; and

WHEREAS, Alaska Natives account for only 13.5% of the state's prison-age population, yet 32% of the jail population is comprised of Alaska Natives; and

WHEREAS, there is significant evidence of racial bias toward economically disadvantaged members of ethnic minorities in administration of the death penalty in other jurisdictions; and

WHEREAS, there is substantial concern among the Native community, and no evidence to the contrary, that in all likelihood the Alaska system of criminal jurisprudence is not capable of avoiding racial bias in the trial process; and

WHEREAS, the majority of Alaska Natives and people residing in rural areas of the state do not have the means to acquire adequate legal defense counsel when charged with serious crimes; and

WHEREAS, establishing a death penalty law and implementing it will cost millions of dollars and thereby deprive Alaska Natives and their communities of critical resources for service programs that focus on crime prevention; and

WHEREAS, Alaska Native tribes and organizations have historically opposed the death penalty as demonstrated by past actions to defeat federal death penalty legislation;

NOW THEREFORE BE IT RESOLVED, that Kawerak, Inc. is opposed to reinstatement of the death penalty in Alaska; and

BE IT FURTHER RESOLVED, that Kawerak, Inc. urges rural and urban legislators alike to oppose any effort to reinstate a death penalty in Alaska.

David Olney
Chairman of the Board

Luci Simonson
Board Secretary

4/2/94
Date

4-2-94
Date

The foregoing resolution was adopted at a duly convened meeting of the Kawerak Board of Directors, a quorum being present this 2nd day of April, 1994.

Kawerak Inc. request this to be
Sent to Judiciary; Finance Com.

TOTAL P.02

RECEIVED
MAR 7 1996
Ans'd.....

Commentary

Death Penalty 'choice' unfair to minorities

by Tom Harris

We, as Alaskan Citizens, are being asked, by Sen. Robin Taylor in Senate Bill 52, to choose death, as in the "Death Penalty", as an "acceptable" alternative form of punishment. Interestingly enough, this decision or choice is being championed, by those who also claim to be champions of the "right of life".

Given this group's representations and

practices of the past, it raises critical concerns, not only as to the core proposition of the death penalty itself as an ethical and moral issue, but also ominous overtones of exactly how the proposed embracement of this plan of death will be executed. We have only to look to Alaska's prison records to see that the minority prison population far exceeds the proportionate status in the overall population. To further compound the issue, prison records show

9

NORDSTROM

Senator Taylor,
Here are 2
newspapers (1 - article
& 1 - advert comment)
in Anti-Death
Penalty
Journal

• Death Penalty 'choice' unfair

that the minority prison population accounts for the overwhelming majority of those crimes that would be classified as "death penalty crimes".

Those championing the Death Penalty Choice have given no indication that they are prepared to discuss solutions or even acknowledge the existing inequities of the judicial system that incarcerates minorities at a rate many times that of the non-minority population. This being so, what assurance can the champions of the Death Penalty possibly give to ensure that their Death Bill will not result in minority executions at the same excessive rate as minority incarcerations.

How can anyone reasonably ask that Alaska's minority citizens agree to a death penalty that executes them at a rate four times greater than non-minorities? What possible justification can there be for this action? Is Alaska being asked to back into the current Bosnia/Serby system of ethnic cleansing? God forbid: What then? Alaska has lots of problems, for which we all need to focus our limited resources. I respectfully ask the State Senate and House leadership, wouldn't Alaska be better served if we all focused Alaska's shrinking resources, time, and talent on improving the quality of life rather than the quality of death, in providing running water and flush toilets rather than providing a death penalty and crushing a life. Thank you.

METRO

Anchorage Daily News Wednesday, February 28, 1996 B3

DON'T KILL FOR ME



I Oppose The Death Penalty

"I oppose the death sentence because it is not a deterrent; it is racially and ethnically biased; and it is fiscally prohibitive to the community that adopts it, due to the appeals process (for which the taxpayers usually pay)."

K. William Greco, Retired
Former Assistant Superintendent, Department of Corrections
State of Alaska

Sponsored by the local Chapter of Amnesty International, The Human Rights Organization
Anchorage's Black the Agenda, Special Services Fund (607) 273-3100, 2000 Anchorage, Alaska 99501-2294



Alaska State Legislature

Please enter into the record my testimony to the

STUD

committee name

committee on

SB 52

dated

2-7-96

bill/subject

I am writing to ask your support in opposing HB 162 and SB 127 which would institute capital punishment in Alaska. I oppose this bill for a number of reasons including that it is expensive and does not work.

There are a number of reasons why this bill should be defeated. There is no deterrent value in the death penalty. There is no appreciable difference in the homicide rates in states which have the death penalty and states that do not. The only data available indicates that the crime rate is actually slightly higher in states with the death penalty. Studies actually indicate that in death penalty states there is an increase in the homicide rate in months following executions.

Besides the lack of deterrent value, the death penalty would not be fairly imposed. Nationwide, death rows are disproportionately filled with African-Americans. During the territorial days in Alaska, 60% of all executions were against African-Americans and Alaska Natives. Currently, nearly 40% of all persons incarcerated in Alaska are Alaska Natives. If this bill passes, it is certain that Alaska Natives and people of color will be more likely to be executed. Poor people that cannot afford the cost of expensive defense attorneys will also be disproportionately impacted.

The death penalty is a too final and does not permit mistakes to be corrected. The criminal justice system in Alaska, like the rest of the United States, is not perfect. Innocent people are convicted of crimes and there are literally hundreds of case studies of innocent people who were convicted of crimes and ended up on death row. A recent book, "In Spite of Innocence" documents 400 cases of people who ended up on death row and later it was conclusively established that they were innocent. Wrongful convictions occur because of perjury, police and prosecutorial misconduct, and sometimes simply because the system is imperfect. However, once the final punishment of death is imposed, there is no possibility of using the justice system to correct the error.

Besides the moral and humanitarian arguments against the death penalty, the simple fact is that Alaska cannot afford to enact this legislation. We are starting out this legislative session with a budget problem approaching one billion dollars. Fiscal notes prepared by the Department of Law indicate that this legislation would cost \$21 million dollars the first four years. The cost of trial alone in a capital case has conservatively been estimated at over a quarter of a million dollars. Post-conviction relief and appellate review costs would likely be even higher. The death penalty will put an enormous burden on our already burdened court system and severely tax the Department of Law and the Public Defender Agency.

There is an understandable concern on the part of Alaskans that violent crime is on the increase in our state. However, it is important that we not become vengeful and short-sighted in our haste to "solve" this problem. Violence and crime are linked to greater social problems such as poverty, racism and drug and alcohol abuse. Long term solutions such as improving the educational and employment opportunities of Alaskans and providing adequate alcohol and drug treatment facilities will go further to solving problems of violence, than simply building more jails and hanging our citizens.

I urge you to do all you can to defeat this inhumane and ineffective law.

Signed:

Testifier

Amnesty International

Representing (Optional)

HCI Box 157-B S. Idofna AK 99669

Address

(907) 262-4872

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the

STUD

committee name

committee on

SB 52

, dated

2-7-96

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Besides the lack of deterrent value, the death penalty would not be fairly imposed. Nationwide, death rows are disproportionately filled with African-Americans. During the territorial days in Alaska, 60% of all executions were against African-Americans and Alaska Natives. Currently, nearly 30% of all persons incarcerated in Alaska are Alaska Natives. If this bill passes, it is certain that Alaska Natives and people of color will be more likely to be executed. Poor people that cannot afford the cost of expensive defense attorneys will also be disproportionately impacted.

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Signed:

Ginetta Schnedlich

Ginetta Schnedlich

Testifier

Amnesty International

Representing (Optional)

P.O. Box 1444 Soldotna, AK 99669

Address

262-5484

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the

STUD

committee name

committee on

SB 52

dated

2-7-96

bill/subject

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Signed:

Testifier

Annex International

Representing (Optional)

135 Brea C. Cliff

Address

262-6498

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the STUD
committee name

committee on SB 52, dated 2-7-96
bill/subject

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I urge you to do all you can to defeat this inhumane and ineffective law.

Signed:

Testifier

Harisad Tahir
Amnesty International

Representing (Optional)

HCI Box 15713 Soldotna AK 99669

Address

(907) 262-4877

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the

STUD

committee name

committee on

SB 52

, dated

2-7-96

bill/subject:

During the forum put forth before the people of the State of Alaska on February 7, 1996 regarding the possible reinstatement of the death penalty, I spoke briefly of the hypocrisy involved in a society which preaches love, acceptance and the doing of good deeds, and at the same time condones the killings of a percentage of its criminal population.

In order to further substantiate my argument, I talked also of the excessive cost that would be incurred by the taxpayers of the State of Alaska in order to implement a program of criminal punishment such as this.

During my time to talk, I was cut short due to a time limit - and so could not share the following story. Please, I beg of you, good sirs and madames, take heed to this story - as it clearly exemplifies capital punishment is wrong.

Several years ago, I met a man whom I will refer to as Mr. X. Inside of a month of meeting, I witnessed him make the admission that he had spent 14 yrs. in prison for murder. I do not jest when I say that my friend went into convulsory shock upon sharing this part of his life. He shook... for six or seven mins.

Currently, this man, Mr. X, is enjoying his third year of sobriety, working with success in his first honest job in years and watching his son enter into adolescence.

18 yrs. ago, Mr. X took a rock to another man's head in a drunken brawl, and mortally wounded him.

Signed:

John Gallant

John Gallant

Testifier

Amnesty International

Representing (Optional)

HCI Box 157-B Soldotna, AK 99669

Address

(907) 262-4877

Phone No.

Last year, this man told me he'd brave the cold and arrive at one of his important college classes late, so that he could jump start my car.

After this failed, the last thing I recall seeing before going to call my parents for a ride, was Mr. X giving my friend or ill home, who now would not have gotten there. Mr. X, though not w/o persuasion, ent class - to help



Alaska Native Brotherhood
Camp No. 2, Inc.

February 7, 1996

The Honorable Robin L. Taylor
Chairman, Judiciary Committee
Alaska State Senate
Room 30, State Capitol
Juneau, AK 99801-1182

via Facsimile

Dear Mr. Chairman:

The Senate Judiciary Committee has before it, Senate Bill 52, "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies..." Essentially, the "Death Penalty Bill."

At a regular meeting of the ANB Camp 2 on February 5, 1996, members present voted to oppose passage of SB52. If history is any guide, invariably, the Alaska Native will be the most affected by this bill, and largely because of the cost factors involved in securing a proper defense.

Please advise your committee members of our position regarding SB52.

Respectfully,

Jeff Anderson
President

cc: Senator Al Adams
465-4821



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

committee on SB 52 dated 7 Feb 96

bill/subject:

*The CS would not ~~not~~ provide average voters with in-depth knowledge on the pros and cons of a death penalty.
Please don't kill for me! The death penalty*

- falls disproportionately on minority populations
- goes beyond justice into vengeance
- is irrevocable - some executed people have later been shown to be innocent
- won't necessarily make us safer
- can cost millions of dollars in attorneys fees for appeals. this money should be spent for prevention... early intervention in the lives of people at risk to provide help in parenting skills, jobs, education, etc. will get us a much longer way into a safer society. People should be valued and nurtured from birth. Killing people to show that killing is wrong is counter productive. Please don't kill for me!

Signed:

PEGGY MULLEN

Testifier

Self

Representing (Optional)

BSS LINGONBERRY

Address

SOLDOTNA AK 99669

Phone No.

262-9225



Alaska State Legislature

Please enter into the record my testimony to the Sen - JUD
committee name
committee on SB No. 52, dated 2.7.96
bill/subject

Prior to asking the Public
for ~~and~~ an Advisory Vote
Please include a true estimate of
all costs, on the ballot.

Remember past Capital
Move ballots included the costs.
I believe to do so without
including the costs is not responsive
to P

Signed: _____

Testifier

Representing (Optional)

P.O. Box 3313

Address

283-7187

Phone No.

JUDICIARY COMMITTEE
DELIVERY ACCEPTANCE LOG

MEETING DATE

2/7/96

BILL

NUMBERS

SB 240 / 52

LEGISLATOR

ACCEPTED BY

TIME

DATE

SEN. GREEN. RM 423

Laura Ann. 2⁵⁴, 2/6/96

SEN. MILLER. RM 125

M. Whitney

SB 52 &
(SB 242)

SEN. ADAMS RM 417

Marla Berg

SEN. ELLIS RM 9

John J. ...

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 52(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS TAYLOR, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for an advisory vote on the issue of capital punishment."

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

3 * Section 1. The lieutenant governor shall place before the qualified voters of the state at
 4 the next general election the question advisory to the legislature of whether the legislature
 5 should enact a law providing for capital punishment for murder in the first degree. The
 6 question shall appear on the ballot in substantially the following form:

7 QUESTION

8 Shall the Alaska State Legislature enact a law providing for capital
 9 punishment for murder in the first degree and establishing procedures for the
 10 imposition of capital punishment that are consistent with the United States
 11 Constitution as interpreted by the United States Supreme Court?

12 Yes [] No []

WHICH PUNISHMENT DO YOU SUPPORT THE MOST FOR CRIMINALS CONVICTED OF
PARTICULARLY TERRIBLE CRIMES AGAINST PEOPLE, INCLUDING FIRST DEGREE MURDER...

DEMOGRAPHICS	UNSURE	DEATH PENALTY	LIFE W-O PAROLE
TOTAL.....	5X	62X	33X
LOCATION			
RURAL.....	8X	59X	32X
CENTRAL.....	2X	56X	42X
SOUTH CENTRAL....	4X	63X	32X
ANCHORAGE.....	4X	66X	30X
SOUTH EAST.....	6X	59X	35X
GENDER			
MALE.....	4X	69X	27X
FEMALE.....	5X	55X	40X
RESPONDENT AGE			
18-29 YRS OF AGE.	4X	57X	39X
30-44 YRS.....	2X	68X	30X
45-59 YRS.....	7X	57X	36X
60+ YEARS OF AGE.	6X	65X	29X
DEMOCRAT.....	6X	47X	47X
REPUBLICAN.....	6X	77X	17X
NON-PARTISAN.....	4X	62X	34X
OTHER.....	0X	55X	45X
NOT REGISTERED...	0X	61X	39X
EMPLOYMENT			
FEDERAL.....	0X	82X	18X
STATE.....	5X	53X	42X
LOCAL	7X	60X	32X
PRIVATE.....	4X	63X	33X
NOT IN WORKFORCE.	7X	59X	35X
TIME IN COMMUNITY			
TO 4 YEARS.....	6X	61X	33X
5-9 YEARS.....	0X	70X	30X
10-14 YEARS.....	1X	62X	37X
MORE THAN 15 YEARS.....	6X	61X	33X

Death's double standard

Territorial Alaska's experience with capital punishment showed race and money mattered

By AVERIL LERMAN

As two capital punishment bills move from one committee to another this legislative session, one facet of the debate has been mostly ignored: our own history. For the first 37 years of this century, Alaska had a death penalty. Eight men were hanged in the territory before statehood.

It wasn't joining the union that ended capital punishment in Alaska. It was an independent vote of the territorial legislature, which passed a short law that read simply, "The death penalty is and shall hereafter be abolished as punishment in Alaska for the commission of any crime."

Before it was overturned, the legislature's application of the death penalty had raised troubling questions about fairness. The case history indicated that even though most of the convicted murderers of the period were white, the ultimate penalty was reserved primarily for nonwhites, people with no political connections and no money to make them

The first two men to be executed this century were gold hunters who murdered other prospectors. Fred Hardy was hanged in Nome in 1902. He'd been convicted the year before for the murder and robbery of three men on Unimak Island. Homer Bird was executed in Seward in 1903. He'd been found guilty of shooting and killing his partner in the presence of several witnesses. Both Hardy and Bird were exceptions: white Alaskans who were executed.

The men hanged between 1903 and 1951 were nonwhite Alaskans. Three were Native, two were African-American, and one was foreign born, from Montenegro — and viewed as a minority by the citizens who tried him.

Was that an accurate demographic reflection of the people who were committing murders in Alaska during the first half of the 20th century?

Not according to a study by justice professor K.S. Kynell. He found that more than 75 percent of Alaska homicides from 1915 to 1958 were committed by whites. Among them were some of the most notorious criminals of their times. But none were executed.

White residents William Dempsey and Vasa Perovich were cases in point. Both Dempsey and Perovich committed crimes that shocked Alaskans, according to University of Alaska historian Claus M. Nasse. Perovich robbed and murdered a

fisherman at his fish camp near Fairbanks in 1904 — by splitting his head and chest with an ax, then setting his body on fire. Dempsey murdered a woman in 1919 — then murdered a U.S. marshal to escape arrest. For these crimes, both Dempsey and Perovich were sentenced to hang. But neither man did. Perovich had friends with money; he was able to pay for a series of legal appeals. His sentence was subsequently commuted to life in prison by President William Taft, then he was pardoned by President Calvin Coolidge. He later became a successful businessman in Rochester, N.Y. Dempsey was sentenced to hang for both the murder of the woman and the murder of the U.S. marshal. But his family was able to pay with the funds to hire a lawyer who success-

fully persuaded President Woodrow Wilson to commute his death sentence to life in prison.

The six men who faced the death penalty after 1903 didn't fare as well in the justice system, to say the least. None had money to hire lawyers; all had court-appointed counsel, and only two could pay for any court appeal at all. Their families were not connected to influential people. Often they were viewed as strangers by the people who sat in judgment of them: juries composed primarily, if not entirely, of white people.

Still, they tried to live. Four of the six men sought presidential mercy, asking to have their death sentences commuted to life in prison. But presidents Wilson, Hoover, Roosevelt and Truman were not moved by those requests.



Three hangings in Fairbanks

Who were these last six men to be executed in Alaska? What were the circumstances of their convictions? How were they executed? Were their death sentences just?

The first three — a man from the Balkan state of Montenegro, and two Alaska Natives — were hanged in Fairbanks in the 1920s.

Maso Segura, the Montenegrin, worked as a wood chopper in the gold rush town of Plat on the Iditarod Trail. In 1918 he was convicted of shooting and killing his employer, one of the most prominent men in town. Segura said the employer refused to pay him for two years of work he'd already performed.

His court-appointed lawyer tried to have the trial moved to another town. He said residents of Plat were racially prejudiced against Segura (denigrated in some of the courtroom papers as a "bohunk" and "a black fellow") and additionally biased because everyone in town knew the victim.

But the motion for change of venue was denied. Segura was convicted by a jury in Plat and sentenced to death.

In Fairbanks, a jury rigged scaffold was built in the center of town by extending a wooden platform between a second floor window in the courthouse and a second floor window of the empty bank building across the street. Midway over the street, a trapdoor was cut into the platform. A framework was erected over the door to which a rope could be tied.

According to published accounts, Segura bought a new suit for the occasion. But he was so terrified when his moment of execution came that he had to be tied in a board and forcefully dropped through the trap door to be hanged.

The second person executed in Fairbanks was an elderly Alaska Native named Hamilton — a man whose first name was never recorded in court records. In 1920 Hamilton shot his own cousin near the town of Shageluk and hid the body.

According to newspaper articles of the day, Hamilton said his cousin was complaining of being frequently beaten. After the cousin's death, she moved in with Hamilton.

At the sentencing, Hamilton's court-appointed lawyer complained to the members of the court and the prosecutor for their fairness. He said

Continued on Page 14

DEATH PENALTY

(Continued from Page 5)

he approved of the verdict. "The man is guilty, and there is absolutely no reason which his counsel knows why sentence should not be pronounced."

Hamilton himself spoke of his terrible shame. He requested only that he be hanged in Alaska and not sent to be hanged somewhere else. His request was granted.

But according to a local memoir, Hamilton's execution was particularly gruesome. The hangman had allowed his body to be dropped too far. He was decapitated.

The last man hanged in Fairbanks was a young Alaska Native named Constantine Heaver. The execution was described by a local marshal as "the saddest affair" he'd ever witnessed.

Heaver was arrested in 1929 for shooting one of his friends during a drunken brawl. His lawyer, Thomas Heston, was appointed only a week before the trial. Noting that all the witnesses were in a distant village, Heston sought a month's delay, which was denied. Like Hamilton, Heaver spoke no English, and neither did any of the witnesses to the killing. The brief trial was conducted through an interpreter. Heaver was found guilty.

The jury was given two ballots, one of which required life imprisonment, and one of which was silent as to the punishment. The jury returned a guilty verdict which was "silent" — and the judge sentenced Heaver to death.

A week later, three of the jurors submitted sworn statements that they had not understood that the silent verdict mandated the death penalty. They said they thought it left the decision up to the judge. If they'd understood the law, they said, they would have voted for life imprisonment and not death. Their affidavits were rejected by the court because they were filed three days after the deadline required for motions.

Until the very last moment, Heaver had hoped that he would be granted executive clemency and that his sentence would be commuted to life — the same as Dempsey's and Persvich's had been. In the meantime he'd won the sympathies of his white jailers, according to newspaper accounts. They'd seen how deeply he regretted what he'd done.

President Herbert Hoover didn't see it that way, however. No presidential commutation was issued. Heaver died without money or influence and was not sulky.

Under the headline "Indian Hanged at Early Hour This Morning Dies with Bravery," the Fairbanks Daily News Miner reported that Heaver walked quietly to the scaffold chanting a song in his own language — a song that was interpreted only by the springing of the trapdoor beneath his bound legs. A doctor at street level determined that Heaver didn't die until nine minutes later.

One of the deputy U.S. marshals in Fairbanks, Frank P. Young, described the hanging of Heaver as "one of the saddest affairs I ever had to witness." He concluded, "I left the marshal's office shortly after that."

Three hangings in Juneau: 1939-1950

The last hangings in Alaska were all in Juneau.

Nelson Charles, a Native from Ketchikan, was convicted in 1939 of brutally murdering his mother-in-law in a drunken attack. The U.S. attorney prosecuting the case was George Fullilove, later to gain prominence as "the hanging judge" of Juneau. Charles was represented by Ketchikan lawyer A.H. Ziegler.

After the verdict, Ziegler sought a mistrial, citing misconduct by Fullilove, and lack of time to prepare a defense. He also filed an affidavit from a Ketchikan lawman that Charles was ordinarily a peaceful man but became insane and uncontrollable when he drank. Ziegler's motion was denied, and no appeal was ever filed. President Roosevelt never responded to the petition for clemency filed on Charles' behalf by the Alaska Native Brotherhood.

Newspaper accounts of the Juneau hanging said that, as his legs were bound on the gallows, Charles calmly stated, "I am innocent of the crime committed against my mother-in-law. I don't want to be hanged."

Nearly 10 years passed before the death penalty was exercised again in Juneau. But the stage was set when grocery/liquor store owner Jim Ellen was found one night in his store with his throat cut.

Within two weeks, federal authorities arrested a young black man named Austin Nelson and charged him with Ellen's murder.

Nelson had no money for a lawyer. Counsel was appointed to represent him on April 2, 1947. His trial began 13 days later.

Over the course of the three-day trial, the government called 16 witnesses to testify. The hastily prepared defense presented only three witnesses beyond the testimony of Nelson and his lawyer. Nelson was found guilty and sentenced to be hanged.

The day after his verdict was entered, the FBI sought a warrant for the arrest of Eugene LaMoore, a friend of Nelson's and one of the witnesses who testified on his behalf. LaMoore also was black. He had lived in Alaska for seven years, working as a fisherman, among other jobs. He had a dated criminal record. As a young man 20 years earlier, he'd been convicted of robbery in California.

The warrant charged LaMoore with perjury for falsely testifying at the trial that he had never been convicted of a felony. He was imprisoned on May 1, 1947, tried, found guilty of participating in the murder of Jim Ellen, and sentenced to death. Five months after his arrest, LaMoore was locked in a cage-like

cell where he was forced to wear leg shackles night and day. He was released only for the purpose of being interrogated by the U.S. marshal and others. Although he had no lawyer and no money to obtain one, LaMoore was not a timid man. Words were exchanged. The authorities were getting nowhere.

Nelson was scheduled to be hanged on Aug. 1. Two days before he was to die, Nelson told authorities that Eugene LaMoore had participated in the robbery of Ellen's store and that LaMoore had himself killed Ellen.

The very next day, according to LaMoore's subsequent testimony, the U.S. marshal brought him and Nelson together. Subbing, Nelson told LaMoore that he lied to the FBI agent when he implicated him in the murder. Nelson begged for his forgiveness, LaMoore said, but he also pleaded for LaMoore to help him — to save him from hanging. In court, LaMoore described his final encounter with Nelson.

"Nelson would not sit down. He stood behind his chair and cried and called himself many dirty names. He told me to forgive him, but help me save my life."

"I have never wanted to be responsible for any man's death," said LaMoore. "That man spoke to me, with tears in his eyes, to help him."

As a result, LaMoore said, he decided to help Nelson in the only way he could — by confessing to a part in the crime, prolonging Nelson's life a little longer, since the prosecutor would want to preserve Nelson as a witness against LaMoore.

LaMoore had no lawyer of his own at first. After he was charged with murder, he contacted prominent Juneau attorney Bert Faulkner, and asked what to do. Faulkner told LaMoore to go ahead and make a statement.

Later, Faulkner said he also told LaMoore that he could not represent him in the matter, and had explained that his advice was not based on a lawyer-client relationship.

LaMoore gave the marshal an unsigned statement typed by Faulkner, in which he confessed to robbing Ellen's store with Nelson but denied he had anything to do with the murder — and did not know about it until after he and Nelson had left the store.

Still, LaMoore was charged with Ellen's murder, based on his partial confession. His trial began on Feb. 2, 1948 — presided over by Judge George Felt.

The prosecution had no physical evidence against LaMoore: no murder weapon, no fingerprints, no stolen property. There were no witnesses to the murder, either, only residents who said they saw LaMoore on the street that night — a fact LaMoore never denied.

Conspicuously absent from the courtroom was Nelson. He never testified against LaMoore, even though his statement had been purporting on the basis that his testimony would be critical.

Instead, LaMoore testified in his defense that his confession had been false, that he made it up only to help Nelson.

The prosecutor cross-examined LaMoore as to whether he really thought he was helping Nelson. LaMoore's answer was short: "He's alive, isn't he?"

"Well, yes," conceded the prosecutor.

Unmoved and to the point, LaMoore concluded, "It undoubtedly helped."

"Didn't you think you were taking a chance to help?" asked the prosecutor.

"I take a chance walking across the streets," LaMoore said.

Austin Nelson was hanged outside the Juneau federal jail March 2, 1948. The warrant for his execution was signed by Judge Felt.

Thirteen months later, on April 14, 1949, Eugene LaMoore was draped up in a temporary gallows outside the jail. His last words: He did not bill Jim Ellen.

It took 13 minutes for LaMoore to die from hanging. He left behind a wife and two young children.

Ten months ago, U.S. Supreme Court Justice Harry A. Blackmun, a longtime champion of the death penalty, rejected any further effort to legitimize what he declared to be a fundamentally unfair process. In a startling dissent from a routine death penalty appeal, Blackmun stated that the death penalty "cannot be administered in accord with our Constitution," because its practice capital punishment has always been applied unevenly.

From now on, he said, "I no longer shall tinker with the machinery of death." Shortly thereafter, Blackmun announced his decision to retire from the court.

The history of the death penalty in Alaska would appear to reinforce Blackmun's assertion. Three fourths of the people hanged in Alaska this century were members of racial minorities, even though minorities accounted for only about one-fourth of the murders.

Economic, cultural and political barriers figured heavily into the final tally of who died and who lived. According to Vic Fischer, a former sponsor of the 1957 bill to overturn the death penalty, these factors were a significant basis for the abolition bill proposed by himself and Warren Taylor, the principal sponsor.

Retired Judge Braden J. Buckalew Jr. was a young representative to the territorial legislature in 1917. He voted against Warren Taylor's abolition bill. In a recent interview, Buckalew described that event as "the only vote I made that I now regret." Many years later, having spent much of his life as a Supreme Court judge, Buckalew, like Blackmun, has come to wonder whether the death penalty promises more harm than benefit.

LA MOORE LIVES UP ON PROMISE TO REMAIN CRIMINAL

[illegible]

Alaskans Against the Death Penalty • P.O. Box 202296 • Anchorage, Alaska 99520-2296 • Tel. 907.258.2296 • Fax 907.258.0288

"When the State Kills: The Death Penalty: A Human Rights Issue," a publication produced by Amnesty International that documents the death penalty as it is used throughout the world and the human rights abuses that inevitably accompany it.

"The Death Penalty: The Religious Community Calls for Abolition," which contains statements from every major denomination in the United States condemning the death penalty.

I am including information that I have obtained since I last contacted you:

"On the Front Line: Law Enforcement Views on the Death Penalty" which is a report on a study of law enforcement officers from across the country who have concluded that the death penalty is ineffective and takes away scarce resources from programs which could be more effective.

I have also enclosed an article from the New York Times which compares the homicide rate in each state which demonstrates that there is no corollary between the death penalty and lower murder rates. In fact, the states that use the death penalty the most, Texas, Florida, Virginia, and Louisiana have the highest murder rates in the country.

And lastly, I have enclosed a copy of a video "The Death Penalty in Alaska: Never Again," which contains a wealth of information about the consequences of passing the death penalty in Alaska.

Simply put, Alaska cannot afford the death penalty. Our current system of justice, especially in rural Alaska, cannot absorb the additional costs associated with the imposition of a death penalty. Although Alaska is fortunate to have an excellent public defender system, many of the offices in rural Alaska are composed of only one or two attorneys who carry very high caseloads. It would be impossible for these attorneys to handle their caseloads while adequately trying to represent clients charged with capital offenses. Death penalty trials are bifurcated trials: first there is a guilt phase and then if the person is convicted there is a separate jury trial to determine punishment. Each of these trials can take months, literally tying up the resources of the police, prosecutor, public defender and court system. In rural Alaska where there is typically only one superior court judge, that judge could very well be occupied full-time for many months on a single capital case which would pre-empt any other civil or criminal case pending.

It is not an exaggeration to say that the imposition of the death penalty would literally bring the justice system in rural Alaska to a standstill. The Alaska Native Community recognizing many of these problems has come out strongly against passage of the

death penalty in Alaska. Both the Alaska Federation of Natives and the Alaska Inter-Tribal Council have passed resolutions strongly opposing the reinstatement of the death penalty in Alaska.

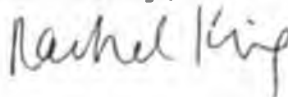
Besides dominating the court systems in rural Alaska, states that have the death penalty are finding that much of the appellate court time is spent hearing death cases. The appeals process in capital cases typically lasts at least ten years. Defendants appeal their convictions through both the state and federal systems, usually each case is appealed all the way to the Supreme Court of the United States. This would put a drain on the Alaska appellate courts. Both Florida and California report that their appellate courts are spending half of their time on death penalty appeals, again pre-empting civil and other criminal matters.

Lastly, the cost of corrections is increased as it costs more to maintain a death facility, even one in lamentably poor condition, than a regular facility. The state of Alaska already cannot afford the costs of housing its current inmate population. It will not be able to absorb the additional costs of a death facility.

When all these factors are considered there is simply no compelling reason to establish a death penalty in Alaska. We are asking you to re-consider your position on SB 52 and HB 45.

Thank you for taking the time to read this information. Please do not hesitate to contact us if you have any questions or would like additional information.

Sincerely,



Rachel King, Esq.
Executive Director
Alaskans Against the Death Penalty

Researchers Say Executions May Provoke More Killings

BOSTON (AP) — Rather than deter crime, highly publicized executions may actually provoke two or three killings that never would have occurred, two researchers report in a sociological study.

The study, to be published in October in "The Journal of Crime and Delinquency," appears to discredit the contention of death penalty proponents that capital punishment deters and reduces violent crime.

"In New York State over the period 1907-63 there were, on the average, two additional homicides in the month after an execution," write William Bowers and Glenn Pierce of Northeastern University's Center for Applied Social Research.

"If executions have a brutalizing effect, as we find, a whole new issue is raised on capital punishment," Bowers said in an interview. "This is a punish-

ment that requires the sacrifice of innocent people."

New York was chosen for the study, Bowers said, because monthly statistics on homicides were kept beginning in 1907 and because New York has executed more persons — 695 from 1890 to 1964 — than any other state.

The researchers note that

their finding of two additional homicides in the month after an execution may be low because they do not take into account homicides in the month when the execution took place.

"There is room to quarrel about whether these data show a brutalizing effect of two or three homicides, on the average," they write.

Capital punishment not deterrent to committing crimes, study shows

By Doug Petersolin
Lantern staff writer

Evidence shows that capital punishment does not deter killers, according to a recent study co-authored by an OSU faculty member.

Ruth D. Peterson, an associate professor of sociology, said the study is different from others because it examined only homicides that were subject to the death penalty.

"We looked at felony murders, which are capital murders," Peterson said. "Most studies of the death penalty and homicides look at general homicides, not all of which are subject to the death penalty. But in most jurisdictions, felony murder is a capital offense."

Most homicides are not crimes eligible for the death penalty, she said.

Peterson co-authored the study with William Bailey, a sociologist from Cleveland State University, who was unavailable for comment.

Ronald Huff, OSU professor of public policy and management and director of the Criminal Justice Research Center, said he agrees here is no evidence that the death penalty deters people from committing crimes.

"I can say definitively there is no unconvincing evidence that executions deter homicides, and as a matter of fact, some of the studies that argued it did were methodologically flawed," Huff said.

The study, published in the current issue of the journal

"Criminology," focused on two areas, Peterson said.

"We were looking at the influence of executions, per se, on felony murder rates, and we were looking at the impact of the amount and the quality of television coverage of executions on felony murder rates. And we do not find support for the notion that either the number of executions or the amount or type of publicity associated with those executions has an influence on most types of felony murder," Peterson said.

She said there were some minor exceptions, but the study did not show the predicted associations between felony murder rates and executions or execution publicity.

Huff said he thinks media coverage of executions is a very important issue, especially because people are talking about televising executions.

"If you said, 'Let's televise executions,' and the rationale for that is it will deter people, I think it is equally convincing that it may set some people off (to commit crimes)," Huff said.

Jim Tobin, treasurer of Ohioans to Stop Executions, said many studies have seriously questioned whether the death penalty is a deterrent.

"The key is people want (the death penalty) to be a deterrent, and it would just only make sense that it would be a deterrent. But all the studies are showing that it is not," Tobin said.

"I think it's more based on the

reasons why people, in the first place, commit these crimes, and they're not thinking they'll get the death penalty if they do that kind of thing," he added.

Huff said he believes society should concentrate on prevention by teaching conflict-resolution skills, beginning with children at the elementary-school age.

"We should teach them how to resolve conflicts in peaceful ways," Huff said. "When a lot of people get married they don't have very good skills at resolving conflicts. So the first time they have a conflict they think they should get a divorce, or they might even have a physical fight and they've never really learned how to deal with their conflicts in a peaceful way."

Huff said many crimes are drug and alcohol related.

"The deterrent to crime is prevention in terms of conflict resolution and in terms of getting people to understand that they should not use drugs," Huff said. "If people could learn not to abuse drugs and alcohol and learn conflict-resolution skills, we could make some significant headway in reducing the number of homicides."

Tobin said he was not surprised at the results of the study and that the opinion of Ohioans to Stop Executions is that the death penalty has not been shown to be a deterrent to crime.

He said the group believes there does need to be retribution for crimes, but they support long-term imprisonment versus executions.

DEATH PENALTY GAINS SUPPORT

"Are you in favor of giving death sentences to terrorists who murder people?"		
	November 1991	August 1985
Favor death penalty	71%	66%
Oppose death penalty	24%	31%
Other, no opinion	5%	3%

A Jerusalem Report poll, conducted by Hannah and Ravi Smith, shows growing public support for the death penalty for terrorist murders, compared to Smith Research Center 1985 figures.

Over 80 percent of the supporters of the Likud and the nationalist parties favor the death penalty, along with 70 percent of those supporting the religious parties and two-thirds of the Labor Party's backers. By contrast, however, only 44 percent of supporters of the dovish, left-wing Ratz, Shinui and Mapam parties support the death penalty.

Along ethnic lines, 80 percent of Jews from Muslim countries favored the death penalty, as against 65 percent of Israelis of European origin and third-generation Israelis.

The survey, which was conducted November 4-12, polled 1,100 Israeli Jews in all parts of the country.

Jerusalem Report Staff

NOVEMBER 28, 1991 THE JERUSALEM REPORT

(ISRAEL)

(OHIO STATE UNIVERSITY)

**ALASKA INTER-TRIBAL COUNCIL
RESOLUTION 94-17**

OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS, numerous statistical analyses prove beyond a doubt that the use of capital punishment in this country is biased by race, both that of the defendant and that of the victim; and

WHEREAS, Alaska is no exception to the national pattern, as demonstrated by the fact that from 1900 to 1957, when the Territory had a death penalty, only two of the nine individuals hanged are known to have been Caucasian, the other 78% having been Alaska Natives, African-Americans and other citizens of color; and

WHEREAS, no Caucasian has been executed here since 1903, but each of the seven minority persons put to death since then was summarily tried, could not afford adequate counsel or appeal, and had no political influence to secure commutation; and

WHEREAS, a 1977 study by the Alaska Judicial Council demonstrated that, despite abolition of the death penalty, a clear pattern of racial influence on the state's criminal sentencing practices continues in modern times, which caused the Alaska Legislature to reform its sentencing statutes, limiting judicial discretion; and

WHEREAS, the 1994 Report of the Alaska Natives Commission documents that: only 16% of Alaska's population are Natives and 13.5% of its prison-age-eligible population are Natives, but that fully 32% of the state's prison inmate population are Natives; that 59% of its violent-crime inmates are Natives; that 53% of all Native inmates are incarcerated for crimes classified as "most violent" (14% for assault, 14% for sexual assault, 13% for sexual abuse of a minor, and 12% for murder or manslaughter); that in 1990 one-half of all Alaskans convicted of second-degree murder were Natives; that the annual rate at which Natives are murdered (often by other Natives) is four times the national average; that most Native crime, particularly violence against persons, is alcohol related; and that language barriers and traditional Native cultural patterns of avoiding confrontational argument (e.g., trials and charge bargaining) contribute to higher Native conviction rates; and

WHEREAS, Alaska Natives know these facts, have consistently expressed their concern with the racial inequitability of the state's criminal justice system, and have no illusions about who will die under any re-instituted system of capital punishment in Alaska; and

WHEREAS, capital punishment wastes limited public resources, since it costs the average state six times as much money to execute one person as it does to keep him or her in prison for life; and fiscal notes attached to recent death penalty bills in the Alaska Legislature by the Departments of Law and Corrections, the criminal defense agencies and the Court System, estimate that re-instituting capital punishment will cost this state more than \$21 million in the first four years and will steadily increase thereafter; and

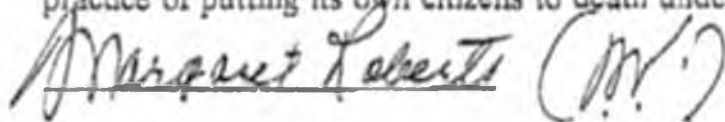
WHEREAS, extensive research demonstrates that the death penalty, whatever the real motives for its use, has little or no deterrent effect on the incidence of capital crimes in the United States; and

WHEREAS, during the 20th century, the American system of justice has sentenced more than 1300 people to death for crimes they did not commit, of whom at least 23 were "mistakenly" executed and subsequently proven innocent; and

WHEREAS, responding to the values of their traditional cultures and to the persistent patterns of discrimination against them in modern times, Native American people and tribes have always been in the forefront of opposition to capital punishment in federal and state laws; and

NOW THEREFORE BE IT RESOLVED, that the Alaska Inter-Tribal Council adamantly oppose reinstatement of the death penalty in Alaska and urge all elected officials and voters to join us in opposition; and

BE IT FURTHER RESOLVED, that the Council urge every Native person and organization to use all legal, financial, and political resources to ensure that the State of Alaska does not return to the irreversible, ineffective, wasteful and plainly discriminatory practice of putting its own citizens to death under cover of the law.

 Margaret Roberts (M.R.)

DATED this 29th day of November, 1994

116 members voting in favor and 0 members opposed.

ALASKA FEDERATION OF NATIVES

1994 ANNUAL CONVENTION

RESOLUTION 94-26

TITLE: OPPOSITION TO REINSTATEMENT OF THE DEATH
PENALTY IN ALASKA

- WHEREAS: numerous statistical analyses prove beyond doubt that the use of capital punishment in this country is biased by race - both that of the defendant and that of the victim; and
- WHEREAS: Alaska is no exception to the national pattern - as demonstrated by the fact that, from 1900 to 1957, when the Territory had a death penalty, only two of the nine individuals hanged are known to have been Caucasian - the other 78% having been Alaska Natives, African-Americans and other citizens of color; and
- WHEREAS: no Caucasian has been executed here since 1903, but each of the seven minority persons put to death since then was summarily tried, could not afford adequate counsel or appeal, and had no political influence to secure commutation; and
- WHEREAS: a 1977 study by the Alaska Judicial Council demonstrated that, despite abolition of the death penalty, a clear pattern of racial influence on the state's criminal sentencing practices continues in modern times, which caused the Alaska Legislature to reform its sentencing statutes, limiting judicial discretion; and
- WHEREAS: The 1994 Report of the Alaska Natives Commission documents that only 16% of Alaska's population are Natives and 13.5% of its prison-age-eligible population are Natives - but that fully 32% of the state's prison inmate population are Natives; that 59% of its violent-crime inmates are Natives; that 53% of all Native inmates are incarcerated for crimes classified as "most violent" (14% for assault, 14% for sexual assault, 13% for sexual abuse of a minor, and 12% for murder or manslaughter); that in 1990 one-half of all Alaskans convicted of second-degree murder were Natives; that the annual rate at which Natives are murdered (often by

other Natives) is four times the national average; that most Native crime, particularly violence against persons, is alcohol-related; and that language barriers and traditional Native cultural patterns of avoiding confrontational argument (e.g., trials and charge bargaining) contribute to higher Native conviction rates; and

WHEREAS: Alaska Natives know these facts, have consistently expressed their concern with the racial inequity of the state's criminal justice system, and have no illusions about who will die under any reinstituted system of capital punishment in Alaska; and

WHEREAS: capital punishment wastes limited public resources, since it costs the average state six times as much money to execute one person as it does to keep him or her in prison for life; and fiscal notes attached to recent death penalty bills in the Alaska Legislature by the Departments of Law and Corrections, the criminal defense agencies and the Court System, estimate that instituting capital punishment will cost this state more than \$21 million in the first four years and will steadily increase thereafter; and

WHEREAS extensive research demonstrates that the death penalty, whatever the real motives for its use, has little or no deterrent effect on the incidence of capital crimes in the United States; and

WHEREAS: during the 20th century, the American system of justice has sentenced more than 1300 people to death for crimes they did not commit, of whom at least 23 were "mistakenly" executed and subsequently proven innocent; and

WHEREAS: responding to the values of their traditional cultures and to the persistent patterns of discrimination against them in modern times, Native American people and tribes have always been in the forefront of opposition to capital punishment in federal and state laws; and

WHEREAS on October 12, 1993, the ANJ Board of Directors resoundingly voted to oppose the death penalty in Alaska;

NOW, THEREFORE, BE IT RESOLVED that the delegates of the 1994 Convention of the Alaska Federation of Natives adamantly oppose reinstatement of the death penalty in Alaska and urge all elected officials and voters to join us in this opposition; and

BE IT FURTHER RESOLVED that the Convention urges every Native person and organization to use all legal, financial and political resources at our command to ensure that the State of Alaska does not return to the irreversible, ineffective, wasteful and plainly discriminatory practice of putting its own citizens to death under cover of law.

SUBMITTED BY: Alaska Native Justice Center, Inc.
COMMITTEE RECOMMENDATIONS:
CONVENTION ACTION: PASSED



Death Penalty Fact Sheet

Murderers in Prison: Alaska Courts Already Have the Power of Forever

prepared by: Alaskans Against the Death Penalty: February 1994

Many people mistakenly believe that a death penalty is needed in Alaska to protect citizens from murderers who have already committed heinous crimes. This belief is founded on the erroneous idea that these dangerous murderers could get out of jail 10 or 20 years after they go in, and so could kill again. This is simply untrue.

Alaska's current penalties for first degree murder are among the toughest in the nation. Alaska judges do not hesitate to impose severe sentences on persons convicted of first degree murder. The average sentence imposed for first degree murder ranged between 62 years and 87 years.¹

Under current law, a person convicted of first degree murder in Alaska may be sentenced to 99 years in jail. This term is mandatory if the victim was a police officer, a fire fighter, or a correctional officer, or if the defendant has a prior conviction for first or second degree murder. Parole is not available unless an inmate has served one-third of the sentence, and is not available at all to persons who have been deemed too dangerous to parole by the sentencing judge. The minimum penalty for first degree murder is a 20 year sentence, every day of which would have to be spent in jail, regardless of parole and good-time.² As can be seen from the average sentences, this minimum sentence is almost never imposed.

Alaska's worst murderers go into jail and never come out. The facts speak for themselves:

Robert Hansen, convicted in 1982 to the serial murders of four people, was sentenced to **461 years** without the possibility of parole; *Charles Meach*, convicted of killing four teenagers in an Anchorage park, sentenced to **396 years** without the possibility of parole ever; *Louis Hastings*, convicted in 1983 for killing six people in McCarthy, sentenced to **630 years**, with no possibility of parole until he has served 210 years; *Kirby Anthoney*, convicted in 1988 for killing a family of three, sentenced to **356 years**, parole eligible only after serving 115 years in jail; *Victor Stern*, convicted of killing an Anchorage grocer, sentenced to serve **99 years** without possibility of parole ever; *Robin Haas*, convicted of killing three people in an Anchorage motel, sentenced to **249 years**, parole eligible only after serving 83 years.

Alaska judges already have the power to protect the public from people who are beyond reformation, and they do not hesitate to use that power. Alaska does not need a death penalty for public protection from those that have been convicted of first degree murder.

¹ From data compiled by the Alaska Judicial Council, for first degree murder sentences imposed 1980 and for those committed between 1984 and 1987.

² The statutes discussed here include A.S. 12.55.125 and 12.55.115.

Death Penalty Fact Sheet

Who's on Death Row, U.S.A.?

prepared by: Alaskans Against the Death Penalty

NAACP ANNUAL REPORT DESCRIBES DEATH ROW INMATES:

An annual report titled "Death Row, USA" is put out by the NAACP Legal Defense and Education Fund. The most recent issue, published in October 1993, paints the following picture of death row inmates in America:

Number of death row inmates: Nationwide, there are 2785 men and women on death row. Sixteen states have more than 50 people awaiting execution:

California	375
Texas	365
Florida	331
Pennsylvania	166
Illinois	158
Ohio	127
Oklahoma	124
Alabama	117
Arizona	117
North Carolina	117
Georgia	110
Tennessee	102
Missouri	83
Nevada	62
Mississippi	55
Indiana	51

A disproportionate number of death row inmates are Black: 40% of the persons presently awaiting execution are African-American; 7% are Hispanic; 50% are Caucasian; 3% are from other racial backgrounds.

A disproportionate number of inmates were sentenced for crimes against Caucasian people: Since 1976, when the United States Supreme Court reinstated the death penalty, 222 people have been executed in America. Almost all of those executed (84%) had murdered a white person.

Death Penalty/Conviction Reversed: In the twenty-year period between 1973 and 1993, more than 1300 people who had been awaiting execution were removed from death row after their sentence or their conviction was reversed on appeal.

Alaska State Legislature

Please enter into the record my testimony to the SENATE JUDICIARY
(committee name)
committee on SB 52, dated 2/7/96.
bill/subject

AS I SEE IT, THE DEATH PENALTY IS A PURPOSEFUL,
PREMEDITATED ACT OF REVENGE, AUTHORIZED BY THE
GOVERNMENT, WHICH RESULTS IN THE TAKING OF A HUMAN
LIFE. / TO CONDONE THIS PRACTICE, EACH OF US, AS
CITIZENS, MUST ACCEPT THE RESPONSIBILITY OF PUTTING
A PERSON TO DEATH. I PERSONALLY FIND THIS,
MORALLY AND ETHICALLY, AN IMPOSSIBLE RESPONSIBILITY
TO ASSUME, AND I DO NOT SUPPORT AND WILL STRONGLY
PROTEST ANY ATTEMPT TO BRING THIS BARBARIC
PRACTICE INTO STATE LAW. / I DO NOT INTEND TO
KILL, NOR DO I WANT MY GOVERNMENT TO
KILL ON MY BEHALF. / I SUPPORT THE POSITIONS
OF AMNESTY INTERNATIONAL AND THE AMERICAN
CIVIL LIBERTIES UNION IN THEIR OPPOSITION TO
~~XXXXX~~ LEGALIZED MURDER.

Signed:

Harold Newman
Treasurer

Phone: 247-4229

Representing (Optional)

1183 2ND AVENUE, KETCHIKAN
Address

Fax transmitted from Ketchikan Legislative Information Office
Phone: 225-9675 Fax: 225-3546

ALEC BULLET POINTS

⊕ Executions Increase in 1993

Statistics recently released by the Justice Department report that 38 death row inmates were executed in 1993, seven more than were executed the year before. The number of executions in 1993 represents the largest number since the U.S. Supreme Court reinstated capi-

FEBRUARY 23, 1995 ■ 3

tal punishment in 1976. The average time served before execution changed little from 1992, when death row inmates spent nine years and six months in prison after being sentenced to death. Out of a total death row population of 2,716, the condemned in 1993 had been under a sentence of death an average of nine years and five months. Texas led all states with 17 executions; no other state was close to that number. Virginia was second with five executions, Missouri third with four and Florida fourth with three. Arizona, Delaware and Georgia each executed two; California, Louisiana and Washington carried out one execution each. Most interesting among the statistics is that about 40 percent of the inmates executed had some sort of criminal justice status when they committed their capital offense, and about half were on parole. The Justice Department said about half had charges pending against them, were on probation, had escaped from prison or were in prison when they murdered their victims. According to the numbers, nearly one of every seven inmates executed between 1988 and 1993 had received at least two death sentences. ALEC's *Report Card on Crime Punishment* uncovered similar facts: one-third of all violent crime is committed by defendants who are on probation, parole or pretrial release.

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April 17, 1995

Dear Senator Taylor:

I am writing to urge you to vote against any effort to reinstate the death penalty in Alaska. Specifically, I urge you to oppose **HB 45** and **SB 52** which would establish capital punishment in the state, or any bills that would submit the death penalty to an "advisory vote."

The death penalty is NOT a deterrent to violent crime. No studies have ever demonstrated that capital punishment deters murder, in fact the opposite appears to be true. In 1991, FBI statistics showed that the average murder rate among states without the death penalty was 4.9 per 100,000 population; in contrast, the average murder rate for states with the death penalty was 7.8.

The death penalty is more expensive than life imprisonment. Despite popular wisdom to the contrary, the evidence clearly establishes that it is far more costly to kill murderers than to incarcerate them for life. In Florida, for example, it has proven six times more expensive to execute someone than to imprison them for life. Every state that has studied the costs of its death penalty system has concluded that the death penalty is more expensive than a life prison sentence.

The death penalty is disproportionately imposed on minorities and the poor. Of the 203 Americans executed since 1976, 46% were members of minority groups. During territorial days when Alaska had a death penalty, 75% of persons executed were members of minority groups. This trend of racial discrimination appears to be continuing in Alaska -- today Alaska Natives comprise 36% of the prison population but only 16% of the population as a whole.

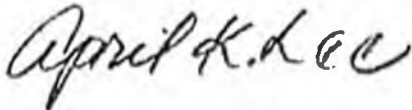
Innocent people will be executed. Despite procedural safeguards, innocent people have been executed for crimes they did not commit. There have been at least 23 documented cases of people proven to be innocent after their death sentences were carried out. In the past 20 years alone, 48 persons have been released from death row upon findings of innocence.

Alternatives will protect society from violent criminals. Unlike some states, Alaska has very tough sentencing laws. Alaska judges do not hesitate to impose severe sentences on persons convicted of murder: the average sentence imposed is between 62 and 87 years and the absolute minimum sentence is 20 years. Persons convicted of murdering a police officer, fire fighter or correctional officer, or if the person has a prior conviction for murder 1 or 2, must receive a mandatory 99 year sentence and judges frequently impose the 99 year sentence on other offenders. Judges have the power to completely restrict parole eligibility and frequently do so. Thus, a death penalty is not

necessary in order to ensure that dangerous offenders are isolated from the public.

I strongly urge you to use your power and influence ^{to} prevent passage of the death penalty in Alaska. It is expensive, unfair, and bad public policy.

Sincerely:



April K. Lee
RE/MAX Properties
2600 Cordova, Suite 100
Anchorage, AK 99503

257-0149 (907)

SB

52

(File 2)

GAO

United States General Accounting Office

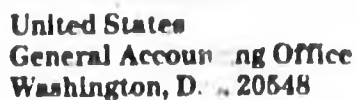
Report to Senate and House Committee
on the Judiciary

February 1990

DEATH PENALTY SENTENCING

Research Indicates
Pattern of Racial
Disparities





B-236876

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate

**The Honorable Strom Thurmond
Ranking Minority Member, Committee
on the Judiciary
United States Senate**

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Hamilton Fish, Jr.
Ranking Minority Member, Committee
on the Judiciary
House of Representatives

The Anti-Drug Abuse Act of 1988 (Public Law 100-690) requires us to study capital sentencing procedures to determine if the race of either the victim or the defendant influences the likelihood that defendants will be sentenced to death. We did an evaluation synthesis—a review and critique of existing research—on this subject to fulfill the mandate. This report provides a summary of our findings and a discussion of our approach and data limitations.

An evaluation synthesis is a critical integration of findings from existing empirical research on a given topic—in this case death penalty sentencing after the Furman decision.¹ First, we identified and collected all potentially relevant studies done at national, state, and local levels from

¹In *Furman v. Georgia*, 408 U.S. 238 (1972), the Supreme Court found unconstitutional death sentences imposed under state statutes which allowed juries to impose these sentences in an arbitrary or capricious manner. In response to this decision, states adopted new statutes that addressed the concerns raised by the Court.

both published and unpublished sources. Computer-generated bibliographic searches and manual reviews of the bibliographies of studies that we obtained contributed to our list of potentially relevant material. We also surveyed 21 criminal justice researchers and directors of relevant organizations whose work relates to death penalty sentencing to identify additional research. We screened more than 200 annotated citations and references to determine relevance to our review. We excluded studies that (1) were based primarily on data collected prior to the Furman decision and (2) did not examine race as a factor that might influence death penalty sentencing. From this initial screening we obtained 63 studies that we determined to be relevant.

We then reviewed each of the 63 studies to determine both appropriateness and overall quality of the research. We excluded studies that did not contain empirical data or were duplicative (a few researchers published several articles, with the most current including data and findings cited in earlier versions). Twenty-eight studies remained after this assessment. The information included in these studies forms the basis for our findings.

Next, we rated the 28 studies according to research quality. Two social science analysts independently rated each study in five dimensions: (1) study design, (2) sampling, (3) measurement, (4) data collection, and (5) analysis techniques. A rating for overall quality was also given. A third analyst reviewed the raters' assessments to ensure consistency. In addition, a statistician reviewed the studies that used specialized analytic techniques to assess whether the techniques were applied correctly and whether the analyses fully supported the researchers' conclusions.

Finally, we extracted all relevant information on the relationship of race to death penalty sentencing from each of the studies. This information was compared and contrasted across studies to identify similarities and differences in the findings.

Evaluation synthesis has benefits and limitations. The major benefit is that evidence from multiple studies can provide greater support for a finding than evidence from an individual study. The major limitation is that this approach depends on the quantity and quality of the design and methodology of available studies and the comprehensiveness of their reporting. In this case, the body of research concerning discrimination in death penalty sentencing is both of sufficient quality and quantity to warrant the evaluation synthesis approach.

Description of the Studies

We evaluated 28 studies which were done by 21 sets of researchers.² The studies covered homicide cases for different time periods through 1988, many states that have the death penalty, and different geographic regions of the country. In three instances, two or more articles were generated from a single database, with each article focusing on a different aspect of the sentencing process. A few researchers used data from other studies in their analyses. Overall, the 28 studies constitute 23 different data sets.

We rated almost half of the studies as high or medium quality; the remainder were rated as low. It is important to evaluate research quality for two reasons: (1) the results of the synthesis should be based on a sufficient number of medium or high quality studies; and (2) it is important to note differences in studies' findings, if any, by the quality of the studies. By quality we mean the strength of the design and the rigor of the analytic technique that leads to a level of confidence we have in the study findings. We judged a study to be high quality if it

- was characterized by a sound design that analyzed homicide cases throughout the sentencing process;
- included legally relevant variables (aggravating and mitigating circumstances); and
- used statistical analysis techniques to control for variables that correlate with race and/or capital sentencing.

We judged a study as medium quality if we found it to be lacking in one or more of the above characteristics. However, the medium quality studies generally were more similar to high quality studies than to low quality studies. Low quality studies typically had weak or flawed designs, relied on less reliable statistical analysis, and were simplistic in interpretation of the data. Studies published before 1985 comprised a larger proportion of lower quality studies than those published subsequently. This coincides with the relatively recent development and use of a more sophisticated statistical technique appropriate for use with data such as those in death penalty studies.

Limitations of the Studies

We critiqued all of the studies to identify methodological limitations in the design and analysis of the research. We identified three major limitations among these studies: (1) the threat of sample selection bias, (2) the problem of omitted variables, and (3) the small sample sizes.

²Appendix I includes a list of the studies we used in the synthesis.

Sample selection bias implies that the cases under consideration are not representative of all the cases of interest. The criminal justice system is characterized by discretionary processes of selection at different points in the system. Racial factors may influence decisions at different stages of the process. A study that considered only whether persons convicted were sentenced to death was especially prone to the biasing effect of sample selection. Racial factors may have influenced decisions earlier in the process, such as whether the prosecutor requested that an offender be charged with capital murder. This discretion exercised early in the process may have the effect of concealing (masking) race effects if analysis is limited only to the later stages.

We found sample selection bias in more than half of the low quality studies; these studies typically analyzed only those cases in which the defendant was convicted of capital murder or received the death penalty. Studies that included all reported homicides and followed the disposition of these defendants from initial charge through subsequent stages of the judicial process are not likely to have been affected by this bias. More than two-thirds of the studies we rated high or medium quality picked up cases prior to conviction and followed these cases through the judicial process.

Another limitation is the problem of omitted variables. This limitation is especially important in studies examining racial discrimination. This is because the effect of race is considered the residual—after all relevant and important variables have been controlled, the effect that remains, the residual, is interpreted to be racial disparity. Omitting relevant variables can affect results by failing to reduce the residual appropriately, thus enhancing the perceived racial disparity. Omitted variables in death penalty research are potentially of two types: (1) variables that were known and were believed to be correlated with race or the death penalty and (2) variables that were not known and may be correlated with race or the death penalty outcome.

Several of the higher quality studies controlled for many variables. For example, one high quality study controlled for more than 200 variables. Only a few variables are shown to be highly explanatory. Most of these are controlled for in the better quality studies. However, there are variables such as strength of evidence or socioeconomic status of the victim and defendant which are difficult to measure or obtain. If there are important omitted variables (either because they are difficult to measure or because they are unknown), other explanations for the differences in death penalty outcomes cannot be excluded. But for another

variable to influence the existing disparity it would have to (1) be jointly correlated with both race and the death penalty outcome and (2) operate independently of the factors already included in the analysis.

A third limitation relates to the consequences of the small sample sizes in the analyses of death penalty imposition. The imposition of the death penalty is a relatively rare event. As such, in most studies there were very few cases at the end of the process—the sentencing and imposition stages. The small sample size places limits on the usefulness of statistical techniques for analysis at these final stages and thus limits the rigor of analyses at these stages.

While the severity of the limitations varied, as reflected in the studies' ratings, these limitations do not preclude a meaningful analysis of the studies. We have considered quality in evaluating the studies and arriving at our findings.

Findings

Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision.

In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.³ This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques. The finding held for high, medium, and low quality studies.

The race of victim influence was found at all stages of the criminal justice system process, although there were variations among studies as to whether there was a race of victim influence at specific stages. The evidence for the race of victim influence was stronger for the earlier stages of the judicial process (e.g., prosecutorial decision to charge defendant with a capital offense, decision to proceed to trial rather than plea bargain) than in later stages. This was because the earlier stages were comprised of larger samples allowing for more rigorous analyses. However,

³When we refer to a finding of racial disparities at the sentencing and imposition stages we are, in fact, including disparities that occurred in earlier stages of the judicial process, e.g., charging and decision to proceed to trial.

decisions made at every stage of the process necessarily affect an individual's likelihood of being sentenced to death.

Legally relevant variables, such as aggravating circumstances, were influential but did not explain fully the racial disparities researchers found. In the high or medium quality studies, researchers used appropriate statistical techniques to control for legally relevant factors, e.g., prior criminal record, culpability level, heinousness of the crime, and number of victims. The analyses show that after controlling statistically for legally relevant variables and other factors thought to influence death penalty sentencing (e.g., region, jurisdiction), differences remain in the likelihood of receiving the death penalty based on race of victim.

The evidence for the influence of the race of defendant on death penalty outcomes was equivocal. Although more than half of the studies found that race of defendant influenced the likelihood of being charged with a capital crime or receiving the death penalty,⁴ the relationship between race of defendant and outcome varied across studies. For example, sometimes the race of defendant interacted with another factor. In one study researchers found that in rural areas black defendants were more likely to receive death sentences, and in urban areas white defendants were more likely to receive death sentences. In a few studies, analyses revealed that the black defendant/white victim combination was the most likely to receive the death penalty. However, the extent to which the finding was influenced by race of victim rather than race of defendant was unclear.

Finally, more than three-fourths of the studies that identified a race of defendant effect found that black defendants were more likely to receive the death penalty. However, the remaining studies found that white defendants were more likely to be sentenced to death.

To summarize, the synthesis supports a strong race of victim influence. The race of offender influence is not as clear cut and varies across a number of dimensions. Although there are limitations to the studies' methodologies, they are of sufficient quality to support the synthesis findings.

⁴About two-thirds of these studies were of high or medium quality.

We are sending copies of this report to cognizant congressional committees, the Attorney General, and other interested parties.

Major contributors to this report are listed in appendix II. Please call me at 275-8389 if you have any questions.



Lowell Dodge
Director, Administration
of Justice Issues

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Arkin, Stephen. "Discrimination and Arbitrariness in Capital Punishment: An Analysis of Post-Furman Murder Cases in Dade County, Florida, 1973-1976." Stanford Law Review, Vol. 33 (November 1980) 75-101.

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Major Contributors to This Report

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Division, Washington,
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Laurie E. Ekstrand, Chief Social Scientist
Harriet C. Ganson, Analyst-in-Charge
Lisa Cassady, Social Science Analyst
James L. Fremming, Consultant
Douglas M. Sloane, Statistical Consultant

FACTSHEET

DOES THE DEATH PENALTY DETER VIOLENT CRIMES?

Deterrence is an argument often cited to justify the death penalty. On the surface, the argument makes sense. Rational people understand links between cause and effect and between crime and punishment. A fear of death or the possibility of death also affects the behavior of most reasonable people.

People who murder, however, are rarely rational at the time they commit the crime. The threat of execution at some future time does not enter the mind of killers acting under the influence of drugs or alcohol, consumed by passions or anger, panicking while committing another crime, or simply lacking an understanding of the gravity of their crime. Hired killers obviously assume they will not be apprehended; otherwise, they would not engage in such activity.

**The death penalty has never been shown to benefit a society.
In fact, there are strong indications that it increases
people's tolerance of violence.**

No study has yet produced any solid scientific evidence that the death penalty deters violent crime. The murder rate in states which use the death penalty is twice that of states which do not use the death penalty according to FBI statistics. Even researchers who set out to prove that police officers have greater protection in jurisdictions permitting executions uncovered no deterrent value in the death penalty. Almost twice as many law enforcement officers were killed in death penalty states between 1976 and 1985 than in states without executions.

The widely respected Thorsten Sellin studies conducted in the United States during 1962, 1967, and 1980 concluded that the death penalty has no deterrent effect. The British Royal Commission on Capital Punishment analyzed statistics from seven European and three non-European countries, reporting that no evidence linked abolition of the death penalty to increased homicide rates. A Department of Public Law study conducted in Nigeria concluded that "no efficacy can be shown for the operation of the death penalty" in cases of either murder or armed robbery.

The 1988 Report to the United Nations Committee on Crime Prevention and Control, a detailed international study, found that all of its documented research "has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment."

Some researchers have found that the death penalty not only fails to reduce murder rates, but also may increase the number of homicides. The Bowers-Pierce study in the United States, analyzing executions between 1907 and 1963, concluded that an average of two additional homicides were committed in the month after an execution took place. The researchers, like many analyzing facts compiled before and after them, noted a "brutalizing" effect on society resulting from executions.

Amnesty International, a non-partisan human rights organization with members and supporters in over 150 countries, works impartially worldwide for the release of prisoners of conscience, for the fair and prompt trial of all political prisoners, and for an end to all use of torture and the death penalty. The organization launched an international campaign in April 1989 for abolition of the death penalty throughout the world. The death penalty, wherever and whenever it is used, violates the basic rights to protection from deprivation of life and from cruel and degrading punishment. For more information, contact Amnesty International USA, 322 Elgin Avenue, New York, NY 10001.



THE DEATH PENALTY:

THE RELIGIOUS COMMUNITY
CALLS FOR ABOLITION

Published by:

National Coalition to Abolish the Death Penalty
National Interreligious Task Force on Criminal Justice

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Preface

This booklet, *The Death Penalty: The Religious Community Calls For Abolition*, is a joint publication of the National Coalition to Abolish the Death Penalty, a coalition of national organizations committed to the abolition of capital punishment, and the National Interreligious Task Force on Criminal Justice, which consists of representatives from religious structures and persons involved in programs and projects around the country, and which is related to the Joint Strategy and Action Committee (JSAC) and the National Council of Churches of Christ.

As a part of the work of the Religious Community Committee of the National Coalition to Abolish the Death Penalty, the 1980 publication of *Capital Punishment: What the Religious Community Says*, was updated to include the larger number of official positions taken in support of the abolition of capital punishment by national religious denominations and other bodies, and to reflect the heightened concern within faith communities over the resumption of executions in the United States.

Although numerous state and local religious and nonreligious organizations graciously provided us with the statements their organizations adopted opposing capital punishment, the limitations of this publication did not permit their inclusion. We encourage states and regional groupings to research and compile their own local compendiums.

We hope that this publication which includes the officially adopted positions of most religious denominations and organizations in this country will be useful to federal and state legislative bodies considering legislation to abolish capital punishment, and all others active in the abolitionist movement. Now that state and federal courts appear increasingly unwilling to address significant legal issues concerning capital punishment, it is more important than ever that the statements arising from the moral convictions of communities of faith listed in this publication be heard.

EARL W. TRENT, ESQ.
Chairperson,
Religious Community Committee
NCADP

Introduction

The Death Penalty: The Religious Community Calls for Abolition

Listen to the voices of contemporary prophets:

To continue a search for fair and equal justice through retribution and deterrence can only increase public demand for continued escalation and severity of punishment. This in the long term will increase the sense of meanness and violence in our total society. With the influence of our nation's religious leaders, we could hopefully turn away from severity of punishment as a panacea for reducing crime and violence. As a humane and caring people, we could then concentrate on developing a range of punishments which neither cripple nor destroy.

(Milton G. Rector, President Emeritus, National Council on Crime and Delinquency, in the introduction to *Punishment: In the Scripture and Tradition of Judaism, Christianity, and Islam*.)

The first, and the final, challenges to punishment should be on religious grounds. The rationale we build in the case against punishment and in the case for restoration and reconciliation will come only out of the prayerful probing by the people of faith — prayerful probing into their Scripture, their tradition, their personal intuitions and convictions and, last but not least, the guidance of the Spirit.

(The Rev. Virginia Mackey, author of *Punishment: In the Scripture and Tradition of Judaism, Christianity, and Islam*.)

Those words were written about the general concept of punishment in the United States criminal justice system. How much more do they apply to the ultimate punishment, the death penalty! And thus how much more deeply do they apply to, and challenge, the religious community and its responsibility to address the issue of capital punishment!

And that challenge has been accepted. Prophets in the wider religious community have been speaking in their own forums and councils and assemblies. New statements by some have emerged as people of faith speak out on subjects they had not addressed in the past. Some statements have been revised as people of faith reassess what they have said in the past and reshape their policies to present realities.

Those present realities are stark: since capital punishment was reinstituted in the United States in 1976 after a ten-year moratorium, more than a hundred people have been executed and more than 2,100 men and women are on death row. Nearly half of them are people of color; a large number are on death row because they could not afford adequate representation at trial; nearly all are poor; many are suffering from a variety of significant mental problems; almost all were victims of abuse as children; a number were minors at the time of their offense. This nation is spending millions of dollars on the processes related to capital punishment — and virtually nothing on care for victims or other ways toward restoration and reconciliation of community.

The religious community is called to become aware of these realities. We must take leadership in abolishing capital punishment if we are to be true to our religious heritage. The education and advocacy statements in this booklet are tools for our awareness and leadership. We pray you will use them for action.

Robert R. Bryan, Esq.
Chairperson
National Coalition to Abolish
the Death Penalty

Rev. Kathy Lancaster
Chairperson
National Interreligious Task
Force on Criminal Justice

October 15, 1988

American Baptist Churches in the U.S.A.

Resolution on Capital Punishment

Passed by the General Board of the American Baptist Churches, June 1977

Until the Gilmore case in 1979, there had been no execution in the United States in 10 years. The ritual taking of life had ceased while debate continued in the courts regarding the constitutionality of capital punishment.

Now that the death laws in some states have been upheld, over 400 persons nationwide face possible execution by hanging, firing squad, asphyxiation, or electrocution. Such punishment has been abolished in Canada and most of Europe, where it is seen as morally unacceptable and a form of cruel and unusual punishment inconsistent with religious and/or ethical traditions.

The majority of those on death row are poor, powerless, and educationally deprived. Almost 50 percent come from minority groups. This reflects the broad inequities within our society, and the inequity with which the ultimate is applied. This alone is sufficient reason for opposing it as immoral and unjust.

Since further legal actions to stop executions appear unpromising it is more important than ever that the religious community speak to the moral, religious and ethical implications of killing by the state. Numerous secular and religious groups have recently taken positions in opposition to capital punishment.

THEREFORE, we as American Baptists, condemn the current reinstatement of capital punishment and oppose its use under any new or old state or federal law, and call for an immediate end to planned executions throughout this country.

We urge American Baptists in every state to act as advocates against the passage of new death penalty laws, and to act individually and in concert with others to prevent executions from being carried out.

We appeal to the governors of each state where an execution is pending to act with statesmanship and courage by commuting to life imprisonment without parole all capital cases within their jurisdiction.

American Baptist Churches in the USA
Valley Forge, Pennsylvania 19382



American Ethical Union

Resolution on Capital Punishment

American Ethical Union, adopted September 17, 1976

The American Ethical Union is unalterably opposed to capital punishment. The willful taking of human life is cruel and inhuman punishment and violates our belief in the intrinsic worth of every human being. It is wholly unacceptable, whether imposed to prevent repetition of a crime by an individual, as a deterrent to others, or as social retribution.

The American Ethical Union therefore calls for the abolition of capital punishment. Where the death penalty now prevails, it urges state legislatures to enact statutes abolishing it. States which do not now impose capital punishment are strongly urged not to enact (or reenact) enabling legislation.

Further, the American Ethical Union encourages its members to work toward these ends in their own states.

American Ethical Union
2 West 64th Street
New York, New York 10023



American Friends Service Committee

Statement on the Death Penalty

November, 1976

The American Friends Service Committee reaffirms its opposition to the death penalty. We base our stand on the Quaker belief that every person has value in the eyes of God and on Quaker testimonies against the taking of human life.

The US Supreme Court decisions of July, 1976, rejected the major constitutional arguments against the death penalty, which had stopped executions in the U.S.A. in the previous decade. These decisions denied that execution is cruel and unusual punishment, citing the passage of death laws by a majority of the states in recent years as evidence that the public does not consider execution to be cruel and unusual. In our view, alleged public support for capital punishment does not diminish the cruelty nor warrant the taking of human life.

The Supreme Court agrees that there is no conclusive evidence that the death penalty acts as a deterrent to crime. It recognized that the continuing demand for capital punishment is in part a manifestation of a desire for retribution. We find it particularly shocking that the Supreme Court would give credence to retribution as a basis for law.

Punishment by death is inflicted most often upon the poor, and particularly upon racial minorities, who do not have the means to defend themselves that are available to wealthier offenders. A minority person convicted of a capital offense is much more likely to pay the extreme penalty than a white person convicted of the same crime. Discretion as to whether to execute continues under the Supreme Court's guidelines, and minority persons will continue to be victims of this discretion. The Supreme Court in its 1976 decision ignores this reality.

The grossly disproportionate number of nonwhites sentenced to be executed and the continuing demand for the death penalty indicate that the death penalty may constitute an outlet for acknowledged racist attitudes. This outlet is now legally sanctioned, but it is nonetheless morally unacceptable.

The death penalty is especially abhorrent because it assumes an infallibility in the process of determining guilt. Persons later found to have been innocent have been executed. This will happen again when killing by the state begins anew.

It is bad enough that murder or other capital crimes are committed in the first place and our sympathies lie most strongly with the victims. But the death penalty restores no victim to life and only compounds the wrong committed in the first place.

We affirm that there is no justification for taking the life of any man or woman for any reason.

American Friends Service Committee
1501 Cherry Street
Philadelphia, Pennsylvania 19102



The American Jewish Committee

Statement on Capital Punishment

The American Jewish Committee, adopted at the 66th Annual Meeting, May 6, 1972

WHEREAS capital punishment degrades and brutalizes the society which practices it; and

WHEREAS those who seek to retain the death penalty have failed to establish its deterrent effect or to recognize the fallibility of criminal justice institutions; and

WHEREAS capital punishment has too often been discriminatory in its application and is increasingly being rejected by civilized peoples throughout the world; and

WHEREAS we agree that the death penalty is cruel, unjust and incompatible with the dignity and self respect of man;

NOW THEREFORE BE IT RESOLVED that the American Jewish Committee be recorded as favoring the abolition of the death penalty.

The American Jewish Committee
165 E. 56th Street
New York, New York 10022



Amnesty International

Against the Death Penalty

Amnesty International opposes the death penalty in all cases without reservation. This is part of the total work of the organization whose activities are focused on prisoners:

- It seeks the release of prisoners of conscience. These are people detained anywhere for their beliefs, color, sex, ethnic origin, language or religion, who have not used or advocated violence.
- It works for fair and prompt trials for all political prisoners and on behalf of such people detained without charge or trial.
- It opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

A Violation of Humane Standards

All international human rights declarations, conventions and covenants stipulate that everyone has the "right to life, liberty and security of person."

The official position of the United Nations General Assembly is that in the case of executions imposed by law it is desirable to abolish the death penalty in all countries and that the crimes to which it applies should be progressively reduced.

The international human rights standards that have been adopted by the United Nations and by regional organizations since 1948 prohibit all forms of "cruel, inhuman or degrading treatment or punishment."

Amnesty International seeks the abolition of the death penalty on the grounds that it is a punishment that is incompatible with these humanitarian standards. Amnesty International opposes executions under all circumstances whether they are to be carried out in political or criminal cases, whether they result from judicial proceedings or whether they take the form of extra-judicial killings, unexplained disappearances or political murders.

The Death Penalty in Practice

Amnesty International most frequently encounters the death penalty in three instances:

- the execution by law of political dissenters or people convicted of political offenses;

- the execution of political figures or ordinary citizens taking place entirely outside the framework of the rule of law. The killings may be the work of the state security forces or of opposition or pro-government death squads;
- the execution of criminals convicted of violent crimes (in some countries economic and sexual offences also carry this penalty).

As a method of attempting to eliminate political dissent the use of the death penalty is abhorrent. As a method of protecting society from crime, it has nowhere been shown to have a special deterrent effect.

The brutal suppression of minority groups or social or political movements frequently contributes to political instability, with both government and opposition resorting to violence in order to achieve their objectives or assert their control. In this context both judicial executions and arbitrary killings often precipitate reprisals and add to a legacy of resentment, intolerance and social conflict.

Not a Special Deterrent

In the case of societies faced with the need to combat violent crime, including acts of terrorism, Amnesty International is not aware of any convincing evidence that the use of the death penalty has a special deterrent effect.

Comparisons of crime rates in different countries that have retained or abolished the death penalty do not indicate that the threat of execution has been effective in preventing capital crimes.

Studies on the death penalty indicate that changes in crime rates depend on many factors apart from the existence or use of the death penalty. The fear of death, in itself, does not appear to prevent individuals from committing capital crimes any more than does acquaintance with the victim. European and North American studies, for example, indicate that the majority of murders take place among members of the same family, friends or acquaintances; most take place in the heat of passion. On examination it can be seen that the assailants gave no thought to the consequences of violent acts, much less to possible penalties.

Unequal, Unjust and Irreversible

Historically the death penalty as a judicial punishment has been seen to bear unequally and unjustly on the poor, on minorities and on oppressed groups within the population.

The vulnerability of all criminal justice systems to discrimination and error must be taken into account. Human factors such as expediency, the exercise of discretion and the influence of public

opinions can affect each stage of legal proceedings from indictment through trial and sentencing to punishment and the possible granting of clemency.

In cases where a full medical report is essential, the access of the defendant — and the court — to impartial and professional psychiatric and medical services may vary from individual to individual, depending on the ability to secure such services, and from country to country, depending on the existence and quality of such services under different economic conditions.

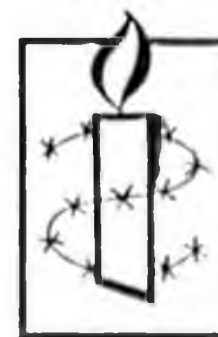
When the ability to obtain good legal representation becomes one of the most important factors in determining the outcome of a trial, questions of race, class and poverty can have a considerable effect upon the administration of justice. The wealthy, the politically well-connected and members of dominant racial and religious groups are far less likely to be sentenced to death and even less likely to be executed for offenses of comparable severity than are the poor, supporters of the political opposition and members of unpopular racial or religious groups.

The possibility of judicial error, for whatever reason, assumes even greater importance in cases involving capital crimes because the death penalty is the irreversible punishment.

Because it is irreversible the death penalty has always been recognized as qualitatively different from all other forms of punishment. Once carried out it can never be corrected. The imposition of the death penalty negates modern concepts of penology which are based on the theory that rehabilitation of the individual criminal is possible.

The full meaning of the irreversibility of the punishment is underlined in countries that make a practice of condemning political dissenters to death. Imposition of the death penalty in such cases can amount to the carrying out of government policy by courts which are unlikely to have judicial independence. The political crimes for which the death penalty may be imposed under such circumstances can be defined in such a way that virtually any political activity inconsistent with government policy becomes a capital offence.

Amnesty International
322 8th Avenue
New York, NY 10001



Christian Church (Disciples of Christ)

Resolution Concerning Opposition to the Use of the Death Penalty

ADOPTED by the General Assembly - 1985

WHEREAS, there is currently a significant rise in the number of executions of convicted murderers throughout the United States, and

WHEREAS, public opinion polls suggest that a majority of the American public favor capital punishment for the Purpose of deterring crime or for the purpose of retribution for violent acts, and

WHEREAS, the Holy Scriptures clearly mandate that we are not to kill, we are not to render evil for evil, and that we are not to seek retribution with vengeance for the evil done to us, and

WHEREAS, the use of execution to punish criminal acts does not allow for repentance or restitution of the criminal, and

WHEREAS, well documented research clearly shows that capital punishment does not deter violent crime but may even give sanction to a climate of violence in our society, and

WHEREAS, the Christian Church (Disciples of Christ) meeting in conventions and General Assemblies has consistently approved resolutions that oppose capital punishment (1957 - F11, 1962 - #43, 1973 - #44, and 1975 - #34);

THEREFORE, BE IT RESOLVED, that the Christian Church (Disciples of Christ) meeting in General Assembly at Des Moines, Iowa express its opposition to the use of the death penalty in the criminal justice system of the United States of America and its various states, and calls for the repeal of all laws and statutes to permit its usage.

BE IT FURTHER RESOLVED, that every congregation of the Christian Church be encouraged to utilize educational materials at every possible occasion to facilitate thoughtful discussion regarding the use of capital punishment, that each congregation in those states which have capital punishment statutes contact any elected legislator who is a member of the Christian Church (Disciples of Christ) making them aware of current statutes that

permit the use of the death penalty, that, those congregations communicate to their own Governor their encouragement and personal support of the Governor's use of his/her sentence to life imprisonment should an execution become imminent; and that all appropriate systems of influence be utilized to repeal all federal statutes which permit capital punishment.

Christian Church
(Disciples of Christ)
222 South Downey Avenue
Indianapolis, IN 46219



Christian Reformed Church in North America

Capital Punishment

Given that human life is sacred, that the magistrate is fallible, that time for repentance is desirable, and that imprisonment will normally satisfy the demand for justice, we conclude that, though judicial executions may sometimes be divinely sanctioned and be in society's best interest, it is not desirable that capital punishment be routinely inflicted upon persons guilty of murder in the first degree. Only under exceptional circumstances should the state resort to capital punishment.

Decisions of the Synod of 1981 re Capital Punishment

1. The synod declare that:
 - a. Modern states are not obligated by Scriptures creed, or principle to institute and practice capital punishment.
 - b. The Scriptures acknowledge the right of modern states to institute and practice capital punishment.
 - c. The Scriptures require that if capital punishment is exercised, it be exercised only with utmost restraint.
2. That synod urge the members of the church, working as individuals and through appropriate organizations, to renounce all motives of revenge, and to encourage their respective governments to adopt criminal justice systems in keeping with the scriptural principles presented in this report.
3. The synod refer the report and the guidelines it contains to the churches for study and guidance.

The Christian Reformed Church
2850 Kalamazoo Avenue, S.E.
Grand Rapids, Michigan 49508



Church of the Brethren

Statements on Capital Punishment

Annual Conference, 1959

"We commend current efforts to abolish capital punishment and call upon Brethren everywhere to use their influence and their witness against it."

Annual conference, 1975

(The following statement is part of a much longer paper on "Criminal justice." It is included in a section of recommendations entitled "Reforming the System.")

"...Brethren are encouraged to work for the following changes: that the use of capital punishment be abolished."

General Board, 1979

The Church of the Brethren General Board views with deep concern and alarm the resumption of the use of capital punishment. We affirm the Church of the Brethren Annual Conference Statements of 1957, 1959, and 1975 which uphold the sanctity of human life and personality, oppose the use of capital punishment, and encourage Brethren to work for the abolition of the death penalty.

We encourage Brethren to express their opposition to capital punishment, especially to governors and state legislators in states where capital punishment has been established or is being considered.

We deplore the taking of human life, whether by the hand of an individual or through the working of a judicial system. We pray, in the spirit of Jesus Christ who calls us to share his ministry of reconciliation, that our society will turn away from the use of capital punishment.

Annual Conference, 1987

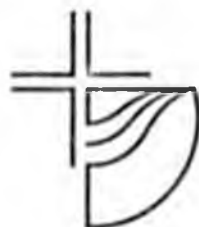
The following excerpts are from a position statement which affirms the brethren's opposition to the death penalty and undergirds it by examining biblical and theological basis as well as practical and social issues involved.

"The death penalty only continues the spiral of violence. Jesus said "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist one who is evil. But if anyone strikes you on the right cheek, turn to him the other also" (Matt. 5:38-39). Do we not believe this to be true? The only real way to deter further violence is to cease our claim to a "life for a life," to recognize that life and death decisions belong to God, and to seek mercy and redemption of God's lost children.

"In a broader sense, we Christians must lead the United States in a total commitment to nonviolence as public policy. All violent systems, structures, and ideologies should be challenged at their very core."

"Jesus came with a message of redemption and compassion for life, while the death penalty carries a message of condemnation and death."

Church of the Brethren
1451 Dundee Avenue
Elgin, Illinois 60120



Church Women United

Capital Punishment

1. *Abolition of Capital Punishment (1981)*

WHEREAS, Church Women United cannot accept retribution or social vengeance as a reason for taking human life, because it violates our deepest belief in God as the Creator and the Redeemer of humankind.

WHEREAS, although Church Women United is deeply concerned about the present high rate of crime in the United States, and about the value of the life taken in murder or homicide, we also believe the life of the victim is further devalued by the taking of another life as punishment.

WHEREAS, Church Women United is convinced that the nation's leaders should give attention to the improvement of the total criminal justice system and to the elimination of social conditions which breed and cause disorder, rather than fostering a false confidence in the effectiveness of the death penalty;

THEREFORE, Church Women United declares its opposition to the retention and use of capital punishment in any form or carried out by any means; we urge the abolition of capital punishment.

FURTHER, the members of the Executive Committee council are urged to write or wire their Senators urging them to oppose the reinstatement of the death penalty in any form.

2. *Against the Death Penalty (1985)*

It was VOTED: That Church Women United affirms the public witness in Atlanta, affirming the decision of the United States Supreme Court, upholding the value of life.

Church Women United
475 Riverside Drive
New York, New York 10115

The Episcopal Church

Capital Punishment

Statement of the 1979 General Convention

WHEREAS, the 1958 General Convention of the Episcopal Church opposed capital punishment on a theological basis that the life of an individual is of infinite worth in the sight of Almighty God; and the taking of such a human life falls within the providence of Almighty God and not within the right of Man; and

WHEREAS, this opposition to capital punishment was reaffirmed at the General Convention of 1969; and

WHEREAS, a preponderance of religious bodies continue to oppose capital punishment as contrary to the concept of Christian love as revealed in the New Testament; and

WHEREAS, we are witnessing the reemergence of this practice as a social policy in many states; and

WHEREAS, the institutionalized taking of human life prevents the fulfillment of Christian commitment to seek the redemption and reconciliation of the offender; and

WHEREAS, there are incarceration alternatives for those who are too dangerous to be set free in society; therefore be it

RESOLVED, the House of Bishops concurring, that this 66th General Convention of the Episcopal Church reaffirms its opposition to capital punishment and calls on the dioceses and members of this church to work actively to abolish the death penalty in their states; and be it further

RESOLVED, the House of Bishops concurring, that this 66th General Convention instruct the Secretary of General Convention to notify the several governors of the states of our action.

The Episcopal Church
815 Second Avenue
New York, New York 10017



Fellowship of Reconciliation

An Appeal to End All Executions

Until 1977, there had been no execution in the United States since 1967. The ritual taking of human life had ceased while debate continued in the courts regarding the constitutionality of capital punishment.

Now that death laws in some states have been upheld, over 400 persons nationwide face possible execution by hanging, firing squad, gas, or electrocutions. But there is strong and growing opposition to capital punishment, which has been abolished in Canada and most of Europe. It is seen as morally unacceptable and a form of "Cruel and unusual punishment," in contradiction to our religious and ethical traditions and the U.S. Constitution. The Fellowship of Reconciliation and its members are among those who condemn its reinstatement, oppose its use under any and every state or federal law, and call for an end to executions.

The Death Penalty Discriminates

The majority of those on death row are poor, powerless, and educationally deprived. Almost 50 percent come from minority groups. This reflects the broad inequities within our society and the inequity with which the ultimate penalty is applied. Persons of wealth, status, and education are favored by the realities of our legal system. They enjoy the benefits of able counsel and rarely suffer severe penalties. As the United Church of Christ has observed, the death penalty "has been found to discriminate on the basis of color and economic condition." This alone is sufficient reason for opposing it as immoral and unjust.

We Seek Restoration, Not Retribution

As people of religious and ethical conscience, we seek the restoration and renewal of wrong-doers, not their deaths. Capital punishment makes it possible for human error or prejudice to send innocent persons to their deaths. It eliminates forever the healing possibility of human love and respect. Penal history provides us with examples of innocent persons falsely condemned. Our Judeo-Christian heritage affirms that for the state to assume the power of absolute judgment is to assume a power that belongs only to God.

The U.S. Supreme Court has noted that there is no conclusive evidence that the death penalty acts as a deterrent. Capital crimes are often impulsive and unplanned, and neither the

presence of the death penalty nor the frequency of executions have been shown to have any significant effect on homicide rates. It serves no purpose in the effort to control crime, and must be seen as the most brutal, irrational kind of revenge. In the words of the Michigan Catholic Conference, "It is clear that the root causes of crime lie within society itself and their effects will not be eliminated by an act of retribution."

The Value of Life is Cheapened

In this regard, we are especially concerned with what the death penalty does to the society that inflicts it. As the United Presbyterian Church has declared, "The use of the death penalty tends to brutalize the society that condones it." In denying the humanity of those we put to death - even those guilty of the most terrible crimes - we deny our own humanity, and life is further cheapened. Nothing is achieved by taking one more life, adding one more victim. By inflicting lethal punishment, society descends to the level of violence and cruelty that it rejects in criminal behavior. We must set an example based on values of compassion, decency, and reconciliation.

We Call for Ecumenical Action

In October 1976, the National Council of Churches called for effective ecumenical action to stop the "avalanche of legal slaughter." Many other peace, religious, human and civil rights groups have called for the abolition of capital punishment. We join our voices with theirs, in the spirit of the prophet Ezekiel: "As I live, says the Lord God, I have no desire for the death of the wicked. I would rather that a wicked man should mend his ways and live." (33:11)

We Appeal to State Governors

We appeal to individuals of conscience to act to prevent the passage of new death penalty laws on the state or federal level, and to intervene to prevent current death laws from being carried out. We call on local, state, and national religious bodies to speak out against capital punishment, and urge the commutation of all death sentences.

We appeal, specifically, to the governors of each state to act with statesmanship and courage by granting clemency in all capital cases without their jurisdiction. To uphold the value of human life and the ideal of justice founded on wisdom and decency, we say to all Americans: end all executions.

Fellowship of Reconciliation
Box 271
Nyack, New York 10960

Friends Committee on National Legislation

Criminal Justice

(Taken from Statement of Legislative Policy dated November 14, 1987)

The objective of criminal law and the criminal justice system should be to promote fair and equitable dealings among individuals in the society, and to prevent violence and destruction. To this end, the criminal justice system should deal fairly with offender, victim, and community by providing equitable and prompt adjudication, effective education, training, or treatment for those convicted, and restitution for the victims of crime. Crime prevention programs must address the complex and pervasive causes of crime, which are often rooted in social and economic injustice. We recommend:

- effective policies and programs for prevention and treatment of juvenile delinquency and crime
- full legal services for those who cannot afford them
- reconciliation of criminal and victim whenever feasible
- enforcement of laws against white-collar crimes, such as perjury, embezzlement, and bribery, with the same degree of vigor as the enforcement of other criminal laws

We seek the abolition of capital punishment, because it violates the sacredness of human life and our belief in the human capacity for change. It is also clear that this irreversible penalty cannot be applied equitably and without error.

Friends Committee on National Legislation
245 Second Street, N.E.
Washington, D.C. 20002



Friends United Meeting

Statement of Capital Punishment

Approved at Five Years Meeting of Friends, July 21, 1960.

Friends accept the Biblical teachings that every human life is valuable in the sight of God, that man need not remain in his sinful state but can repent and be saved, that God loves the sinner and takes "no pleasure in the death of the wicked," but longs "that the wicked turn from his way and live." (Ezekiel 22:11.)

We oppose capital punishment because it violates the gospel we proclaim, and promotes the evils of vengeance and injustice through the agencies of government intended to advance righteousness and justice. We believe the Christian way to deal with crime is to seek the redemption and rehabilitation of the offender, promote penal reform and work more diligently at the task of preventing crime.

As capital punishment is abolished, we recognize that society must be protected against release from prison of those unredeemed spiritual life, or whose condition of physical or mental health, would endanger others.

We look with favor upon the renewed efforts in our time to abolish capital punishment, urge our members individually, and our Monthly and Yearly Meetings to unite with others in the task for removing the death penalty from the statute books of the various states, provinces and central or federal governments, and the United Nations.

Friends United Meeting
101 Quaker Hill Drive
Richmond, Indiana 47374

The General Association of General Baptists

Crime and Punishment

Approved by the 1975 General Association.

We believe that it is the duty of governmental agencies to establish and maintain police forces, courts and facilities for the punishment and rehabilitation of offenders. Citizens should be protected from those who would encroach upon personal and property rights. We respect the basic freedom and rights of persons convicted of crimes, but demand their just penalty as directed by impartial jury and law. We support governmental objectives to prevent or reduce crime, and also oppose social conditions that induce crime. We assert that it is the Christian social concern and objective to develop effective means of rehabilitation for those involved in crime. We believe that a part of the mission of the church is to share the message of Christ with those people so they may be restored, rescued, reinstated and rehabilitated as persons profitable to God and society. Views differ among us and laws differ among states concerning the death penalty. Christians must use prayer and the word of God to arrive at a decision on the rightness or wrongness of the death penalty.

The General Association
of General Baptists
100 Stinson Drive
Poplar Bluff, MO 63901

General Conference Mennonite Church

Capital Punishment

The position on capital punishment of the General Conference Mennonite Church as adopted at Estes Park, Colorado, July 16, 1965.

In View Of our Christian responsibility to give witness to the righteousness which God requires of all men, we are constrained to set forth our convictions concerning capital punishment.

OUR BELIEF

Since Christ through His redemptive work has fulfilled the requirement of the death penalty, and has given the church a ministry of reconciliation, and in view of the injustice and ineffectiveness of capital punishment as a means for the achievement of the purpose of government, we express our conviction that its use should be discontinued. In view of the prophetic commission given to the church, therefore, we appeal to the Parliament of the Dominion of Canada and to the federal and state governments of the United States, to discontinue the use of the death penalty and to set rehabilitation as the ultimate goal in the treatment of the criminal, expressing a positive attitude to the offender, thus further encouraging the peace and order which under the lordship of Christ the state is commissioned to provide.

OUR CONFESSION AND OUR PRAYER

In view of our responsibility as ministers of reconciliation we confess that we have not adequately fulfilled our obligation to work for the abolition of capital punishment or for the reduction of crime in our society. We need to be more faithful in serving persons in prison and in laboring for the reform of prison procedures; for the rehabilitation of released prisoners; and for the improvement of the economic, social, and religious conditions which contribute to the making of juvenile offenders and to the spread of crime.

We pray that in our brotherhood the Spirit may deepen each member's conviction and understanding of his obligation to individual criminal offenders, to the government under which he lives, and to Christ. And we pray that God may grant us wisdom,

vision, and courage that as a brotherhood we may engage in this ministry as the Holy Spirit gives us direction.

General Conference Mennonite Church
722 Main Street
Box 347
Newton, Kansas 67114-0347

Lutheran Church in America

Statement on Capital Punishment

(The following statement is given the status of historical document by the Evangelical Lutheran Church in America and as with our predecessor documents is now used as guidance until new documents have been developed.)

Adopted by the third Biennial Convention, Kansas City, Missouri, June 21-29, 1966.

Within recent years, there has been throughout North America a marked increase in the intensity of debate on the question of abolishing the death penalty. This situation has been accompanied by the actual abolition of capital punishment in ten states and two dependencies of the United States, qualified abolition in three states, and in six states a cessation in the use of the death penalty since 1955. Although the issue of abolition has been widely debated in Canada in recent years, a free vote in Parliament on April 5, 1966, failed to end the legality of the death sentence. However, during the last two years or more, death sentences in Canada have been consistently commuted.

These developments have been accompanied by increased attention to the social and psychological causes of crime, the search for improved methods of crime prevention and law enforcement, efforts at revising the penal code and judicial process, and pressure for more adequate methods in the rehabilitation of convicted criminals. There has been a concurrent concern for persons who, because of ethnic or economic status, are seriously hampered in defending themselves in criminal proceedings. It has been increasingly recognized that the socially disadvantaged are forced to bear a double burden: intolerable conditions of life which render them especially vulnerable to forces that incite to crime and the denial of equal justice through adequate defense.

In seeking to make a responsible judgment on the question of capital punishment, the following considerations must be taken into account:

1. The Right of the State to Take Life

The biblical and confessional witness asserts that the state is

responsible under God for the protection of its citizens and the maintenance of justice and public order. For the exercise of its mandate, the state has been entrusted by God with the power to take human life when the failure to do so constitutes a clear danger to the civil community. The possession of this power is not, however, to be interpreted as a command from God that death shall necessarily be employed in punishment for crime. On the other hand, a decision on the part of civil governments to abolish the death penalty is not to be construed as a repudiation of the inherent power of the state to take life in the exercise of its divine mandate.

2. Human Rights and Equality Before the Law

The state is commanded by God to wield its power for the sake of freedom, order, and justice. The employment of the death penalty at present is a clear misuse of this mandate because (a) it falls disproportionately upon those least able to defend themselves, (b) it makes irrevocable any miscarriage of justice, and (c) it ends the possibility of restoring the convicted person to effective and productive citizenship.

3. The Invalidity of the Deterrence Theory

Insights from both criminal psychology and the social cause of crime indicate the impossibility of demonstrating a deterrent value in capital punishment. Contemporary studies show no pronounced difference in the rate of murders and other crimes of violence between states in the United States which impose capital punishment and those bordering on them which do not.

In light of the above considerations, the Lutheran Church in America:

- urges the abolition of capital punishment;
- urges the members of its congregations in those places where capital punishment is still a legal penalty to encourage their legislation to abolish it;
- urges citizens everywhere to work with persistence for the improvement of the total system of criminal justice, concerning themselves with adequate appropriations, the improvement of administration of courts and sentencing practices, adequate probation and parole resources, better penal and correctional institutions, and intensified study of delinquency and crime;

- Urges the continued development of a massive assault on those social conditions which breed hostility toward society and disrespect for the law.

(The following paragraph is part of the much longer social statement, "In Pursuit of Justice and Dignity: Society, the Offender, and Systems of Correction.")

Adopted by the Sixth Biennial Convention, Dallas, Texas, June 30-July 6, 1972.

In keeping with the social statement, "Capital Punishment," adopted in 1966, the church should work for abolition of capital punishment or oppose its reinstatement where it has been suspended.

Lutheran Church in America
ATTN: Church and Society
231 Madison Avenue
New York, New York 10016
(212) 696-6700



Evangelical Lutheran Church
ATTN: Dr. Jerry Folk
8765 West Higgins Road
Chicago, Illinois 60631
(312) 380-2710



Menonite Central Committee U.S.

Death Penalty

Adopted U.S. Peace Section meeting - December 4, 1982

Movement on both state and federal levels to reinstate and activate the death penalty provides an opportunity and an obligation for the religious community to witness against the use of such punishment as a response to violent crime in our nation. Christ's teachings of love and forgiveness, as well as a recognition of past failures in dealing with capital offenders, guide us to believe that punishment by death is both unproductive and a violation of principle.

We therefore call upon the State to eliminate all death statutes as a means of imposing punishment. We call for the immediate end to planned executions throughout this country. We urge that our society instead look toward constructive alternatives that address the situations of both victims and offenders.

Christian Teaching and Anabaptist Models

The basis for our beliefs comes directly from the Bible. Through the Old as well as New Testaments runs a theme that stresses the sacredness of human life because people are made in the image of God. Thus God's abhorrence of murder is made clear early on. While some allowance for capital punishment is made in the Old Testament, it is modified even there by cities of refuge to which the guilty can flee and by frequent reminders that "vengeance is mine, I will repay, saith the Lord."

In the New Testament, the sacrificial expiation of guilt for murder, which was required in the Old Testament, is now met by Christ's death. The cross now abolishes any Old Testament basis for capital punishment. In addition, the teachings of Jesus about revenge and turning the other cheek instruct us to love others despite their wrongs (Matthew 5:30-56). When Christ himself was executed, he set a model response by his dying words: "Father, forgive them, for they know not what they do." And when confronted directly with the question of what to do in a capital case in his own society, Christ responded, "If any one of you is without sin, let him be the first to throw a stone" (John 8). Christ's model of love, forgiveness and reconciliation does not leave room for the penalty of death.

There has been a long history among Mennonites and Brethren in Christ of objecting to state-sanctioned killings. Our 16th-century Anabaptist heritage emphasizes obedience to Christ, including a reverence for life, and speaks specifically against the use of capital punishment. Menno Simons declared, "... it would hardly become a true ruler to shed blood ... if the transgressor should truly repent before his God and be reborn of Him he would then also be a chosen saint and a child of God ... if he remains impenitent, and his life be taken, one would unmercifully rob him of the time of repentance of which, in case his life were spared, he might yet avail himself."

Simons' point is still relevant. If murderers repent and are converted, then like we who have sinned and deserve death (Romans 3:23, 6:23) but have our own penalty of death remitted, they too must be forgiven. If they have not repented, the opportunity for such repentance must not be cut off from them.

Capital Punishment is Ineffective

The major utilitarian argument advanced for capital punishment is that the execution of violent offenders may deter other potential offenders from committing violent acts. Yet the most sophisticated studies have not been able to establish a deterrent effect. If capital punishment is a deterrent, its effect is so minuscule that even the most sophisticated techniques have not been able to measure it. We do not believe that society has the moral right to take so serious a step as ending human life for such a minute and questionable effect.

In fact, it has long been recognized that capital punishment may have the opposite effect upon certain would-be offenders. Numerous studies suggest that some potential offenders may in fact be incited to commit a murder by the example of the death penalty. One study suggests that an execution of an offender may actually cause several additional homicides.

Deterrence theory assumes that potential murderers rationally calculate costs and benefits before committing a violent crime. However, most murders are committed in moments of extreme anger or passion and/or by persons who are psychologically abnormal. A majority involve family members or close acquaintances. Most are hardly situations in which costs and benefits are weighed.

Capital Punishment is Inequitable

Since the Supreme Court handed down its decision in 1972 stating that the current death laws were discriminatory to minori-

ties and the disadvantaged, many states as well as the federal government have sought to reinstate death penalty statutes that eliminate discrimination. The complex and discretionary nature of the criminal justice process, however, makes attainment of the goal highly unlikely. Many states have reinstated the death penalty and a dramatic number of men and women now await execution. In spite of legal guidelines against discrimination, most of those currently on death row are the poor, the minorities and the uneducated.

Capital Punishment is Irreversible

Neither due process protections nor jury attempts to weigh various mitigating and aggravating factors provide an adequate safeguard against mistaken verdicts. History shows a disturbing number of instances where the innocent have been convicted and even executed. Convictions of innocent persons have been documented as late as 1978. Even with elaborate safeguards, innocent persons may be executed. The taking of human life is far too serious an act to contemplate when there is any possibility of error.

Capital Punishment is Inhumane

It can be argued that the taking of human life is itself an inhumane act. Beyond that, human suffering on death row has been described as a kind of "living death."

America's treatment of serious, violent criminals does not compare favorably to other western nations. The United States is the only nation in North America with the death penalty. The European Parliament has adopted a resolution against member nations extending the death penalty. France, once noted for its liberal application of the guillotine, has abolished capital punishment. Thus virtually all of western Europe is without a death law. At the same time, more authoritarian governments like Iran and South Africa retain active death statutes.

Alternatives

We believe the Mennonite and Brethren in Christ churches must act to enhance respect for human life, and that this cannot be done through executions. We recognize the seriousness and emotion with which this issue is considered by many Americans. We also recognize the difficulty of any simple answers to the issues of violent crimes. In this spirit, the MCC U.S. Peace Section affirms the following directions for alternatives to capital punishment that are aimed at the removal of underlying causes of violence.

The Mennonite Church

Statement on Capital Punishment

Adopted August, 1965, Kidren, Ohio

In view of the prophetic commission given to the church as set forth in two recent statements of Mennonite General Conference, *A Declaration of Christian Faith and Commitment with Respect to Peace, War, and Nonresistance* (1951), and *The Christian Witness to the State* (1961); in view of the sanctity of human life; and in view of our redemptive concern for the offender, be it

RESOLVED That we appeal to the parliament of the Dominion of Canada and to the federal and state governments of the United States, to discontinue the use of the death penalty and that we refer to our conferences and congregations for study and discussion of the paper, "A Christian Declaration on Capital Punishment," as prepared by the Peace Problems Committee.

In view of our responsibility as ministers of reconciliation, be it further

RESOLVED That we confess that we have not adequately fulfilled our obligation to the offender nor for the reduction of crime in our society. We need to be more faithful in bringing a Christian witness to persons in prison and in laboring for the reform of prison procedures, for the rehabilitation of released prisoners and for the correction of spiritual, economic, and social conditions which contribute to the making of juvenile offenders and to the spread of crime.

We pray that in our brotherhood the Spirit may deepen each member's conviction and understanding of his obligation to individual criminal offenders, to the government under which he lives, and to Christ. And we pray that God may grant us wisdom, vision, and courage that as a brotherhood we may engage in this ministry as the Holy Spirit gives us direction.

The Mennonite Church
528 E. Madison Street
Lombard, Illinois 60148

1. We must work for a more equitable and just society. The poor and minorities historically have received little understanding and attention. Many crimes stem from the needs and frustrations of the poor and their despair and hopelessness. We cannot be satisfied when one part of our society lives comfortably while another part goes hungry. Our most pressing need for today is to work for improvement of the quality of life by addressing poverty, inequality and racial discrimination. This is essential if we are to curb our nation's violence.
2. We actively seek a nonviolent society. The unrestricted sale of handguns has been a main source of perpetuating violent crime. The focus upon violence in our society through television and militarism has contributed. We will seek to make government more accountable by calling upon it to pass laws restricting the sale and possession of handguns. We identify society's acceptance of corporate violence, institutionalized in national policy and capability for fighting nuclear war, as a taproot of individual violence, and we renounce it.
3. We acknowledge the need to restrain violent offenders and recognize that any alternative to the death penalty will involve such restraint. We urge that that restraint, however, be under more humane conditions which leave room for human growth and change.
4. We wish increasingly to remember the needs of the victim. Often the victim of violent crime becomes victimized once more when society turns its back on the frustration and hurt that the victim faces. We need to broaden our sensitivity to include the affirmation of life of the victim and family as well. If the victim is dead, we will not kill again to show that killing is wrong, nor do we believe that the mating of such vengeance in the long run meets real victim needs, but we urge society to take victims' needs more seriously.
5. We believe that true justice is created through restitution and reconciliation, not retribution. We seek to open avenues for such responses to happen, not just simply with property offenses but with violent offenses as well.

We oppose the death penalty because it violates the teaching and spirit of Jesus Christ. It does not deter crime. It is inevitably inequitable, irreversible and inhumane. In its place we affirm restitution and reconciliation, nonviolence, aid to victims and improvements of social conditions.

Mennonite Central Committee
U.S. Peace Section
21 South 12th Street
Akron, PA 17501

The Moravian Church

Capital Punishment

Adopted by the Synod, 1961

"Resolved, that the Northern Province of the Moravian Church in North America put itself on record as being opposed to capital punishment and that the members of the Moravian church be urged to work for the abolition of the death penalty."

The Moravian Church
1021 Center Street
P.O. Box 1245
Bethlehem, Pennsylvania 18016-1245

National Board YWCA of the U.S.A.

"SOCIAL JUSTICE

The YWCA has traditionally been concerned with social justice and places a high value on human life. As one of the ways of manifesting this concern we support:

The abolition of capital punishment."

National Board YWCA of the U.S.A.
726 Broadway
New York, New York 10003

National Council of the Churches of Christ in the U.S.A.

Resolution Opposing Capital Punishment and Racism in Sentencing

Adopted by the Governing Board, May 26, 1988

In 1968 the National Council of the Churches of Christ in the U.S.A. declared its opposition to capital punishment, reasoning in part that "economically poor defendants, particularly members of racial minorities, are more likely to be executed than others because they cannot afford exhaustive legal defenses." In 1976 the NCC reasserted "the conviction expressed in the policy statement of 1968 that the death penalty is wrong," observing that "the ultimate sanction continues to fall more heavily on minorities and those who cannot afford extensive legal defense." In 1979 the NCC again acted against capital punishment, asserting that "the penalty of death should not be imposed, in any case, on any person as punishment for wrongdoing, nor be a part of any state or federal penal code." In its agenda for action it called for the revision "of criminal codes and their application to exclude race, class, and sex bias — including . . . the abolition of capital punishment." At the Governing Board meeting in May, 1987, the Commission on Justice and Liberation brought an Issue Paper on "Racism and the Death Penalty" to the Unity and Relationships Cluster and distributed Amnesty International's report, *United States of America: The Death Penalty*, to the full Governing Board in order to bring new visibility to the issue.

Many member communions have adopted policies in opposition to the death penalty and have further been involved in the efforts of the National Coalition to Abolish the Death Penalty to eliminate state-sanctioned executions in the United States.

There are at present 2,048 men and women on the death rows of 14 states; nearly half of them are people of color. Forty-five of the 98 people executed between 1977 (when executions resumed in the United States after a ten-year moratorium) and April 1988 were Black or Hispanic; 84 of the 99 victims were white, and no whites were executed for killing a minority person.* In 1987 the U.S. Supreme Court ruled, in *McCleskey v.*

Kemp, that the statistical evidence of racial bias against Black defendants and against those whose victims were white is not a violation of the 8th or 14th Amendments to the U.S. Constitution, and that racial disparities were not sufficient to render the law unconstitutional.

Legislation to provide for the review of elements of racial injustice in capital sentencing was introduced in 1988 in the United State House of Representatives.** Among other features, the proposed legislation makes it unlawful to impose or implement a death sentence in a racially discriminatory manner and establishes the level of proof required to make a claim of discrimination. It also requires states to maintain data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes. While work goes forward on a number of strategies for entirely eliminating the imposition of death sentences, this legislation is viewed as an appropriate interim remedy, although not a solution, to the injustice of state-sanctioned executions.

In light of its long-standing opposition to capital punishment, and recognizing the necessity for making incremental efforts to eliminate the death penalty, the National Council of the Churches in the U.S.A. reaffirms its opposition to the death penalty and supports legislation that seeks to eliminate racially biased sentencing. It requests the General Secretary to communicate the concerns of this resolution to members of the United States Congress.

The National Council of Churches also calls upon its member communions, and local and regional ecumenical bodies, to:

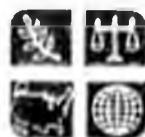
1. inform themselves on the current efforts to abolish the death penalty in the United States, and to encourage members to support the passage of this specific legislation as an interim remedy;
2. communicate their support of this legislation to elected representatives in the United States Congress and in their individual states;
3. use a variety of other channels of communication to interpret the concerns expressed in this resolution to those beyond the church community;
4. participate in the work of the National Coalition to Abolish the Death Penalty and its religious-community working group.

The National Council of Churches further expresses its pastoral concern for victims of crimes, for those who are under death sentences and their families, and for all whose lives are effected by crime and the criminal justice system.

*Data from NAACP Legal Defense and Educational Fund, Inc., May 1, 1988.

**H.R.4442, the Racial Justice Act.

National Council of Churches of Christ in the U.S.A.
475 Riverside Drive
New York, New York 10115



The Orthodox Church in America

Resolution on the Death Penalty

August, 1989

WHEREAS Orthodox Christians should be called to go beyond the political, social, and legal issues raised by capital punishment and recognize and address the deeper moral, ethical, and religious questions of the supreme value of human life in a manner consistent with our opposition to abortion and mercy killing, and in all such questions involving life and death the Church must always champion life; and

WHEREAS in an effort to further the respect for all human life and to witness to the redemptive nature of the Gospel of Jesus Christ who Himself prevented the legal execution of a woman (John 8:3-11) and realizing that premature death resulting from the application of the death penalty can prevent the rehabilitation, reconciliation, and redemption of the offender; and

WHEREAS, while we recognize the necessity to punish those guilty of violent crime, we also recognize that there is no humane way to execute a human being;

BE IT RESOLVED THAT the Ninth All-American Council of the Orthodox Church in America supports the abolition of the death penalty in this and all countries and does urge our elected and appointed officials in those states where prisoners are still executed to introduce and support appropriate legislation aimed at abolishing the death penalty;

BE IT FURTHER RESOLVED THAT this Council requests all governors of states where the death penalty is still in force to halt all further executions according to the power of their office, but that legislative provisions be made for life imprisonment without possibility of parole for those subject to the death penalty;

FINALLY, BE IT FURTHER RESOLVED THAT the Ninth All-American Council of the Orthodox church in America supports and encourages religious bodies, organizations and human rights groups which seek the abolition of the death penalty.

Orthodox Church in America
6850 Route 25A
Syosset, NY 11791

Presbyterian Church (U.S.A.)

Continuing Opposition to Capital Punishment

Whereas, the 171st General Assembly (United Presbyterian Church-1959) declared that "capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God's love in Jesus Christ . . ." and "The use of the death penalty tends to brutalize the society that condones it"; the 177th General Assembly (UPC-1965) called for the abolition of the death penalty; the 106th General Assembly (Presbyterian Church U.S.-1966) proclaimed itself against the death penalty; and the 189th General Assembly (UPC-1977) called upon members to work to prevent executions of persons under sentence of death, to work against efforts to reinstate death penalty statutes, and to work for alternatives to capital punishment; and

Whereas, we believe that the government's use of death as an instrument of justice places the state in the role of God, who alone is sovereign; and

Whereas, the use of the death penalty in a representative democracy places citizens in the role of executioner: "Christians cannot isolate themselves from corporate responsibility, including responsibility for every execution, as well as for every victim" (UPC-1977); and

Whereas, since between July 2, 1976, when the U.S. Supreme Court ruled in *Gregg v. Georgia* that capital punishment does not invariably violate the Constitution," and September 30, 1984, 38 states have approved death penalty statutes and have executed 26 persons; and

Whereas, there are presently over 1,400 persons on death row in the U.S., many of whose rights of appeal are rapidly running out:

Therefore, the 197th General Assembly (1985):

1. Reaffirms the positions of the General Assemblies of the United Presbyterian Church of 1959, 1965, and 1977, and of the Presbyterian Church U.S. of 1966, and declares its continuing opposition to capital punishment.

2. Calls upon governing bodies and members to work for the abolition of the death penalty in those states which currently have capital punishment statutes, and against efforts to reinstate such statutes in those which do not.
3. Urges continuing study of issues related to capital punishment and commends the use of resources available from the Presbyterian Criminal Justice Program.
4. Requests the Stated Clerk to notify the President and the Congress of the United States, and all the state governors and legislatures, of the action taken.

Presbyterian Church (U.S.A.)
100 Witherspoon Street
Louisville, KY 40202



PRESBYTERIAN CHURCH (USA)

Reformed Church in America

Resolution on Capital Punishment

Reformed Church in America, adopted by the General Synod of 1965

That in light of the following reasons this General Synod go on record as opposing the retention of capital punishment as an instrument of justice within our several states, encouraging forward looking study in all areas related to criminology; supporting all efforts to improve our penal institutions, crime prevention agencies and policy procedures, and efforts being made to secure provision of adequate staff and budget for prisons, parole boards and similar institutions;

1. Capital punishment is incompatible with the spirit of Christ and the ethic of love.
2. Capital punishment is of doubtful value as a deterrent.
3. Capital punishment results in inequities in application.
4. Capital punishment is a method to irremediable mistakes.
5. Capital punishment ignores corporate and community guilt.
6. Capital punishment perpetuates the concepts of vengeance and retaliation.
7. Capital punishment ignores the entire concept of rehabilitation. The Christian faith should be concerned not with retribution, but with redemption.

Reformed Church in America
475 Riverside Drive, 18th Floor
New York, New York 10115



Unitarian Universalist Association

Capital Punishment

The following General Resolution was passed by a vote of two thirds or more at the 1979 General Assembly of the Unitarian Universalist Association

WHEREAS, General Assemblies to the Unitarian Universalist Association have opposed capital punishment by Resolution in 1961, 1966 and 1974; and

WHEREAS, the aforementioned Resolutions have urged complete abolition of capital punishment as inconsistent with respect for human life; for its retributive, discriminatory, and non-deterrent character; and opposed its restoration or continuance in any form; and

WHEREAS, the State of Florida has declared its intent to proceed with the executions of those under capital sentence in Florida prisons, numbering more than one hundred, and having begun with the execution of John Spinklink on May 25, 1979; and

WHEREAS, the Florida example may become precedent for a new wave of capital punishment in numerous other states;

BE IT RESOLVED: That the 1979 General Assembly of the Unitarian Universalist Association urges the Governor of the state of Florida to commute all existing death sentences; and

BE IT FURTHER RESOLVED: That the General Assembly urges governors of all other states similarly to commute death sentences and to prevent the restoration or continuance of capital punishment.

Unitarian Universalist Association
25 Beacon Street
Boston, Massachusetts 02108



United Church of Christ

Death Penalty

Resolution of the 12th General Synod of the United Church of Christ, 1979.

WHEREAS the Seventh, Ninth and Eleventh General Synods of the United Church of Christ have declared their opposition to the death penalty as a means of restorative justice; and

WHEREAS such opposition is based on our understanding of the Christian Faith and the New Testament call to redemptive love, mercy, and sanctity of life; and

WHEREAS the death penalty has now been reinstated in thirty-five states resulting in 520 people being confined to death row - 132 of whom reside in the Florida State Prison; and

WHEREAS it has been demonstrated that the death penalty is applied discriminately toward Blacks, Hispanics, Native Americans; and

WHEREAS 80 percent of men and women on death row could not afford an attorney; and

WHEREAS executions have been resumed recently in Florida; and

WHEREAS we are concerned about possible executions of hundreds of persons in this nation over the next few years; therefore,

BE IT RESOLVED that the Twelfth General Synod of the United Church of Christ reaffirm opposition to the death penalty, and that it call upon its brother-in-Christ and United Church of Christ member, the Governor of Florida, to cease the authorization of additional executions in Florida, and further call upon governors of all states to refrain from the authorization of executions;

BE IT FURTHER RESOLVED that the Twelfth General Synod instruct its President to continue to try to communicate directly with the Governor of Florida on its behalf expressing deep pastoral concern and moral anguish over the Governor's role in inspiring the resumption of executions in this country; and

BE IT FURTHER RESOLVED that all General Synod delegates and visitors from those states wherein the death penalty currently exists be encouraged to petition their governors and state legislators to reconsider and review those existing statutes which legalize the killing of human beings; and

BE IT ALSO FURTHER RESOLVED that the Twelfth General Synod recognize the failure of the Church to affect the moral climate of this nation on this matter where polls indicate a majority of the people both endorse and support capital punishment; and that it enable its instrumentalities and agencies to develop additional resources needed to educate and organize the UCC constituency on this issue; and that the Conferences be encouraged to assist local churches and individual members of the United Church of Christ to engage in serious ethical reflection and prayer-guided action toward the eradication of legalized execution and the creation of a more just and humane society. We will continue to offer our prayers on behalf of our brothers-in-Christ, and our brothers and sisters on death row in hopes we may end further legalized killing.

United Church of Christ
105 Madison Avenue
New York, New York 10016



United Methodist Church

Capital Punishment

Adopted by the 1980 General Conference, Indianapolis, Indiana

In spite of a common assumption to the contrary, "an eye for an eye and a tooth for a tooth," does not give justification for the imposing of the penalty of death. Jesus explicitly repudiated the *lex talionis* (Matthew 5:38-39) and the talmud denies its literal meaning, replacing it with financial indemnities.

When a woman was brought before Jesus, having committed a crime for which the death penalty was commonly imposed, our Lord so persisted in questioning the moral authority of those who were ready to conduct the execution, that they finally dismissed the charges (John 8:11).

The Social Principles of The United Methodist Church condemns "... torture of persons by governments for any purpose," and asserts that it violates Christian teachings. The church also through its Social Principles further declares, "we oppose capital punishment and urge its elimination from all criminal codes."

After a moratorium of a full decade, the use of the death penalty in the United States has resumed. Other Western nations have largely abolished it during the 20th century. But a rapidly rising rate of crime and an even greater increase in the fear of crime has generated support within the American society for the institution of death as the punishment for certain forms of homicide. It is now being asserted, as it was often in the past, that capital punishment would deter criminals and would protect law-abiding citizens.

The United States Supreme Court, in *Gregg v. Georgia*, in permitting use of the death penalty, conceded the lack of evidence that it reduced violent crime, but then permitted its use for purposes of sheer retribution.

The United Methodist Church cannot accept retribution or social vengeance as a reason for taking human life. It violates our deepest belief in God as the creator and the redeemer of humankind. In this respect, there can be no assertion that human life can be taken humanely by the state. Indeed, in the long run, the use of the death penalty by the state will increase the acceptance of revenge in our society and will give official sanction to a climate of violence.

The United Methodist Church is deeply concerned about the present high rate of crime in the United States, and about the value of a life taken in murder or homicide. By taking another life through capital punishment, the life of the victim is further devalued. Moreover, the church is convinced that the use of the death penalty would result in neither a net reduction of crime in general nor in a lessening of the particular kinds of crime against which it was directed. Homicide — the crime for which the death penalty has been used almost exclusively in recent decades — increased far less than other major crimes during the period of the moratorium. Progressively rigorous scientific studies, conducted over more than forty years, overwhelmingly failed to support the thesis that capital punishment deters homicide more effectively than does imprisonment. The most careful comparisons of homicide rates in similar states with and without use of the death penalty and also of the same state in periods with and without it have found as many or slightly more criminal homicides with use of the death penalty.

The death penalty also falls unfairly and unequally upon an outcast minority. Recent methods for selecting the few persons sentenced to die from among the larger number who are convicted of comparable offenses have not cured the arbitrariness and discrimination that have historically marked the administration of capital punishment in this country.

The United Methodist Church is convinced that the nation's leaders should give attention to the improvement of the total criminal justice system and to the elimination of social conditions which breed crime and cause disorder, rather than fostering a false confidence in the effectiveness of the death penalty.

The United Methodist Church declares its opposition to the retention and use of capital punishment in any form or carried out by any means; the church urges the abolition of capital punishment.

The United Methodist Church
Board of Church and Society
100 Maryland Avenue, N.E.
Washington, DC 20002



U.S. Catholic Conference

Statement on Capital Punishment

November, 1980

(Excerpts)

"Allowing for the fact that Catholic teaching has accepted the principle that the state has the right to take the life of a person guilty of an extremely serious crime, and that the state may take appropriate measures to protect itself and its citizens from grave harm, nevertheless, the question for judgement and decision today is whether capital punishment is justifiable under present circumstances....We believe that in the conditions of contemporary American society, the legitimate purposes of punishment do not justify the imposition of the death penalty."

"...The infliction of the death penalty extinguishes possibilities for reform and rehabilitation for the person executed as well as the opportunity for the criminal to make some creative compensation for the evil he or she has done. It also cuts off the possibility for a new beginning and for moral growth in a human life which has been seriously deformed."

"Abolition sends a message that we can break the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime."

"Racist attitudes and the social consequences of racism have some influence in determining who is sentenced to die in our society. This we do not regard as acceptable."

"Our society should not flinch from contemplating the suffering that violent crime brings to so many when it destroys lives, shatters families, and crushes the hopes of the innocent. Recognition of this suffering should not lead to demands for vengeance, but to a firm resolution that help be given to the victims of crime and that justice be done fairly and swiftly."

"It is the special responsibility of the Church to provide a community of faith and trust in which God's grace can heal the personal and spiritual wounds caused by crime and in which we can all grow by sharing one another's burdens and sorrows."

We believe that abolition of the death penalty is most consonant with the example of Jesus, who both taught and practiced the forgiveness of injustice....There is and has been a certain sense that even in those cases where serious justifications can be offered for the necessity of taking life, those who are identified in a special way with Christ should refrain from taking life."

U.S. Catholic Conference
Committee on Social Development and World Peace
1312 Massachusetts Avenue, N.W.
Washington, DC 20005





A Report by the
Death Penalty Information Center

REVISED EDITION—FALL 1994

MILLIONS MISSPENT

What Politicians Don't Say
About the High Costs
of the Death Penalty

MILLIONS MISSPENT:

What Politicians Don't Say About the High Costs of the Death Penalty

*"Whether you're for it or against
it, I think the fact is that Oregon
simply can't afford it."*

*—James Ellis,
Chief Criminal Judge, Oregon*

A Report by
The Death Penalty Information Center
Written by Richard C. Dieter, Executive Director
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October 1992

Executive Summary

Across the country, police are being laid off, prisoners are being released early, the courts are clogged, and crime continues to rise. The economic recession has caused cutbacks in the backbone of the criminal justice system. In Florida, the budget crisis resulted in the early release of 3,000 prisoners. In Texas, prisoners are serving only 20% of their time and rearrests are common. Georgia is laying off 900 correctional personnel and New Jersey has had to dismiss 500 police officers. Yet these same states, and many others like them, are pouring millions of dollars into the death penalty with no resultant reduction in crime.

The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies. Before the Los Angeles riots, for example, California had little money for innovations like community policing, but was managing to spend an extra \$90 million per year on capital punishment. Texas, with over 300 people on death row, is spending an estimated \$2.3 million per case, but its murder rate remains one of the highest in the country.

The death penalty is escaping the decisive cost-benefit analysis to which every other program is being put in times of austerity. Rather than being posed as a single, but costly, alternative in a spectrum of approaches to crime, the death penalty operates at the extremes of political rhetoric. Candidates use the death penalty as a facile solution to crime which allows them to distinguish themselves by

the toughness of their position rather than its effectiveness.

The death penalty is much more expensive than its closest alternative—life imprisonment with no parole. Capital trials are longer and more expensive at every step than other murder trials. Pre-trial motions, expert witness investigations, jury selection, and the necessity for two trials—one on guilt and one on sentencing—make capital cases extremely costly, even before the appeals process begins. Guilty pleas are almost unheard of when the punishment is death. In addition, many of these trials result in a life sentence rather than the death penalty, so the state pays the cost of life imprisonment on top of the expensive trial.

The high price of the death penalty is often most keenly felt in those counties responsible for both the prosecution and defense of capital defendants. A single trial can mean near bankruptcy, tax increases, and the laying off of vital personnel. Trials costing a small county \$100,000 from unbudgeted funds are common and some officials have even gone to jail in resisting payment.

Nevertheless, politicians from prosecutors to presidents choose symbol over substance in their support of the death penalty. Campaign rhetoric becomes legislative policy with no analysis of whether the expense will produce any good for the people. The death penalty, in short, has been given a free ride. The expansion of the death penalty in America is on a collision course with a shrinking budget for crime prevention. It is time for politicians and the public to give this costly punishment a hard look.

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Introduction

Over two-thirds of the states and the federal government have installed an exorbitantly expensive system of capital punishment which has been a failure by any measure of effectiveness. Literally hundreds of millions of dollars have already been spent on a response to crime which is calculated to be carried out on a few people each year and which has done nothing to stem the rise in violent crime.

For years, candidates have been using the death penalty to portray themselves as tough on crime. But when politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime. The public is left with fewer resources and little discussion about proven crime prevention programs which could benefit their entire community. In today's depressed economy, the criminal justice system is breaking down for lack of funds while states pour more money into the black hole of capital punishment expense.

Local governments often bear the brunt of capital punishment costs and are particularly burdened. A single death penalty trial can exhaust a county's resources. Politicians singing the praises of the death penalty rarely address the question of whether a government's resources might be more effectively put to use in other methods of fighting crime. A million dollars spent pursuing the execution of one defendant

could provide far more effective long-term crime reduction: many additional police officers; speedier trials; or drug rehabilitation programs. Instead, in today's political atmosphere, politicians worry about appearing soft on crime, even if soft means espousing proven methods of crime reduction. Thus, there is little debate about whether the death penalty accomplishes any good at all.

Meanwhile, the death penalty is reaching a critical stage in America. No longer isolated in the South, the death penalty has become a national phenomenon. There are more people on death row than at any time in the nation's history. The list of states actually carrying out executions has grown to 20, with 4 new states added this year. The number of executions in 1992 is likely to be the largest in 30 years and the costs of pursuing the death penalty continue to mount. At the same time, the United States has parted company from the other democratic countries of the world which have largely abandoned capital punishment.

In the 1990 elections, politicians were particularly blatant in their promotion of the death penalty. It was advanced at all levels of the political process as an answer to crime and was used by liberals and conservatives alike. This year, the death

"When politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime."

penalty rhetoric, while not as blatant, continues the charade: vital crime fighting programs are being cut while the high-priced death penalty goes unchecked.

Like the emperor's cowering subjects who praised his invisible robes, many politicians extol the death penalty as if it were a solution to the problem of crime. It is a cynical manipulation of the public's legitimate fear of the growing tide of violence: a symbol without substance, a "solution" for politicians who know that no credible evidence exists linking the death penalty to a reduction of murder.

This report will focus first on the role the death penalty plays in the economic crisis facing states and local governments. As budgets everywhere are being tightened, the death penalty looms as an exorbitant and superfluous "luxury item." Some counties have been pushed to the brink of bankruptcy and have had to enact repeated tax increases to fund these extremely expensive cases. As money is spent on the death penalty, it is thereby less available for the very programs which are the backbone of the effort to reduce crime in this country.

Secondly, the report will illustrate how politicians have manipulated the death penalty issue and avoided debate on the real causes of crime. Their approach has been typically marked by a simplistic rhetoric of revenge which ignores the ineffectiveness and costs of capital punishment. This superficial treatment comes

precisely at a time when the economic crisis in criminal justice and crime prevention demands that the death penalty be given a harder look.

The Financial Costs of the Death Penalty

Death penalty cases are much more expensive than other criminal cases and cost more than imprisonment for life with no possibility of parole. In California, capital trials are six times more costly than other murder trials.¹ A study in Kansas indicated that a capital trial costs \$116,700 more than an ordinary murder trial.² Complex pre-trial motions, lengthy jury selections, and expenses for expert witnesses are all likely to add to the costs in death penalty cases. The irreversibility of the death sentence requires courts to follow heightened due process in the preparation and course of the trial. The separate sentencing phase of the trial can take even longer than the guilt or innocence phase of the trial. And defendants are much more likely to insist on a trial when they are facing a possible death sentence. After conviction, there are constitutionally mandated appeals which involve both prosecution and defense costs.

Most of these costs occur in every case for which capital punishment is sought, regardless of the outcome. Thus, the true cost of the death penalty includes all the added expenses of the "unsuccessful" trials in which the death penalty is sought but not achieved. Moreover, if a defendant is convicted but not given the death sentence, the

state will still incur the costs of life imprisonment, in addition to the increased trial expenses.

For the states which employ the death penalty, this luxury comes at a high price. In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.³ In Florida, each execution is costing the state \$3.2 million.⁴ In financially strapped California, one report estimated that the state could save \$90 million each year by abolishing capital punishment.⁵ The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million annually.⁶

The Recession and the Death Penalty

The effects of the present financial crisis on the criminal justice system vary widely, but the common thread has been cutbacks in critical areas. In a report released in August of this year, the American Bar Association found that "the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding." The report went on to state that "the very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."⁷

"The very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."

-American Bar Association

"Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone.... In this context, the proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility"

—Scott Harshbarger,
Attorney General of
Massachusetts

New Jersey, for example, laid off more than 500 police officers in 1991.⁸ At the same time, it was implementing a death penalty which would cost an estimated \$16 million per year,⁹ more than enough to hire the same number of officers at a salary of \$30,000 per year.

In Florida, a mid-year budget cut of \$45 million for the Department of Corrections forced the early release of 3,000 inmates.¹⁰ Yet, by 1988 Florida had spent \$57.2 million to accomplish the execution of 18 people.¹¹ It costs six times more to execute a person in Florida than to incarcerate a prisoner for life with no parole.¹² In contrast, Professors Richard Moran and Joseph Ellis estimated that the money it would take to implement the death penalty in New York for just five years would be enough to fund 250 additional police officers and build prisons for 6,000 inmates.¹³

Ten other states also reported early release of prisoners because of overcrowding and underfunding.¹⁴ In Texas, the early release of prisoners has meant that inmates are serving only 20 percent of their sentences and re-arrests are common.¹⁵ On the other hand, Texas spent an estimated \$183.2 million in just six years on the death penalty.¹⁶

Illinois built new prisons but does not have the funds to open them.¹⁷ It does, however, have the fourth largest death row in the country. Georgia's Department of Corrections lost over 900 positions¹⁸ in the past year while

local counties have had to raise taxes to pay for death penalty trials.

Police officers on the beat, imprisonment of offenders, and a functioning criminal justice and correctional system form the heart of the nation's response to crime. Yet, in state after state, these programs are suffering drastic cuts while the death penalty absorbs time, money and political attention.

The Cost to Local Governments

An increasingly significant consequence of the death penalty in the United States is the crushing financial burden it places on local governments. The current economic recession has made it clear that there is no unlimited source of government largesse. Counties, which bear the brunt of the costs of death penalty trials, are also the primary deliverers of local health and human services in the public sector.¹⁹ Hard choices have to be made among the demands of providing essential services, creative crime reduction programs such as community policing, and the vigorous pursuit of a few death penalty cases.

As Scott Harshbarger, Attorney General of Massachusetts, put it: "Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone. . . . In this context, the

proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is, as a sheer matter of equity, morally irresponsible. If this is really the best we can do, then our public value system is bankrupt and we have truly lost our way."²⁰

While state and national politicians promote the death penalty, the county government is typically responsible for the costs of prosecution and the costs of the criminal trial. In some cases, the county is also responsible for the costs of defending the indigent. Georgia, Alabama and Arkansas, for example, provide little or no funding for indigent defense from the state treasury.²¹ In Lincoln County, Georgia, citizens have had to face repeated tax increases just to fund one capital case.

Even where the state provides some of the money for the counties to pursue the death penalty, the burden on the county can be crushing. California, for example, was spending \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of murder trials in smaller counties. (Now, even that reimbursement is being cut.) But many financially strapped smaller counties still could not afford to prosecute the complicated death-penalty cases. Some small counties have only one prosecutor with little or no

experience in death-penalty cases, no investigators, and only a single Superior Court judge.²²

In Sierra County, California authorities had to cut police services in 1988 to pick up the tab of pursuing death penalty prosecutions. The County's District Attorney, James Reichle, complained, "If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement. The sewage system at the courthouse is failing, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue." The county's auditor, Don Hemphill, said that if death penalty expenses kept piling up, the county would soon be broke.²³ Just recently, Mr. Hemphill indicated that another death penalty case would likely require the county to lay off 10 percent of its police and sheriff force.²⁴

In Imperial County, California, the county supervisors refused to pay the bill for the defense of a man facing the death penalty because the case would bankrupt the county. The county budget officer spent three days in jail for refusing to pay the bill. A judge reviewing the case took away the county's right to seek the death penalty, thus costing the county the partial reimbursement which the state provided for capital cases. The County took the challenge all the way to the California Supreme Court and

"Even though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed."

—Norman Kinne,
Dallas County
District Attorney

ended up costing the County half a million dollars.²⁵ In the criminal trial, the defendant was acquitted.

A similar incident occurred recently in Lincoln County, Georgia. The county commissioners also refused to pay the defense costs when the attorney won a new trial for a death row inmate Johnny Lee Jones. As in California, the commissioners were sent to jail. Walker Norman, chair of the County Commission explained: "We're a rural county of 7,500 people with a small tax base. We had to raise taxes once already for this case when it was originally tried, and now we are going to have to raise taxes again. It's not fair."²⁶ The first trial alone cost the county \$125,000.²⁷ The second trial was completed in September and the defendant received a life sentence.

In Meriwether County, Georgia, a county of 21,000 residents and a \$4 million annual budget, the prosecutor sought the death penalty three times for Eddie Lee Spraggins, a mentally retarded man. The case cost the county \$84,000, not including the defense attorney's bill for appealing, and the third conviction was again overturned by the Georgia Supreme Court.²⁸ Spraggins was finally granted a plea and received a life sentence.

In Mississippi, Kemper and Lauderdale Counties recently conducted a border survey battle to avoid responsibility for a capital murder trial. Faced with a case that could cost the county

\$100,000, Kemper County wanted to show that the scene of the murder was outside their border and conducted two surveys of the site. County Supervisor Mike Luke explained, "As much as we were talking about the taxpayers of Kemper County having to pay out, we believed we needed to be sure." Luke said that the decision to seek the death penalty was not his—he only had to come up with the money. Lauderdale County, where the trial was originally scheduled, has now sent a bill to Kemper County for expenses incurred while holding the defendant in jail for 19 months. Kemper County is considering how much it will have to raise taxes just to pay the initial costs of the prosecution.²⁹

In Yazoo City, Mississippi, the town is worried that it, too, might get stuck with an expensive death penalty case. "A capital murder trial is the worst financial nightmare any government body could envision," said the editor of the local paper.³⁰

With more death row inmates and more executions than any other state, Texas is also experiencing the high costs of executions. Norman Kinne, Dallas County District Attorney, expressed his frustration at the expense:

"[E]ven though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his

life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed. . . . I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles."³¹

Vincent Perini of the Texas Bar Association, calls the death penalty a "luxury": "There's some things that a modern American city and state have got to have. You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty. The death penalty in criminal justice is kind of a luxury item. It's an add-on; it's an optional item when you buy your criminal justice vehicle."³²

Chief Criminal Judge, James Ellis, came to a similar conclusion in Oregon: "Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."³³ James Exum, Chief Justice of the North Carolina Supreme Court, agrees: "I think those of us involved in prosecuting these (death penalty) cases have this uneasy notion that . . . these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes. . . ."

Efforts are under way in both Congress and the Supreme Court to reduce the avenues of appeal available to death row inmates. But most of the costs

associated with the death penalty occur at the trial level.³⁴

Whatever effect cutting back on the writ of habeas corpus may have on the time from trial to execution, it is not clear that the changes will make the death penalty any less expensive, and they may result in the execution of innocent people. With the number of people on death row growing each year, the overall costs of the death penalty are likely to increase.

Some state appeals courts are overwhelmed with death penalty cases. The California Supreme Court, for example, spends more than half its time reviewing death cases.³⁵ The Florida Supreme Court also spends about half its time on death penalty cases.³⁶ Many governors spend a significant percentage of their time reviewing clemency petitions and more will face this task as executions spread. As John Dixon, Chief Justice (Retired) of the Louisiana Supreme Court, said: "The people have a constitutional right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system."³⁷

Alternatives for Reducing Crime

New York does not have the death penalty. In the early 1980s, the N.Y. State Defenders Association conducted a study to estimate how much the death penalty would cost if it were to be implemented in New York. The estimates were that each case

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Attorney General of
Massachusetts

would cost the state \$1.8 million, just for the trial and the first stages of appeal.³⁸ The majority of those costs would be borne by the local governments. New Yorkers have consistently re-elected a governor whom they know will veto any death penalty legislation which comes across his desk. Now it appears that New York may be reaping the benefit of that choice.

Significantly, no city in New York State, without the death penalty, is among the nation's top twenty-five cities in homicide rates according to statistics recently released by the FBI.³⁹ In particular, New York City bucked the national trend and experienced a decline in every major category of crime last year.⁴⁰ In the first four months of 1992, crime is again down across the board in New York, compared to the same period two years ago, with murders decreasing by over 11 percent.⁴¹

While direct causes for a decrease in crime are difficult to pinpoint, many experts have attributed New York's success to an increasingly popular concept known as community policing. Two years ago, New York had 750 foot officers on the street. Today that number is 3,000.⁴² Community policing is a strategy for utilizing police officers not just as people who react to crime, but also as people who solve problems by becoming an integral part of the neighborhoods they serve.

Such programs do not come cheaply, but they do seem to be effective. In Prince George's County, Maryland, police Capt. Terry Evans said their community policing program is "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around."⁴³ Fully implemented, Prince George's community policing program will cost the county \$10 million per year.

The programs apparently work best where governments can afford to add officers, rather than taking from existing numbers, leaving other work unattended. This is borne out in cities like Boston where murders dropped 23 percent in 1991, partly because of a program that put more police officers on the beat.⁴⁴ The need for more police officers is supported by a survey of Chiefs of Police from around the country, 70 percent of whom said they could no longer provide the type of crime prevention activities they did ten years ago because of too few police officers.⁴⁵

Boston, like New York, is in a state without the death penalty, though Governor William Weld (R-Mass.) has been attempting to re-instate it. That proposal has met with opposition from the state's district attorneys. Judd Carhart, past president of the district attorneys' association said a majority of the state's district attorneys oppose capital

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punishment partially on the grounds that it is a waste of money better spent on other areas of law enforcement and incarceration.⁴⁶ Attorney General Scott Harshbarger agreed: "We need major criminal justice and court reform now to address the crisis in our criminal justice system. The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."⁴⁷

Compared to community policing and other successful programs, the death penalty, for all its cost, appears to have no effect on crime. A New York Times editorial noted recently that the number of executions in this country "constituted less than .001 percent of all murderers . . . and were only .000004 percent of all violent criminals. Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice." The public seems to agree: only 13 percent of those who support capital punishment believe it deters crime.⁴⁸

New York and Massachusetts can be contrasted with Texas which is the nation's leader in the use of the death penalty. Texas has the largest

death row and has executed almost twice as many people as the next leading state. Houston alone accounts for 10% of all people executed in the United States since 1976.⁴⁹ Yet, the murder rates in three of Texas' major cities rank among the nation's top 25 cities. In all three, Houston, Dallas and Fort Worth, the number of murders increased significantly last year.⁵⁰

Wherever the death penalty is in place, it siphons off resources which could be going to the front line in the war against crime: to police, to correctional systems, and to neighborhood programs which have proven effective. Instead, these essential services are repeatedly cut while the death penalty continues to expand. Politicians could address this crisis, but, for the most part, they either endorse executions or remain silent.

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—New York Times
editorial, 1992

Political Manipulation of the Death Penalty

What drives this high spending on such an ineffective program? The answer lies partly in the promotion by politicians who hope to benefit by advocating the death penalty. Even though it fails to meet the cost-benefit test applied to other government programs, many politicians use capital punishment to distinguish themselves from their opponents. Politicians have generally not posed the death penalty as one alternative among a limited number of crime fighting initiatives which the people must ultimately pay for. Rather, the death penalty is used to play on the public's fear of crime and to create an atmosphere in which the extreme view wins. The rhetoric then becomes policy and the people pay.

The Death Penalty In National Politics

Flush with his party's convincing victory in the 1988 Presidential elections, Republican National Chairman Lee Atwater urged his fellow Republicans to capitalize on the issue of crime because "almost every Democrat out there running is opposed to the death penalty."⁸¹ Apparently, the Democrats were listening as well since politicians of all stripes rushed to proclaim their support of capital punishment.

From Florida to California, the political races in 1990 were marked by excessive attempts by

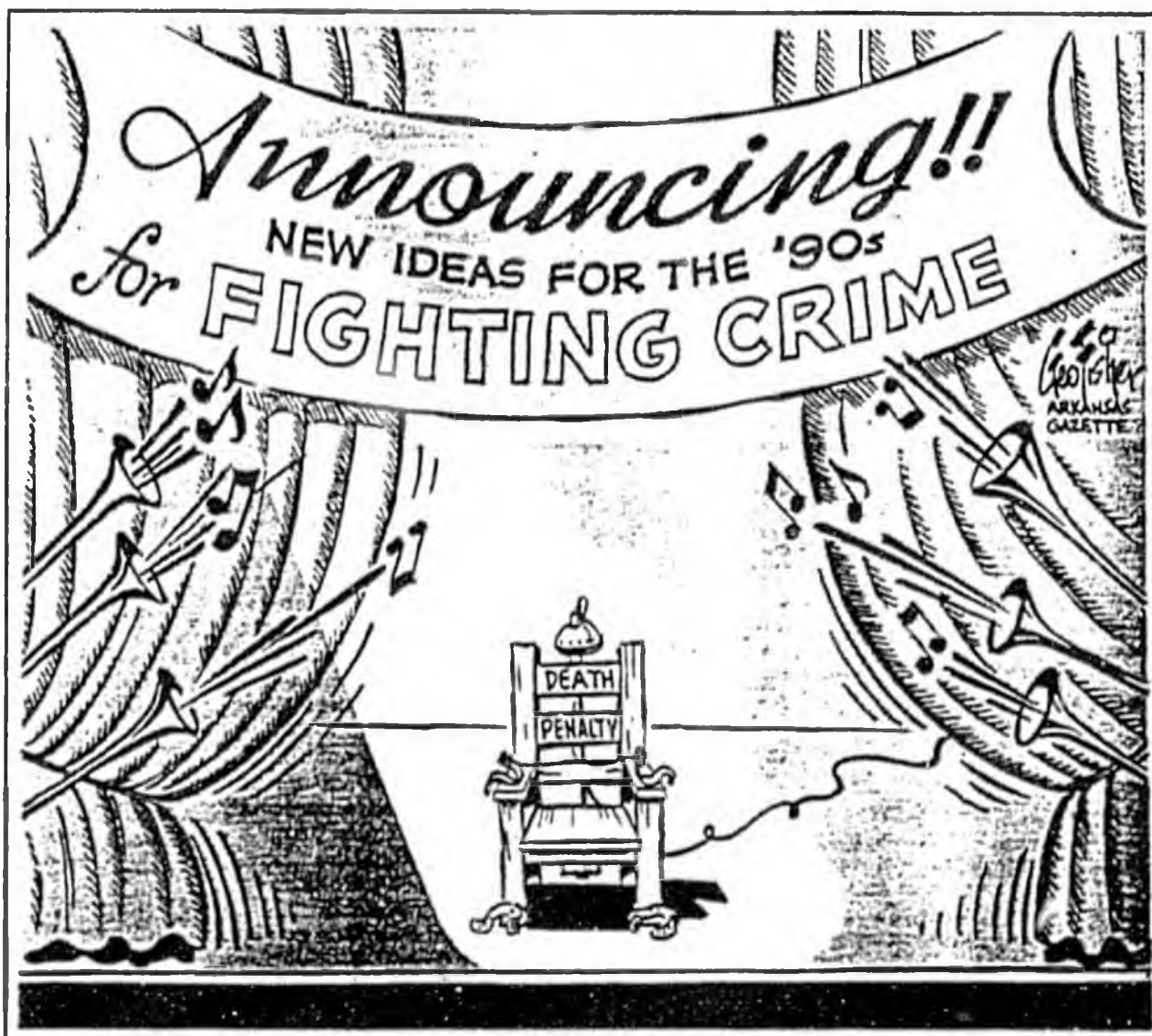
politicians to appear tougher on crime by their willingness to execute people. Ironically, those who were most demonstrative about the death penalty were defeated, though seldom by opponents of capital punishment.

In this election year, the national political debate on the death penalty is more conspicuous for its silence. The utility of the death penalty as a defining issue was lost when most of the Democratic Presidential candidates supported the death penalty. George Bush, Bill Clinton and Ross Perot are all in favor of the death penalty, though none has made it a major campaign issue.

George Bush: From Willie Horton to the Crime Bill

In the previous campaign, George Bush was able to link a furlough for convicted murderer Willie Horton with Michael Dukakis' position against the death penalty, thus portraying Dukakis as soft on crime. This time, President Bush has sought to convey a tough image by his support for a greatly expanded federal death penalty. When recent unemployment figures indicated that the economy was going to be a negative for the Bush campaign, his advisers called for a greater emphasis on crime to bolster the President's popularity.⁸²

In 1990, President Bush sought to identify the Republican Party as tough on crime. He introduced a crime bill whose



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centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

"What they mean when they say they're 'getting tough' is simply that they are talking tough."

—Franklin Zimring,
Earl Warren Legal
Institute

current bill are also window dressing, having little to do with the public's concern about crime.

The crime bill would impose death sentences for such offenses as treason, espionage, murder in the act of destroying a maritime platform, murder of federal egg product inspectors, horse inspectors and poultry inspectors. These proposals will have no real impact on crime in the streets, which is the rationale for proposing such legislation. As one legal commentator put it: "What they mean when they say they're 'getting tough' is simply that they are talking tough."⁵³

An expanded federal death penalty could also prove to be enormously expensive. One amendment approved by the Senate would impose the death penalty for murders involving weapons used in interstate commerce. The Congressional Budget Office estimated that this proposal would cost as much as \$600 million over four years.⁵⁴

Senator Thomas Daschle (D.-SD) described much of the talk about the death penalty on Capitol Hill as political posturing: "We debate in codes, like the death penalty as a code for toughness on crime. The whole game is a rush to acquire the code: he who gets the code first wins. . . . It denigrates the national debate."⁵⁵

Bill Clinton: Insulating Himself from Attack

Although Clinton's pro-death penalty stance has partially neutralized Bush's use of this

tactic in the current campaign, on the death penalty one can never be tough enough. For example, Vice President Dan Quayle recently attacked Clinton for being soft on capital punishment (despite having presided over four executions as Arkansas Governor) because Clinton had suggested that Gov. Mario Cuomo (D-NY) might make a good Supreme Court Justice.⁵⁶

Bill Clinton has criticized Bush's manipulation of the death penalty issue: "President Bush has used an expansion of the death penalty as a cover for actually weakening the partnership of the federal government in the fight against crime."⁵⁷ However, Clinton bowed to the popular wisdom when he made a prominent demonstration of his support for the death penalty by leaving the primary campaign in January to preside over the execution of a brain damaged defendant in Arkansas.

Ever since he lost the Governor's race in Arkansas after serving only one term, Clinton has made clear his support for the death penalty. Clinton returned to office as Governor in 1983 and has granted no commutations to anyone on death row and has presided over all four of the state's executions in the modern era. However, as Arkansas was returning to executions, its murder rate was increasing: murders in Little Rock, alone, jumped 40 percent in the past year.⁵⁸

The Death Penalty In State Politics

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

The Texas Campaign: "Who Can Kill the Most Texans?"

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"⁵⁰

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."⁵¹

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.⁵²

California Politics: A Case of Neglect

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

penalty."⁶² This ploy caused her Democratic rival, John Van de Kamp, to respond with ads assuring the voters that he wouldn't let his conscience get in the way of carrying out executions. Although personally opposed to the death penalty, his ads proclaimed his record as attorney general of putting or keeping almost 300 people on California's death row and featured pictures of the condemned inmates in the background.

Van de Kamp lost to Feinstein and Feinstein then lost to Republican Pete Wilson, another strident pro-death penalty candidate. This year Feinstein is running for the Senate and all 11 of the major candidates for California's two Senate seats support the death penalty.⁶³

California is in the throes of an extreme financial crisis. The state paid its workers with IOUs for two months and most social services are facing major cuts. Los Angeles County alone is considering laying off 500 sheriff's deputies to cope with the loss of state funds. Such cuts are likely to have a direct effect on public safety. As one official remarked, "The public doesn't seem to have a heightened sense of urgency about this yet, and I don't think they ever will—until they become victims themselves."⁶⁴ Nevertheless, the state has been paying an estimated \$90 million per year over normal costs to carry out the death penalty.⁶⁵ With over 300

people condemned to death, California has the second largest death row in the country.

The Los Angeles riots were a stark reminder of the anger which simmers as a result of social neglect. Reforms like community policing were contemplated in L.A. but were viewed skeptically by former Police Chief Daryl Gates because no funds were available: "The first problem," Gates said in his new book, "is the need for more officers. But again, how much more can taxpayers be asked to pay?"⁶⁶ As a result, L.A.'s police force was described by one expert as "the antithesis of community policing. The department was cool, aloof, disconnected from the community."⁶⁷ The city burned.

New York Politics: Grandstanding on the Death Penalty

New York illustrates that voters are not monolithic when it comes to the death penalty. Although more executions have been carried out in New York since 1900 than in any other state, it does not have the death penalty now and has not executed anyone since 1963. For ten straight years, the state legislature has passed death penalty legislation and for ten years Governor Cuomo has vetoed the bills, continuing the tradition of Governor Hugh Carey before him. Although the majority of New Yorkers appears to support capital punishment, Cuomo has been re-elected

repeatedly. Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."⁶⁸

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.⁶⁹ As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."⁷⁰

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."⁷¹

Politics In Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."

—Jack Kemp,
Secretary of HUD

the public were misled to believe that a young black man was the attacker and the Republican Party called a press conference within hours of Stuart's death demanding a return to capital punishment.⁷² After the embarrassing truth came out that Stuart was probably murdered by her own husband, the campaign fizzled.

In Arizona, state Representative Leslie Johnson (R-Mesa) called for the death penalty for child molesters after a particularly horrendous crime in Yuma. On the floor of the House, Johnson proposed the quick fix: "If we do away with these people, if we do have the death penalty and if you are a sex offender, you're just out of here — dead, gone. And if we get a few innocent people, fine and dandy with me. I'll take the percentage, folks, because I don't want to put my children at risk anymore."⁷³

And in the District of Columbia, Senator Richard Shelby (D-Ala.) proposed that the death penalty be enacted for the city by Congress after one of his aides was killed on Capitol Hill. Congress responded by cutting out the Mayor's \$25 million youth and anti-crime initiative while imposing a referendum on the death penalty. The hidden but inevitable costs resulting from having capital punishment were not addressed in the appropriations bill. But if the experience of other states is any indication, it will be years before any execution is carried out, after

an expenditure of as much as \$100 million, either from federal or DC funds.

Finally, the death penalty is manipulated by those politicians who are closest to it: the elected state attorneys and prosecutors who make the decisions on which cases to pursue the ultimate punishment. A campaign advertisement for district attorney Bob Roberts of North Carolina, for example, lists all the defendants for whom he won a death sentence. His slogan: "If one of your loved ones is murdered, who do you want to try the accused? Bob Roberts with his splendid record and experience or his inexperienced opponent."⁷⁴

As a public defender, attorney general Grant Woods of Arizona had argued before a judge that it would be murder if the judge sentenced his innocent client to death. Now, as chief prosecutor and staunch defender of the death penalty, Woods turned on his client, Murray Hooper, saying he is guilty and deserves the death penalty. Since Hooper is still on death row, such a representation has raised questions of legal ethics and client loyalty. Woods claims he is just doing his job.⁷⁵

A district attorney in Georgia, Joseph Briley, was also charged with numerous breaches of legal ethics in a Supreme Court amicus brief signed by 12 legal ethics professors from around the country. When the conviction of Tony Amadeo was overturned, Briley first announced that he would again

seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."⁷⁶

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.⁷⁷

In Nebraska, attorney general Dean Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."⁷⁸ While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.

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"Every dollar we spend on a capital case is a dollar we can't spend anywhere else. . . . We have to let the public know what it costs" to pursue a capital case.

—John M. Bailey, Chief State's Attorney, Connecticut

Since the publication of *Millions Misspent* in the fall of 1992, more judges, prosecutors and other state officials have joined those questioning the death penalty in light of its exorbitant costs. At a time when crime is the nation's primary concern, new data confirms the Report's earlier conclusion that the death penalty is draining state treasuries of funds which could be spent on effective crime prevention measures.

The financial burden is particularly acute in counties where administrators are being forced to choose between raising taxes and bankruptcy in order to prosecute death penalty cases. While many politicians continue to ignore these costs in using the death penalty to sound tough, some prosecutors are now deciding not to seek executions because the cases are simply too expensive.

The Duke University Study

In May, 1993, a federally funded study brought a new perspective to the cost debate.⁷⁹ This model study was prompted by an American Bar Association proposal and was conducted at Duke University's Terry Sanford Institute of Public Policy. It is one of the most comprehensive and thorough analyses on this topic.

Authors Philip Cook and Donna Slawson spent two years comparing the costs of adjudicating capital and noncapital cases in North Carolina and concluded that capital cases *cost at least an extra \$2.16 million per execution*, compared to what taxpayers would have spent if defendants were tried without the death penalty and sentenced to life in prison.⁸⁰ Moreover, the bulk of those costs occur at the trial level.

Applying their figures on a national level implies that \$82 million was spent just for U.S. executions in 1993, and that the national bill for the death penalty has been over \$500 million since the death penalty was reinstated.⁸¹ Yet, the national concern about crime indicates that few feel safer for all this expense.

Time Is Money

Death penalty cases are so expensive because they take longer at every stage and require vast resources for both the prosecution and the defense. The authors of the North Carolina study identified 24 principal areas in which a death penalty case would likely be more expensive than if the case were tried non-capitally.⁸² These areas included:

- More investigative work by both law enforcement officials and the defense team
- More pre-trial motions

"A little rural county in Kentucky just can't deal with (death penalty) bills like that."

—Michael Mager, Executive Director of the Kentucky County Judge-Executives Association

- More questioning concerning individual jurors' views on capital punishment and more peremptory challenges to jurors at jury selection
- The appointment of two defense attorneys
- A longer and more complex trial
- A separate penalty phase conducted in front of a jury
- A more thorough review of the case on direct appeal
- More post-trial motions
- Greater likelihood that counsel will be appointed for a federal habeas corpus petition
- Greater likelihood that there will be full briefing and argument on federal review
- More preparation for, and a longer clemency proceeding.

The North Carolina study estimated that a death penalty trial takes about four times longer than a non-capital murder trial. And, of course, not every death penalty trial results in a death sentence. Based on the experience in North Carolina, the authors found that less than a third of capital trials resulted in a death sentence.⁶¹ Nevertheless, each of these trials had the extra expense associated with death penalty proceedings. The trial costs alone were about \$200,000 more for each death penalty imposed than if no death penalty was involved.⁶²

The authors computed the costs of appealing a death penalty case and subtracted the savings which accrue to the state when an execution finally occurs. The

"savings," which are due to the inmate no longer being kept at the expense, only occur when an execution is actually carried out. As with the trial level, there is a "failure" rate resulting from the fact that many inmates who are sentenced to death will never be executed. Many cases will be overturned on appeal, some inmates will commit suicide, others will die of natural causes. Again, based on the experience in North Carolina, the authors estimated that only one inmate would likely be executed for every ten who are sentenced to death.⁶³ This is actually higher than the national rate where only about one in every eleven cases which have been resolved has resulted in an execution.⁶⁴

Bulk Of Costs at Trial Level

The importance of accounting for this failure rate is critical for two reasons. First, it represents a truer picture of what it is actually costing the state to achieve an execution. It is not just the cost of a single person's trial and appeals. That would be comparable to saying that the cost of landing a man on the moon was the cost of fuel for the one rocket which brought him there. The state has to pay more for all the trials and appeals which start out as death penalty cases but for which there will never be the "saving" associated with an execution.

Second, the per execution costs reveal that the bulk of death penalty costs occur at the trial level. Often those who acknowledge the high costs of the death

penalty believe that the expense is due to "endless appeals." By taking into account the capital cases which will never result in an execution, the North Carolina study makes clear that the *trials* produce the largest share of death penalty costs⁸⁷ and these costs will not be substantially lessened by tinkering with the opportunities that death row inmates have to appeal. A significant financial corollary of this finding is that taxpayers must pay death penalty expenses up front, whereas the costs of a life sentence are meted out gradually over many years, making that alternative even less expensive.

Evidence from Other States

There have been numerous indications from other areas of the country that the death penalty is straining the budgets of state and local governments and that the financial drain is getting worse. Some counties have been brought to the brink of bankruptcy because of death penalty cases. More county commissioners have risked going to jail for balking at paying for capital prosecutions,⁸⁸ while others reluctantly raise taxes to pay the costs of even one capital case.

- In San Diego, California, the prosecution costs alone (not counting defense costs or appeals) for three capital cases averaged over half a million dollars each.⁸⁹ One estimate puts the total California death penalty expense bill at \$1 billion since 1977.⁹⁰ California has executed two people during that time, one

of whom refused to appeal his case.

- In Jasper County, Mississippi, the Circuit Judge and the District Attorney had to address the county supervisors to get more money for death penalty prosecutions. The only solution was to raise county taxes. "It's going to be a fairly substantial increase," said the board president, John Sims. "I hope the taxpayers understand...."⁹¹

- In Connecticut, a state with only a handful of death row inmates, *The Connecticut Law Tribune* was unable to calculate the total costs of capital punishment but concluded that the "costs are staggering."⁹² State's attorney Mark Solak said he spent between 1,000 and 1,500 hours preparing one capital prosecution.⁹³ The defense attorney in the case noted that if his client had been given an offer of life in prison without parole he would have accepted it "in a heartbeat." "The case," he said, "would have been over in 15 minutes. . . . No one would have spent a penny."⁹⁴

- Other items from *The Connecticut Law Tribune's* report:

- ✓ Jury selection in death cases can take eight weeks.⁹⁵
- ✓ One state's attorney in one case spent about 7 months distilling a 10,000 page trial transcript, and three other attorneys assisted him, putting in a total of 15

"It's going to be a fairly substantial (tax) increase. I hope the taxpayers understand."

—John Sims, Jasper County (Miss.) Board President, on death penalty prosecution costs

"Life without parole could save millions of dollars. In other words, it's cheaper to lock 'em up and throw away the key. . . . As violent crime continues to escalate, it's something to consider."

—Jim Mattox, former Texas Attorney General

"We're running the county out of money."

—Judge Miron Love, Harris County (TX), reflecting on a projected \$60 million expense for pending death penalty cases in that county alone.

"When the law changed so defendants can be sentenced to 40 years flat time, and when you start taking into account what the taxpayers are getting for their money, it seems like some defendants should be tried... without the death penalty."

—Judge Doug Shaver, Harris County (TX)

months' work.⁹⁸

- ✓ The state's public defender office spends about \$138 defending an average criminal case. Death penalty cases, however, have cost over \$200,000 each to defend.⁹⁷

- In South Carolina, *The Sun News* reported that the bills for death penalty cases are "skyrocketing" because of a state supreme court ruling that attorneys in death penalty cases deserve reasonable fees. Before the decision, attorneys received no more than \$2,500 for each death penalty case.⁹⁸

- It took six years to extradite Charles Ng from Canada to California mainly because Canada resisted the prospect of sending someone to a possible death sentence. Since coming to California, the case has cost Calaveras County \$3.2 million, an amount which would have bankrupt the county except for the fact that the state agreed to reimburse the county until 1995. Now it looks as though the bailout will have to last until the year 2000, with millions more in expenses yet to come.⁹⁹

- In Harris County, Texas, there are 135 pending death penalty cases. State Judge Miron Love estimated that if the death penalty is assessed in just 20 percent of these cases, it will cost the taxpayers a minimum of \$60 million. Judge Love, who oversees the county's courts, remarked:

"We're running the county out of money."¹⁰⁰

Reactions to the High Costs

There have been many similar reactions from state and local officials who wonder about the wisdom of spending such exorbitant sums on such unpredictable and isolated cases. In Tennessee, the number of people sentenced to death has dropped because prosecutors say death penalty cases cost too much.¹⁰¹

In Texas, Judge Doug Shaver from Houston was also concerned about the high costs of so many capital cases: "I can't figure out why our county is prosecuting so many more (death) cases than comparably large counties around Texas. When the law changed so defendants can be sentenced to 40 years flat time (as an alternative to death), and when you start taking into account what the taxpayers are getting for their money, it seems like some defendants should be tried . . . without the death penalty."¹⁰²

Former Texas Attorney General Jim Mattox agrees: "Life without parole could save millions of dollars." "In other words," he wrote, "it's cheaper to lock 'em up and throw away the key As violent crime continues to escalate, it's something to consider."¹⁰³

California has been hit particularly hard by natural disasters and the economic recession. Many social programs have had to be cut. Yet the state continues to spend hundreds of millions of dollars on the death

penalty which has resulted in two executions in seventeen years. Even supporters of the death penalty recognize that it is a financial loser. In financially strapped Orange County, Vanda Bresnan, who manages the criminal courts, remarked: "Even though I do believe in the death penalty, I wonder how long the state or county can afford it,"¹⁰⁴ she said. Defense attorney, Gary Proctor, who practices in the same county, believes that the solution will be found by cutting other services: "What I see happening is that other services provided to the taxpayer — such as libraries and parks — will be cut back. Certain people are not aware of the tradeoffs." He added: "Strong beliefs are easy enough to hold if you don't think they're coming out of your pocket."¹⁰⁵

In rural Kentucky, tax bases are small and budgets are already stretched. When an expensive capital case is about to be heard in court, the state and county often argue for weeks about who will pay. As Michael Mager, executive director of the Kentucky County Judge-Executives Association, points out, "A little rural county in Kentucky just can't deal with bills like that."¹⁰⁶

And in Connecticut, the Chief State's Attorney, John M. Bailey, echoed similar concerns: "Every dollar we spend on a capital case is a dollar we can't spend anywhere else. . . . We have to let the public know what it costs" to pursue a capital case.¹⁰⁷

Political Manipulation of the Death Penalty

Despite the overwhelming weight of evidence pointing to the unmanageable and growing costs of imposing capital punishment, politicians continue to ignore these costs in using the death penalty to appear tough on crime. This hypocrisy reached new heights with the passage of the federal crime bill. Every time this legislation was considered, the number of new death penalty crimes grew. While debate immediately before the bill's passage centered on whether the proposed crime prevention measures were too expensive, little was said about the costs that these new death penalties would bring or whether they were likely to do any good.

Ultimately, funding for crime prevention programs was cut back but the 60 new federal death penalty crimes were left intact. Unfortunately, the legacy of the death penalty will probably outlast all the other provisions of the legislation. Federal funding for new police, prisons and programs like midnight basketball will be phased out in a few years but the costs of expanding the death penalty will last for decades. Federal prosecutions in death penalty cases are likely to be even more expensive than in the states. Thousands of offenses will now be eligible for the federal death penalty. Even if only a small fraction of these cases are pursued, the costs of additional federal prosecutors, additional federal public defenders and judges will be draining.

"Even though I do believe in the death penalty, I wonder how long the state or county can afford it."

—Vanda Bresnan,
Manager of the
Criminal Courts,
Orange County (CA)

"I know of no law-enforcement professional who believes that all the death penalty provisions and new Federal crimes would affect public safety in the slightest."

—Robert
Morgenthau,
Manhattan (NY)
District Attorney

"Like a black hole, the death penalty absorbs vast quantities of resources but emanates no light."

The federal government will be joining the states in spending millions of dollars for an occasional execution, with no effect on the real problem of crime.

Some Representatives and Senators voted in conscience against the crime bill because of its death penalty provisions. But, for the most part, politics prevailed. Philip Heymann, the former U.S. Deputy Attorney General who recently resigned from the Justice Department, commented that the entire crime debate was "so mired in politics and ideology that no one in the Government dared speak the truth about the subject." The truth, as he saw it, was that the crime bill was a deeply flawed quick fix that sounded great "for the first 15 seconds," the perfect length for a campaign ad sound bite.¹⁰⁸

Robert Morgenthau, the District Attorney for Manhattan, similarly castigated the politics behind expansion of the federal death penalty: "I know of no law-enforcement professional who believes that all the death penalty provisions and new Federal crimes would affect public safety in the slightest." The bill, he noted, "would provide no new Federal judges, prosecutors or courtrooms. That isn't surprising: the new crimes and death sentences are window dressing."¹⁰⁹

Conclusion

Recent studies of death penalty costs reinforce the existing evidence that the death penalty is becoming unmanageably expensive. Like a black hole, it absorbs vast quanti-

ties of resources but emanates no light. Nevertheless, politicians and much of the public are drawn to it in the hope of finding a quick fix to the crime problem. But as the actual costs of capital punishment become clearer, the public should be in a better position to judge the death penalty as they would other programs. If a program is highly cost intensive, given to years of litigious expense, focused on only a few individuals, and produces no measurable results, then it should be replaced by better alternatives.

Amanda Smith assisted in the preparation of this Epilogue.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center prepares in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is a project of the J. Roderick MacArthur Foundation.

Innocence and the Death Penalty

*Assessing The Danger
of Mistaken Executions*

*Staff Report by the Subcommittee on
Civil and Constitutional Rights
Committee on the Judiciary
One Hundred Third Congress, First Session*

INNOCENCE AND THE DEATH PENALTY:

Assessing The Danger of Mistaken Executions

Staff Report issued on October 21, 1993 by the
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

One Hundred Third Congress, First Session

Chairman Don Edwards of the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights directed the subcommittee majority staff to prepare this report. This report has not been reviewed or approved by other members of the subcommittee.

INNOCENCE AND THE DEATH PENALTY:

ASSESSING THE DANGER OF MISTAKEN EXECUTIONS

"No matter how careful courts are, the possibility of perjured testimony, mistaken honest testimony, and human error remain all too real. We have no way of judging how many innocent persons have been executed, but we can be certain that there were some." Furman v. Georgia, 408 U.S. 238, 367-68 (1972) (Marshall, J., concurring).

I. INTRODUCTION

In 1972, when the Supreme Court ruled in Furman v. Georgia that the death penalty as then applied was arbitrary and capricious and therefore unconstitutional, a majority of the Justices expected that the adoption of narrowly crafted sentencing procedures would protect against innocent persons being sentenced to death. Yet the promise of Furman has not been fulfilled: innocent persons are still being sentenced to death, and the chances are high that innocent persons have been or will be executed.

No issue posed by capital punishment is more disturbing to the public than the prospect that the government might execute an innocent person. A recent national poll found that the number one concern raising doubts among voters regarding the death penalty is the danger of a mistaken execution.¹ Fifty-eight percent of voters are disturbed that the death penalty might allow an innocent person to be executed.

Earlier this year, the Subcommittee on Civil and Constitutional Rights heard testimony from four men who were released from prison after serving years on death row -- living proof that innocent people are sentenced to death.² The hearing raised two questions: (1) just how frequently are innocent persons convicted and sentenced to death; and (2) what flaws in the system allow these injustices to occur? In order to answer these questions, Subcommittee Chairman Don Edwards called upon the Death Penalty Information Center to compile information on cases in the past twenty years where inmates had been released from death row after their innocence had been acknowledged. This staff report is based on the research of the Center.

Section II of the report briefly describes each of the 48 cases in the past twenty years where a convicted person has been released from death row because of innocence. Sections III and IV examine why the system of trials, appeals, and executive clemency fails to offer sufficient safeguards in protecting the innocent from execution. The role of current legal

¹ See *Sentencing for Life: Americans Embrace Alternatives to the Death Penalty* 6, Death Penalty Information Center (April, 1993).

² Hearings on innocence and the death penalty were also held before the Senate Judiciary Committee on April 1, 1993.

protections is addressed by looking closely at a few of the cases where death row inmates were later found to be innocent or were executed with their guilt still in doubt. The report concludes that there is a real danger of innocent people being executed in the United States.

II. RECENT CASES INVOLVING INNOCENT PERSONS SENTENCED TO DEATH

The most conclusive evidence that innocent people are condemned to death under modern death sentencing procedures comes from the surprisingly large number of people whose convictions have been overturned and who have been freed from death row. Four former death row inmates have been released from prison just this year after their innocence became apparent: Kirk Bloodsworth, Federico Macias, Walter McMillian, and Gregory Wilhoit.

At least 48 people have been released from prison after serving time on death row since 1973 with significant evidence of their innocence.¹ In 43 of these cases, the defendant was subsequently acquitted, pardoned, or charges were dropped. In three of the cases, a compromise was reached and the defendants were immediately released upon pleading to a lesser offense. In the remaining two cases, one defendant was released when the parole board became convinced of his innocence, and the other was acquitted at a retrial of the capital charge but convicted of lesser related charges. These five cases are indicated with an asterisk (*).

YEAR OF RELEASE

1973

1. David Keaton	Florida	Conviction: 1971

Sentenced to death for murdering an off-duty deputy sheriff during a robbery. Charges were dropped and Keaton was released after the actual killer was convicted.

1975

2. Wilber Lee	Florida	Conviction: 1963
3. Freddie Pitts	Florida	Conviction: 1963

Lee and Pitts were convicted of a double murder and sentenced to death. They were released when they received a full pardon from Governor Askew because of their innocence. Another man had confessed to the killings.

¹ The principal sources for this information are news articles. M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* (1992), H. Bedau & M. Radelet, *Mistrials of Justice in Potentially Capital Cases*, 40 *Stanford L. Rev.* 21 (1987), and the files of the National Coalition to Abolish the Death Penalty.

1976

4. Thomas Gladish	New Mexico	Conviction: 1974
5. Richard Greer	New Mexico	Conviction: 1974
6. Ronald Keine	New Mexico	Conviction: 1974
5. Clarence Smith	New Mexico	Conviction: 1974

The four were convicted of murder, kidnapping, sodomy, and rape and were sentenced to death. They were released after a drifter admitted to the killings and a newspaper investigation uncovered lies by the prosecution's star witness.

1977

8. Delbert Tibbs	Florida	Conviction: 1974
- Sentenced to death for the rape of a sixteen-year-old and the murder of her companion. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning.

1978

9. Earl Charles	Georgia	Conviction: 1975
- Convicted on two counts of murder and sentenced to death. Charles was released when evidence was found that substantiated his alibi. After an investigation, the district attorney announced that he would not retry the case. Charles won a substantial settlement from city officials for misconduct in the original investigation.

10. Jonathan Treadway	Arizona	Conviction: 1975
- Convicted of sodomy and first degree murder of a six-year-old and sentenced to death. He was acquitted of all charges at retrial by the jury after 5 pathologists testified that the victim probably died of natural causes and that there was no evidence of sodomy.

1979

11. Gary Beeman	Ohio	Conviction: 1976
- Convicted of aggravated murder and sentenced to death. Acquitted at the retrial when evidence showed that the true killer was the main prosecution witness at the first trial.

1980

12. Jerry Banks	Georgia	Conviction: 1975
- Sentenced to death for two counts of murder. The conviction was overturned because the prosecution knowingly withheld exculpatory evidence. Banks committed suicide after his wife divorced him. His estate won a settlement from the county for the benefit of his children.

Conviction: 1978

Convicted on two counts of murder and sentenced to death, Hicks was acquitted at the retrial when witnesses confirmed his alibi and when the eyewitness testimony at the first trial was proved to have been perjured. The Playboy Foundation supplied funds for the reinvestigation.

1981

Conviction: 1978

Conviction and death sentence reversed by the Oklahoma Court of Criminal Appeals on the grounds of insufficient evidence. Thereafter, the charges were dropped.

Conviction: 1979

Linder was acquitted at retrial on the grounds of self-defense.

Conviction: 1975

Sentenced to death for rape, Ross was released when his blood type was found to be inconsistent with that of the rapist's.

1982

Conviction: 1981

Sentenced to death for two counts of first degree murder; released when the Florida Supreme Court ruled the evidence did not sustain the conviction.

Conviction: 1971

Sentenced to death for first degree murder. The charges were dropped when a previously silent eyewitness came forward and implicated the state's chief witness as the actual killer.

1986

Conviction: 1983

Convicted of first degree murder and sentenced to death. At the retrial, the state's chief witness admitted that his testimony at the first trial had been perjured and Brown was acquitted.

Conviction: 1982

Convicted of first degree murder and sentenced to death. He was released at the request of the state's attorney when new evidence showed that the conviction was based on the perjured testimony of a jail-house informant.

1987

21. Joseph Green Brown (Shabaka Waglini) Florida Conviction: 1974
Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. At one point, Brown came within 13 hours of execution.

22. Perry Cobb Illinois Conviction: 1979

23. Darby Williams Illinois Conviction: 1979

Cobb and Williams were convicted and sentenced to death for a double murder. They were acquitted at retrial when an assistant state attorney came forward and destroyed the credibility of the state's chief witness.

24. Henry Drake* Georgia Conviction: 1977

Drake was resentenced to a life sentence at his second retrial. Six months later, the parole board freed him, convinced he was exonerated by his alleged accomplice and by testimony from the medical examiner.

25. John Henry Knapp* Arizona Conviction: 1974

Knapp was originally sentenced to death for the arson murder of his two children. He was released in 1987 after new evidence about the cause of the fire prompted a judge to order a new trial. In 1991, his third trial resulted in a hung jury. Knapp was again released in 1992 after an agreement with the prosecutors in which he pleaded no contest to second degree murder. He has steadfastly maintained his innocence.

26. Vernon McManus Texas Conviction: 1977

After a new trial was ordered, the prosecution dropped the charges when a key prosecution witness refused to testify.

27. Anthony Ray Peek Florida Conviction: 1978

Convicted of murder and sentenced to death. His conviction was overturned when expert testimony was shown to be false. He was acquitted at his second retrial.

28. Juan Ramos Florida Conviction: 1983

Sentenced to death for rape and murder. The decision was vacated by the Florida Supreme Court because of improper use of evidence. At his retrial, he was acquitted.

29. Robert Wallace Georgia Conviction: 1980

Sentenced to death for the slaying of a police officer. The 11th Circuit ordered a retrial because Wallace had not been competent to stand trial. He was acquitted at the retrial because it was found that the shooting was accidental.

1988

30. Jerry Bigelow California Conviction: 1980
 Convicted of murder and sentenced to death after acting as his own attorney. His conviction was overturned by the California Supreme Court and he was acquitted at the retrial.

31. Willie Brown Florida Conviction: 1983

32. Larry Troy Florida Conviction: 1983
 Originally sentenced to death after being accused of stabbing a fellow prisoner, Brown and Troy were released when the evidence showed that the main witness at the trial had perjured himself.

33. William Jent* Florida Conviction: 1980

34. Earnest Miller* Florida Conviction: 1980
 A federal district court ordered a new trial because of suppression of exculpatory evidence. Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Dept. because of official errors.

1989

35. Randall Dale Adams Texas Conviction: 1977
 Adams was ordered to be released pending a new trial by the Texas Court of Appeals. The prosecutors did not seek a new trial due to substantial evidence of Adam's innocence. Subject of the movie, *The Thin Blue Line*.

36. Jesse Keith Brown* South Carolina Conviction: 1983
 The conviction was reversed twice by the state Supreme Court. At the third trial, Brown was acquitted of the capital charge but convicted of related robbery charges.

37. Robert Cox Florida Conviction: 1988
 Released by a unanimous decision of the Florida Supreme Court on the basis of insufficient evidence.

38. Timothy Hennis North Carolina Conviction: 1986
 Convicted of three counts of murder and sentenced to death. The State Supreme Court granted a retrial because of the use of inflammatory evidence. At the retrial, Hennis was acquitted.

39. James Richardson Florida Conviction: 1968
 Released after reexamination of the case by prosecutor Janet Reno, who concluded Richardson was innocent.

1990

40. **Clarence Brandley** Texas Conviction: 1980
 Awarded a new trial when evidence showed prosecutorial suppression of exculpatory evidence and perjury by prosecution witnesses. All charges were dropped. Brandley is the subject of the book *White Lies* by Nick Davies.

41. **Patrick Croy** California Conviction: 1979
 Conviction overturned by state Supreme Court because of improper jury instructions. Acquitted at retrial after arguing self-defense.

42. **John C. Skelton** Texas Conviction: 1982
 Convicted of killing a man by exploding dynamite in his pickup truck. The conviction was overturned by the Texas Court of Criminal Appeals due to insufficient evidence.

1991

43. **Gary Nelson** Georgia Conviction: 1980
 Nelson was released after a review of the prosecutor's files revealed that material information had been improperly withheld from the defense. The district attorney acknowledged: "There is no material element of the state's case in the original trial which has not subsequently been determined to be impeached or contradicted."

44. **Bradley P. Scott** Florida Conviction: 1988
 Convicted of murder ten years after the crime. On appeal, he was released by the Florida Supreme Court because of insufficiency of the evidence.

1993

45. **Kirk Bloodsworth** Maryland Conviction: 1984
 Convicted and sentenced to death for the rape and murder of a young girl. Bloodsworth was granted a new trial and given a life sentence. He was released after subsequent DNA testing confirmed his innocence.

46. **Federico M. Macias** Texas Conviction: 1984
 Convicted of murder, Macias was granted a federal writ of habeas corpus because of ineffective assistance of counsel and possible innocence. A grand jury refused to reindict because of lack of evidence.

47. **Walter McMillian** Alabama Conviction: 1988
 McMillian's conviction was overturned by the Alabama Court of Criminal Appeals and he was freed after three witnesses recanted their testimony and prosecutors agreed case had been mishandled.

48. Gregory R. Wilhoit

Oklahoma

Conviction: 1987

Wilhoit was convicted of killing his estranged wife while she slept. He was acquitted at a retrial⁷ after 11 forensic experts testified that a bite mark found on his dead wife did not belong to him.

III. WHERE DID THE SYSTEM BREAK DOWN?

These 48 cases illustrate the flaws inherent in the death sentencing systems used in the states. Some of these men were convicted on the basis of perjured testimony or because the prosecutor improperly withheld exculpatory evidence. In other cases, racial prejudice was a determining factor. In others, defense counsel failed to conduct the necessary investigation that would have disclosed exculpatory information.

Racial Prejudice: Clarence Brandley

"The court unequivocally concludes that the color of Clarence Brandley's skin was a substantial factor which pervaded all aspects of the State's capital prosecution of him." Judge Perry Pickett.

Sometimes racial prejudice propels an innocent person into the role of despicable convict. In 1980, a 16 year-old white girl named Cheryl Dee Ferguson was raped and murdered at a Texas high school. Suspicion turned to the school's five janitors. One of the janitors later testified that the police looked at Clarence Brandley, the only black in the group, and said, "Since you're the nigger, you're elected."⁸

Brandley was convicted and sentenced to death by an all-white jury after two trials. The prosecutor used his peremptory strikes to eliminate all blacks in the jury pool.⁹ Eleven months after the conviction, Brandley's attorneys learned that 166 of the 309 exhibits used at trial, many of which offered grounds for appeal, had vanished.

After six years of fruitless appeals and civil rights demonstrations in support of Brandley, the Texas Court of Criminal Appeals ordered an evidentiary hearing to investigate all the allegations that had come to light. The presiding judge wrote a stinging condemnation of the procedures used in Brandley's case, and stated that "The court unequivocally concludes that the color of Clarence Brandley's skin was a substantial factor which pervaded all aspects of the

⁷ M. Radcliff, H. Bodau, & C. Putnam, *In Spite of Innocence* 121 (1992).

⁸ *Id.* at 124-25. The juries at both trials were all-white.

State's capital prosecution of him."⁹ Brandley was eventually released in 1990 and all charges were dismissed.¹⁰

It took many years and a tremendous effort by outside counsel, civil rights organizers, special investigators, and the media to save Brandley's life. For others on death row, it is nearly impossible to even get a hearing on a claim of innocence.

The Pressure to Prosecute: Walter McMillian

"I was wrenched from my family, from my children, from my grandchildren, from my friends, from my work that I loved, and was placed in an isolation cell, the size of a shoe box, with no sunlight, no companionship, and no work for nearly six years. Every minute of every day, I knew I was innocent...." Walter McMillian, Written testimony at Subcommittee Hearing, July 23, 1993.

In 1986, in the small town of Monroeville, Alabama, an 18-year-old white woman was shot to death in the dry cleaners around 10 AM. Although the town was shocked by the murder, no one was arrested for eight months. Johnny D. (Walter) McMillian was a black man who lived in the next town. He had been dating a white woman and his son had married a white woman, none of which made McMillian popular in Monroeville.¹¹

On the day of the murder, McMillian was at a fish fry with his friends and relatives. Many of these people gave testimony at trial that McMillian could not have committed the murder of Ronda Morrison because he was with them all day. Nevertheless, he was arrested, tried and convicted of the murder. Indeed, McMillian was placed on death row upon his *arrest*, well before his trial. No physical evidence linked him to the crime but three people testifying at his trial connected him with the murder. All three witnesses received favors from the state for their incriminating testimony.¹² All three later recanted their testimony, including the only "eyewitness," who stated that he was pressured by the prosecutors to implicate McMillian in the crime.

The jury in the trial recommended a life sentence for McMillian but the judge overruled this recommendation and sentenced him to death. His case went through four rounds of appeal, all of which were denied. New attorneys, not paid by the State of Alabama, voluntarily took over the case and eventually found that the prosecutors had illegally withheld evidence which

⁹ *Id.* at 134.

¹⁰ See also Davies, *White Lies: Rape, Murder, and Justice Texas Style* (1991).

¹¹ See P. Applebome, *Black Man Freed After Years on Death Row in Alabama*, *The New York Times*, Mar. 3, 1993, at A1.

¹² See *Five Years on Death Row*, *The Washington Post*, Mar. 6, 1993, at A20.

would have pointed to McMillian's innocence. A story about the case appeared on CBS-TV's program, *60 Minutes*, on Nov. 22, 1992. Finally, the State agreed to investigate its earlier handling of the case and then admitted that a grave mistake had been made.¹³ Mr. McMillian was freed into the welcoming arms of his family and friends on March 3, 1993.

Inadequate Counsel: Federico Macias

Federico Macias' court-appointed lawyer did virtually nothing to prepare the case for trial. Macias was sentenced to death in Texas in 1984. Two days before his scheduled execution, Macias received a stay. New counsel from the large Skadden, Arps law firm had entered the case and devoted to it the firm's considerable resources and expertise. Mr. Macias' conviction was overturned via a federal writ of habeas corpus, which was upheld by a unanimous panel of the U. S. Court of Appeals for the Fifth Circuit in December, 1992. The court found that not only was Macias' original counsel grossly ineffective, but also that he had missed considerable evidence pointing to Macias' innocence. The court concluded:

We are left with the firm conviction that Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question. The state paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for.¹⁴

Thereafter, Macias was freed when the grand jury, which now had access to the evidence developed by the Skadden, Arps attorneys, refused to re-indict him.

There are many similar stories of defendants who have spent years on death row, some coming within hours of their execution, only to be released by the courts with all charges dropped.¹⁵ What is noteworthy about the cases outlined above is that they are very recent examples which illustrate that mistaken death sentences are not a relic of the past.

Official Misconduct: Chance and Powell

While Clarence Chance and Benny Powell were not sentenced to death, their convictions for murder illustrate the dangers of overzealous police work. They were released from prison last year after Jim McCloskey of Centurion Ministries took on their case and demonstrated their innocence. The City of Los Angeles awarded them \$7 million and the judge termed the police

¹³ See P. Applebome, note 11 above, at B11.

¹⁴ *Martinez-Macias v. Collins*, 979 F.2d 1067 (5th Cir. 1992).

¹⁵ For a list of death row inmates who were reprieved with 72 hours of their scheduled executions, see Bedau & Radelet, at 72.

department's conduct "reprehensible" while apologizing for the "gross injustices" that occurred.¹⁶

IV. ARE THE PROTECTIONS IN THE LEGAL SYSTEM ADEQUATE TO PREVENT EXECUTING INNOCENT PERSONS?

To some degree, the cases discussed in Section III illustrate the inherent fallibility of the criminal justice system. (Sensational murder cases often tend, however, to amplify the flaws of the system.) Mistakes and even occasional misconduct are to be expected. The cases outlined above might convey a reassuring impression that, although mistakes are made, the system of appeals and reviews will ferret out such cases prior to execution. In one sense, that is occasionally true: the system of appeals sometimes allows for correction of factual errors.

But there is another sense in which these cases illustrate the inadequacies of the system. These men were found innocent *despite the system* and only as a result of extraordinary efforts not generally available to death row defendants.

Indeed, in some cases, these men were found innocent as a result of sheer luck. In the case of Walter McMillian, his volunteer outside counsel had obtained from the prosecutors an audio tape of one of the key witnesses' statements incriminating Mr. McMillian. After listening to the statement, the attorney flipped the tape over to see if anything was on the other side. It was only then that he heard the same witness complaining that he was being pressured to frame Mr. McMillian.¹⁷ With that fortuitous break, the whole case against McMillian began to fall apart.

Similarly, proving the innocence of Kirk Bloodsworth was more a matter of chance than the orderly working of the appeals' process. Only a scientific breakthrough, and an appellate lawyer's initiative in trying it, after years of failed appeals, allowed Bloodsworth to prove his innocence. And even then, the prosecutor was not bound under Maryland law to admit this new evidence.¹⁸

Furthermore, not every death row inmate is afforded, after conviction, the quality of counsel and resources which Walter McMillian and Federico Macias were fortunate to have during their post-conviction proceedings. Many of those on death row go for years without any attorney at all.

¹⁶ M. Lacey & S. Hubler, *L.A. Awards 2 Freed Inmates \$7 Million*, Los Angeles Times, Jan. 27, 1993, at B1.

¹⁷ C. Cormely, *The Brady Rule: Is it Working?*, The National Law Journal, May 17, 1993, at 1.

¹⁸ See, e.g., S. Showton, *New DNA Testing Provides Hope for Some Inmates*, The Los Angeles Times, July 4, 1993, at A26 (Maryland's time limit for admitting new evidence is one year after the judgment becomes final).

Most of the releases from death row over the past twenty years came only after many years and many failed appeals. The average length of time between conviction and release was almost 7 years for the 48 death row inmates released since 1970.

Innocence Is Not Generally Reviewed

To often, the reviews afforded death row inmates on appeal and habeas corpus simply do not offer a meaningful opportunity to present claims of innocence. As will be discussed more fully below, in many states there simply is no formal procedure for hearing new evidence of a defendant's innocence prior to his execution date. After trial, the legal system becomes locked in a battle over procedural issues rather than a reexamination of guilt or innocence. The all-night struggle to stay the execution of Leonel Herrera in 1992, even *after* the U.S. Supreme Court had agreed to hear his constitutional challenge, is an example of how much pressure is exerted to proceed with executions.¹⁹

Accounts which report that a particular case has been appealed numerous times before many judges may be misleading. In fact, most often, procedural issues, rather than the defendant's innocence are being argued and reviewed in these appeals. For example, when Roger Keith Coleman was executed in Virginia last year, it was reported that his last appeal to the Supreme Court "was Coleman's 16th round in court."²⁰ However, the Supreme Court had earlier declared that Coleman's constitutional claims were barred from any review in federal court because his prior attorneys had filed an appeal too late in 1986.²¹ His evidence was similarly excluded from review in state court as well. Instead, Coleman's innocence was debated only in the news media and considerable doubt concerning his guilt went with him to his execution.²²

This section will examine some of the means, both extra-judicial and within the system, by which the cases of innocence are uncovered. But first, it is necessary to clarify what is meant in this report by the term "innocent."

¹⁹ See R. Marcus, *Execution Stalled on 11th-Hour Claim of Innocence*, The Washington Post, Feb. 25, 1992, at A3. "Lawyers for the state of Texas and a death row prisoner engaged in a last-minute sprint through the federal court system over the execution, which had been scheduled to take place before sunrise." The execution did not take place that night because a Texas state court decided to issue a stay. Herrera's case was argued before the Supreme Court on Oct. 7, 1992. The Court decided Herrera was not entitled to a hearing on his innocence claims, and he was executed in May, 1993.

²⁰ M. Allen, *Coleman Is Electrocuted*, Richmond Times-Dispatch, May 21, 1992 at A11.

²¹ *Coleman v. Thompson*, 111 S. Ct. 2546 (1991).

²² See, e.g., J. Smolowe, *Must This Man Die?*, Time Magazine, May 18, 1992, at 41 (cover story).

Meaning of "Innocent"

In the criminal justice system, defendants are presumed to be innocent until proven guilty beyond a reasonable doubt. Thus, a person is fully entitled to a claim of innocence if charges are not brought against him or if the charges brought are not proven. A person may be guilty of other crimes or there may be some who still insist he is guilty, but with respect to the charge in question, he is innocent.

In some cases, the investigative process does conclusively determine innocence. A piece of evidence may demonstrate that a suspect or defendant could not have been the perpetrator, or someone else confesses, eliminating other suspects. Under the law, there is no distinction between the definitively innocent and those found innocent after a trial but about whom there may remain a lingering doubt.

Extra-Judicial Redress

In the absence of adequate legal mechanisms, the most serious errors in the criminal justice system are sometimes uncovered as a result of such extra-judicial factors as the media and the development of new scientific techniques. These following cases illustrate the randomness of how the legal system works.

Role of the Media: Randall Dale Adams

One unpredictable element that can affect whether an innocent person is released is the involvement of the media. In Randall Dale Adams' case, film producer Errol Morris went to Texas to make a documentary on Dr. James Grigson, the notorious "Dr. Death."²³ Grigson would claim 100% certainty for his courtroom predictions that a particular defendant would kill again, and he made such a prediction about Randall Adams.

In the course of his investigation of Grigson, Morris became interested in Adams' plight and helped unearth layers of prosecutorial misconduct in that case. He also obtained on tape a virtual confession by another person. Morris' movie, *The Thin Blue Line*, told Randall Adams' story in a way no one had seen before. The movie was released in 1988 and Adams was freed the following year.

Role of the Media: Other Cases

Similarly, all charges and death sentences against Thomas Gladish, Richard Greer, Ronald Keine, and Clarence Smith were dropped in 1976 thanks, in part, to the *Detroit News* investigation of lies told by the prosecution's star witness.²⁴

²³ See Bedau, et al., *supra*, at 68.

²⁴ *Id.* at 56-57.

Walter McMillian's case was featured on *60 Minutes* shortly before his release. So was the case of Clarence Brandley. Brandley was also aided by the civil rights community, which organized opposition to his execution. Supporters were able to raise \$80,000 for his defense.²⁵

Obviously, these advantages are not available to everyone on death row who may have been wrongly convicted.

Unpredictable Emergence of New Scientific Tests: Kirk Bloodsworth

In 1984, a 9-year-old girl named Dawn Hamilton was raped and murdered in Baltimore County, Maryland. Two young boys and one adult said they had seen Dawn with a man prior to her death. They thought that Kirk Bloodsworth looked like the man who had been with her. Again, no physical evidence linked Bloodsworth to the crime. He was convicted and sentenced to death because he looked like someone who might have committed the crime.²⁶

There was some evidence taken from the crime scene, but it gave the police no clue as to who the killer was. Tests were conducted on the girl's underwear, but the tests were not sophisticated enough at that time to detect and identify DNA material from the likely assailant. Fortunately for Mr. Bloodsworth, he was granted a new trial when a judge ruled that the state had withheld evidence from the defense attorneys about another suspect. This time he received a life sentence. Bloodsworth, however, continued to maintain his innocence and the life sentence gave him the time to prove it.²⁷

When a new volunteer lawyer agreed to look into Bloodsworth's case, he decided to try one more time to have the evidence in the case tested. He sent the underwear to a laboratory in California that used newly developed DNA techniques. The defense attorney was astonished when he learned that there was testable DNA material. The tests showed that the semen stain on the underwear could not possibly have come from Mr. Bloodsworth. The prosecution then agreed that if these results could be duplicated by the FBI's crime laboratory, it would consent to Mr. Bloodsworth's release. On Friday, June 25, the FBI's results affirmed what Bloodsworth had been saying all along: he was innocent of all charges. On June 28, he was released by order of the court from the Maryland State Correctional facility in Jessup, after 9 years in prison -- two of which were on death row.

The next section of the report will look at the traditional avenues which an innocent defendant can use to prevent or overturn a sentence of death.

²⁵ *Id.* at 128.

²⁶ See G. Small, *Nine-year Prison "Nightmare" Comes to an End as Accused Killer is Exonerated*, *The Baltimore Sun*, June 29, 1993, at 1A.

²⁷ See also P. Valentine, *Jailed for Murder, Freed by DNA*, *The Washington Post*, June 29, 1993, at A1.

Trial Is Critical, but often Hampered by Poor Legal Representation

The trial is obviously the critical time for the defendant to make his or her case for innocence. Unfortunately, the manner in which defense counsel are selected and compensated for death penalty trials does not always protect the defendant's rights at this pivotal time. Most defendants facing the death penalty cannot afford to hire their own attorney and so the state is required to provide them with one. Some states have public defender offices staffed by attorneys trained to handle such cases. In other states, attorneys are appointed from the local community and the quality of representation is spotty.²⁸

Federico Macias is certainly not alone with respect to ineffective counsel. The stories regarding deficient representation in death penalty cases are rampant.²⁹ The Subcommittee has held several hearings documenting this problem.³⁰ Although death penalty law is a highly specialized and complex form of litigation, there is no guarantee that the attorney appointed to this critical role will have the necessary expertise. There is no independent appointing authority to select only qualified counsel for these cases and attorneys are frequently underpaid and understaffed, with few resources for this critical undertaking.

Proving Innocence After Trial: Defendant's Burden

Before trial, the arrested defendant need do nothing to prove his innocence. The burden is completely on the prosecution to prove that the individual is guilty of the crimes charged beyond a reasonable doubt. However, *after* someone has been found guilty, the presumption shifts in favor of the state. The burden is now on the defendant to prove to a court that something went wrong in arriving at the determination of guilt. It is no longer enough to raise a reasonable doubt. To overturn a conviction, the evidence must be compelling, and violations of Constitutional rights by the state will be forgiven as long as they were "harmless."³¹

The Appellate Process

If an innocent defendant is convicted, he generally has little time to collect and present new evidence which might reverse his conviction. In Texas, for example, a defendant has only 30 days after his conviction to present new evidence, and the state strictly adheres to that rule.

²⁸ See *A Study of Representation in Capital Cases in Texas*, The Spangenberg Group (1993), at vi ("the rate of compensation provided to court-appointed attorneys in capital cases is abysmally low and does not cover the cost of providing representation")

²⁹ See, e.g., S. Bright, *In Defense of Life: Enforcing the Bill of Rights on Behalf of Poor, Minority and Disadvantaged Persons Facing the Death Penalty*, 57 Missouri L. Rev. 849 (1992)

³⁰ See Subcommittee hearings May 22, June 27, and July 17, 1991.

³¹ See, e.g., *Brecht v. Abrahamson*, 123 L. Ed. 2d 353 (1992) (relaxing the standard in federal habeas for finding error to be harmless)

Sixteen other states also require that a new trial motion based on new evidence be filed within 60 days of judgment.³² Eighteen jurisdictions have time limits between 1 and 3 years, and only 9 states have no time limits.³³

Thus, even a compelling claim of innocence, such as a videotape of someone else committing the crime (as recently hypothesized by Justice Anthony Kennedy in oral arguments of *Herrera*,³⁴ discussed below), does not guarantee a review in state or federal court.

All death row inmates are assured representation to make one direct appeal in their state courts. If that appeal is denied, representation is no longer assured.³⁵ In states like Texas and California with large death rows, many defendants sentenced to death are not currently being represented by any attorney.³⁶ Obviously, such a defendant's opportunity to uncover evidence to prove his innocence is greatly reduced, even assuming a court would hear the evidence if it was found.

Habeas Corpus: The Great Writ

When someone has been unjustly convicted under circumstances similar to those described above, he can challenge that conviction in federal court through the writ of habeas corpus. Although numerous legislative proposals to limit habeas corpus in the past few years have failed, the opportunity for using this writ has already been stringently narrowed by recent Supreme Court decisions. The following cases illustrate some of the barriers erected by the Court to claims of innocence in habeas cases.

Leonel Herrera

The Supreme Court has denied habeas review of claims from prisoners on death row with persuasive, newly discovered evidence of their innocence. Leonel Herrera presented affidavits

³² See *Herrera v. Collins*, slip op. No. 91-7328 (Jan. 25, 1993), at 19, n.8.

³³ *Id.* at 19-20, n.9-11.

³⁴ See D. Savage, *Court Urged to OK Execution Despite Evidence*, Los Angeles Times, Oct. 8, 1992, at A1: "Let's say you have a videotape which conclusively shows the suspect is innocent," said Justice Anthony M. Kennedy, addressing the state's attorney. "Is it a federal constitutional violation to execute that person?"

"No. It would not be violative of the Constitution," replied Texas Assistant Attorney Gen. Margaret P. Griffey."

³⁵ See *Murray v. Giarratano*, 492 U.S. 1 (1989) (states not required to provide counsel to indigent death row prisoners after direct appeal). Once a case moves into federal habeas litigation, federal law allows for the appointment of counsel but crucial issues may have been waived before then.

³⁶ See R. Smothers, *A Shortage of Lawyers to Help the Condemned*, The New York Times, June 4, 1993, at A21; see also H. Chiang, *Judge Sees 'Time Bomb' on Death Row*, San Francisco Chronicle, Aug. 18, 1993 (105 of the 370 Calif. death row inmates have no attorneys).

and positive polygraph results from a variety of witnesses, including an eyewitness to the murder and a former Texas state judge, both of whom stated that someone else had committed the crime. However, the Supreme Court ruled that Herrera was not entitled to a federal hearing on this evidence and was told that his only recourse was the clemency process of the state of Texas.³⁷ Herrera was executed in May of this year.

Gary Graham

Death row inmates who claim their innocence are therefore often forced to rely on procedural claims. But those, too, are being foreclosed by the Supreme Court.

For example, Gary Graham's case has gained national attention because he has made a substantial claim of innocence. However, the barriers to getting such new evidence before the courts has necessitated that the defense pursue other claims which only affect his sentence. Death penalty attorneys realize that proving their client innocent after he is executed is of no value to him.

But when Gary Graham claimed that the Texas death penalty procedures did not allow consideration of his youth at the time of the crime, the U. S. Supreme Court refused to even consider the question. The Court said that even if he was right in his claim, ruling in his favor would create a "new rule" of law and no such rule could apply retroactively to his case.³⁸

Another recent narrowing of the writ requires federal courts to reject all claims if the proper procedures were not followed by the defendant in state court. Roger Coleman, for example, filed his Virginia state appeal three days late and this error *by his attorneys* barred any consideration of his federal constitutional claims.³⁹ Coleman was executed without a federal court hearing his claim. Similarly, if a claim is not raised on a defendant's first habeas petition, the claim (with rare exceptions) is automatically rejected, even if the government withheld the very evidence the defendant would have needed to raise the claim in his first petition.⁴⁰

Clemency

For the innocent defendant, the last avenue of relief is clemency from the executive branch. All death penalty states have some form of pardon power vested either in the governor

³⁷ See *Herrera*, *supra*, at 20

³⁸ *Graham v. Collins*, 122 L. Ed 2d 260 (1993)

³⁹ *Coleman v. Thompson*, 111 S. Ct. 2546 (1991)

⁴⁰ See *McCleskey v. Zant*, 111 S. Ct. 1454 (1991)

or in a board of review.⁴¹ However, clemencies in death penalty cases are extremely rare. Since the death penalty was re-instated in 1976, 4,800 death sentences have been imposed but less than three dozen clemencies have been granted on defendants' petitions.⁴² In Texas, the state with the greatest number of executions, no clemencies have been granted.

The procedures for clemency are as varied as the states. In many states the governor has the final say on granting a commutation of a death sentence. Since the governor is an elected official and since there is virtually no review of his or her decision, there is the danger that political motivations can influence the decisions.⁴³ Many of the commutations which have been granted in the past 20 years were granted by governors only as they were leaving office.

Other arrangements are also subject to political pressures. In Texas, a board must first recommend a clemency to the governor. However, the board is appointed by the governor and is not required to meet or hear testimony to review a case. Recently, a judge in Texas held that this lack of process violated Gary Graham's constitutional rights and ordered a hearing to review his claims of innocence.⁴⁴

In Nebraska, Nevada and Florida, the chief state prosecutor sits on the clemency review board.⁴⁵ And generally, there are no procedural guarantees to assure that a claim of innocence which has been barred review by the courts will be fully aired for clemency. As Justice Blackmun recently pointed out:

"Whatever procedures a State might adopt to hear actual innocence claims, one thing is certain: The possibility of executive clemency is *not* sufficient to satisfy the requirements of the Eighth and Fourteenth Amendments."⁴⁶

Thus, the prospect of clemency provides only the thinnest thread of hope and is certainly no guarantee against the execution of an innocent individual.

⁴¹ See *Herrera*, *supra*, at 23, n. 14.

⁴² See *Clemency: Fail-safe System or Political Football?*, The Oakland Tribune, June 27, 1993 (41 additional clemencies have been granted for judicial expediency, to save time and expense after court rulings requiring a new sentencing).

⁴³ See, e.g., J. Berry, *Governors Shy Away From Death Row Pardons*, The Dallas Morning News, Aug. 15, 1993, at 11.

⁴⁴ See *New Turns in Case of a Texan Scheduled to Die*, The New York Times, Aug. 13, 1993 (stay was ordered pending appeal of judge's order).

⁴⁵ B. Reeves, *Execution Stay Upheld*, The Lincoln (Nebraska) Star, Aug. 6, 1992, at 1.

⁴⁶ *Herrera v. Collins*, slip op. No. 91-7328-Dissent (Jan. 25, 1993) (emphasis in original), at 11.

IV. CONCLUSION

It is an inescapable fact of our criminal justice system that innocent people are too often convicted of crimes. Sometimes only many years later, in the course of a defendant's appeals, or as a result of extra-legal developments, new evidence will emerge which clearly demonstrates that the wrong person was prosecuted and convicted of a crime.

Americans are justifiably concerned about the possibility that an innocent person may be executed. Capital punishment in the United States today provides no reliable safeguards against this danger. Errors can and have been made repeatedly in the trial of death penalty cases because of poor representation, racial prejudice, prosecutorial misconduct, or simply the presentation of erroneous evidence. Once convicted, a death row inmate faces serious obstacles in convincing any tribunal that he is innocent.

The cases discussed in this report are the ones in which innocence was uncovered before execution. Once an execution occurs, the small group of lawyers who handle post-conviction proceedings in death penalty cases in the United States move on to the next crisis. Investigation of innocence ends after execution. If an innocent person was among the 222 people executed in the United States since Furman, nobody in the legal system is any longer paying attention.

Many death penalty convictions and sentences are overturned on appeal, but too frequently the discovery of error is the result of finding expert appellate counsel, a sympathetic judge willing to waive procedural barriers, and a compelling set of facts which can overcome the presumption of guilt. Not all of the convicted death row inmates are likely to have these opportunities.

Judging by past experience, a substantial number of death row inmates are indeed innocent and there is a high risk that some of them will be executed. The danger is inherent in the punishment itself and the fallibility of human nature. The danger is enhanced by the failure to provide adequate counsel and the narrowing of the opportunities to raise the issue of innocence on appeal. Once an execution occurs, the error is final.

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Capital Punishment in Territorial Alaska: A brief summary of research undertaken in connection with an oral and documentary history of three executions in Juneau, Alaska, between 1939 and 1950.

by: Averil Lerman

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This article summarizes research completed to date on three separate executions which took place in Juneau, Alaska between 1939 and 1950. This article is a report on a work in progress.

The ultimate goal of this history is to record the story of capital punishment in Territorial Alaska, from as many points of view as possible, including those of the family and friends of the murder victims, the defendants, trial witnesses, jurors, policemen, jailers, and anyone else who was affected by the execution processes. More than 50 people have been interviewed. Many interviews were conducted by telephone, some of which were tape-recorded. Others were conducted in person, in Seattle, Juneau, Anchorage, and Maine.¹

Documentary research is also ongoing. Relevant materials have been located with the invaluable aid of archivists and librarians at the Alaska State Archives, the National Archives, the Loussac Library, the University of Alaska/Anchorage library, and the Alaska Historical Library.

Brief Overview: The Death Penalty in Territorial Alaska

Until it was abolished by the Territorial Legislature in 1957, Alaska had a death penalty. Between 1900 and 1957, eight men were executed in the Territory by force of law, each of them convicted of murder. Although most of the murders in the Territory were committed by white men,² most of the men who hanged were non-white. Only two of the men hanged during this period were white: Fred Hardy, executed in Nome in 1902, and Homer Bird, executed in Sitka in 1903. After 1904, all of the men hanged in the Territory were non-white or of minority status. Three were Alaska Natives, two were African-American, and one was a foreigner from Montenegro, viewed as a minority by the citizens who tried him.³

In 1957, the territorial legislature abolished the death penalty in Alaska, after a prolonged

debate and an impassioned speech by abolition sponsor Warren Taylor. According to Vic Fischer, who was the junior sponsor of the abolition bill, one of the factors motivating abolition was concern about the apparent race bias in the application of the death penalty.⁴

This project focuses on the last three hangings, each of which was in Juneau, Alaska, between 1939 and 1950. Through interviewing people who were involved in or affected by the capital trials and the executions, and through consulting documentary sources, the goal is to better understand a number of questions related to capital punishment in Alaska: Why was the death penalty so rarely applied? Is it simply coincidence that there was a single decade in Fairbanks in which the penalty was exacted, and then a single decade in Juneau in which hangings occurred, or was that related to social stresses, or to a particular judge or prosecutor, or to some other factor? How did race factor into application of the death penalty, and at what stage or stages of the process of arrest, trial, sentence, or post-conviction venues did the specter of race influence the eventual outcome? How did the death penalty impact the people who came into contact with it, whether as government workers or as persons connected with the murder victim or the man convicted of the murder? And finally, why was the death penalty abolished, when it was so rarely used?

These goals are ambitious, and answers to these questions are certainly beyond the scope of this particular brief paper, but this list of questions sets the context for the discussion below. What follows is a brief overview of the story of the last three hangings in Alaska, gleaned both from interviews and from documentary sources (principally court records and newspaper articles).

Nelson Charles

The first person hanged in Juneau was Nelson Charles, a Ketchikan fisherman. Charles, described in the newspaper accounts as "an Indian" perhaps from the Puget Sound area, had been tried and convicted in Ketchikan of the 1938 murder and assault of his mother-in-law. The crime was committed when both he and his victim had been drinking heavily.

Charles was represented at trial by well-known Ketchikan lawyer A H Ziegler, who was appointed by the court on behalf of the indigent defendant. The defense called no witnesses at the trial, but, after the verdict was received, tried to submit the affidavit of a retired marshal, stating that Charles was a peaceable man who was rendered almost insane by drink. The

evidence was too little, too late. Charles was sentenced to hang.

Three of the witnesses to the execution of Nelson Charles were interviewed for this article: John Gaffney, George Sundborg, and Al Anderson. Each had been a journalist at the time of the execution, and each had a vivid recollection of the hanging, even though the interviews took place in 1994, 55 years after the hanging. John Gaffney provided, in addition, a remarkable essay that he had written shortly after the event, detailing his thoughts and feelings as a witness to the execution.

Like most of the men hanged in Alaska, Nelson Charles had no money, and thus could not afford to bring any appeal from his conviction. Efforts for clemency were made on his behalf by the Alaska Native Brotherhood, through a petition to President Roosevelt.

While Charles was attempting to avoid the scaffold, the U.S. marshal's office in Juneau was trying to figure out how to build a scaffold. Execution by hanging is not as simple a matter as it might at first appear to be. The weight of the prisoner and the length of his fall must be carefully calculated, and a smooth and stretched rope must be used.

The U.S. marshal in Juneau in 1939 was William Mahoney. Mahoney, like the others in his position during Territorial times, was a political appointee. Mahoney's second-in-command, Walter Hellan, was often delegated important tasks. George Sundborg, who was in 1939 a young reporter for a local weekly called *The Juneau Independent*, was responsible for making a daily visit to the marshal's office in search of news. He recalls seeing the marshal and his deputies pore through the manuals in order to learn their new duty.

Several weeks ahead of the date of the hanging, the office of the U.S. marshal was making preparations there for it. They of course had never conducted a hanging, and I think they got a few books out of libraries somewhere, probably from the U.S. Marshal Service, to tell them how a hanging was to be set up and carried through. And I know that they had done some dry runs with the trap that they built, and had carefully calculated the weight of the victim -- of the accused, so that he wouldn't be dropped so far as to behead him, which sometimes happens in a hanging. I learned at that time.³

Like men on a firing squad, one of whom has a blank cartridge in his rifle, the marshal's deputies were to be insulated from individual responsibility for the act of executing Nelson

Charles Sundborg explained:

And so Walter Hellan, who was in charge of all of this, had told me that, so that the person who actually sprung the trap would not know that he had done it, they set up several, I think four, different ropes that would pull a pin that dropped the trap. And three of them would be false, and one would be the one that actually did it. And so the four men, all of whom were deputy marshals -- the one who did it would not know that it was he who had pulled the one that actually caused this man's death. And I know that after I wrote that in my story of the execution, Walter Helen admonished me the next day and said, 'You shouldn't have said that, because we didn't want it to [be known] who pulled the strings...'

The scaffold was constructed in a stairwell of the building which housed both the Federal Jail and the marshal's residence. The building had at one time been the Territorial capital, and still displayed its initial purpose with a colonnaded entrance and a small, latinate cupola at its peak. But the inside of the building had never been updated, and was so decrepit that it was regularly the source of grand jury reports suggesting renovation.⁶ Instead of building a gallows, the marshal decided to make use of the architecture of the building itself. Sundborg described the Federal jail and the plan worked out by Mahoney:

It was a large building which previously had been the capitol. And it was a wooden building but very large, and quite attractive. But it had grown old and it had been supplanted by the federal building, which was across the street from it. It had outside stairways, that is, one was out in the open when going from the second floor to the third floor, and so on. And [the marshal's office] had decided that they would do the hanging under one of these stairways because there was an open space there with quite a drop. And so we went in and they had set up a floor in the place with a trap in the middle of it.

The plan was to permit a drop of four and one-half feet below the level of the trapdoor. Construction of the scaffold was started on Nov. 7, 1939.⁷

Charles faced his imminent death calmly. According to the local newspaper, Charles left behind 13 letters of farewell, one of which was addressed to Marshal Mahoney, stating that the marshal "had treated him kindly and that he did not hold Mahoney in any way to blame for what was about to happen to him."⁸ The paper also reported on Charles' condition on the night before his death, almost as if to reassure the public about a hospital patient recovering from some serious illness. "Nelson Charles was calm throughout the night, jailers said, and ate a hearty breakfast. He slept about an hour and a half."⁹

The law required the execution to take place in front of 12 witnesses selected by the marshal. Mahoney approached this issue with solemnity. Invited witnesses received printed invitations, looking almost like engraved wedding invitations (according to George Sundborg), printed on blue paper tickets. The invitations were sought after. Al Anderson, a writer for *The Alaska Daily Press* and a stringer for the United Press Service,, was given an invitation by Mahoney. More than 50 years later, he still remembered with astonishment the extent to which others envied him for it:

There were some people who wanted to witness a hanging. One gal, in particular, told me to influence my boss to get her a ticket. And she cried because she couldn't get one. Can you imagine that?¹⁰

The people who had been invited by Marshal Mahoney to witness the execution included three journalists, a priest, a minister, two doctors, men from the marshal's office, and several others who had no professional connection to the process (including one man who worked for the Internal Revenue Service). The scaffold was set up underneath a tall staircase on the outside of the jail building. A trapdoor had been placed under the large staircase that led from the ground up to the second floor. A second set of stairs descended to the basement level. A rope had been hung from the bottom of the second floor landing to the trapdoor structure that had been built over the excavated area into which the lower stair descended. Two small benches had been placed on the wooden platform, ten feet from the trapdoor that would open into the pit below.

The witnesses were seated on benches beneath the ascending staircase. The marshal came out of the door, and told everyone that there was to be no talking once Nelson Charles came out. Then he left again. There were only a few remarks from the witnesses assembled, waiting. Al Anderson recalled hearing someone say, "Jesus Christ, what a way to make a living."

Nelson Charles was brought out of the jail by Mahoney and a deputy. He was a small, dark-skinned man, wearing blue serge trousers, a white shirt, a carefully knotted necktie, and black shoes. Charles's arms and hands were bound tightly to his sides with white straps. As the witnesses watched, Mahoney took another strap and bound Charles's legs together.

In his essay, John Gaffney recorded the final exchange between the marshal and his

prisoner:

As [Mahoney] finished his task, he stepped back a little, is there anything you'd like to say, Nelson? he asked. We listened as we had never thought a man could listen, listened till our ears would burst, listened while we expected him to say nothing, but hoped he would; we expected a brief negative nod of the dark head. But he spoke, his voice a half-sob, whispering, barely more: I am innocent of killing my mother-in-law, he murmured. I don't want to hang; I still say I am innocent. His head was bowed forward, you could feel if not see the hot tears in his eyes, you could feel his trembling in your own body.

Mahoney pulled a black knit hood over Charles's head, and then took the noose off a peg on the wall, and placed it over Charles' hooded head. Then he stepped back a step, and raised his arm, and softly said, "OK."

John Gaffney recorded his own thoughts at that moment:

Had I any thought of a man, a criminal, about to pay for his crime? Any thought of a disreputable and dangerous killer about to give his life for one he had taken? No, nothing like that. Only that a man was about to die, that there, almost within reach, was a man, a man like ourselves, a young man who somewhere had a wife, who had once slept an untroubled sleep, had only the day before laughed and hoped for life. I was aware of some feeling as I sat there then, some unusual feeling that was strange to me, then it was vague, and there was not time to fathom it. But now I know, it was the certainty, the sureness of it. I knew for the only time in my life that within minutes this man who now lived as I lived would be dead, a stone, lifeless, cold and stiff. Men have been stricken with fatal diseases and we have known they will die; we have held our buddies in our arms at the front and watched the last breaths spend themselves, but even then there has been hope, and when not hope, the awareness that death might stay away yet awhile. Would it come now, or later, perhaps? But none of that now, nothing less than a miracle can save this fellow, and there are no miracles in this life; we know no other. Soon he will be a stone.

Deputy Marshal Walter Heilan flipped a switch on the wall next to him. Gaffney stated:

The deputy reached somewhere toward the back wall and at once a clicking noise commenced. It was loud in the quiet, widely spaced clicks, which seemed second apart, loud yet muffled, un-mechanical sounding clicks, the water near me dripped on, drip, drip, click, click, drip, click, drip, click.

Then, the clicking stopped with the louder sound of the trap's springing. There it was, the square of wood on which he stood fell away and he fell toward the pit, fell then swung. Not a movement, just swung, turning, turning, now right, now left, like a stone on a string, a bit of paper on a cord, held in the air for a kitten to leap at.

After the drop, Charles neither moved nor made any sound, according to the witnesses. The marshal walked off the platform and went downstairs to help the doctors climb up a pile of boxes from the floor below to determine whether or not Nelson Charles was still alive. "Dead," was all the second doctor said. The witnesses left. As they walked through the jail gate, a black hearse pulled through the gate towards the jail. One of the newspapers reported that the body was recovered not by cutting the noose from the rope, but instead by pulling it back up through the trap.

Al Anderson remembered what happened after the hanging, dropping his voice to quote Mahoney:

And afterwards, I'll never forget, the United States marshal congratulating Walter Hellan on the '... smooth job, well done.' And I think after that, I went downtown to a bar and had a good stiff drink, then came back to my office at the Alaska Daily Press, wrote the story, and everybody stayed away from me because they knew I had enough on my mind.

George Sundborg recalled emerging after the execution from the dark jail into the rainy daylight, and recalled a "... very striking scene, one of the greatest, most striking scenes of my life." He recalls seeing a ring of several hundred people around the jail.

I was dumbstruck to see that the entire ring -- it was on a hillside, and every point of vantage where a person could stand was filled with a Native Alaskan, an Indian. You've probably seen the movies in the old days where the wagon trains are going through a valley, and all of a sudden an Indian will appear on the horizon, and then there would be nothing but Indians all the way around. Well, that was the way it was on the day of the execution.

Sundborg did not know whether these witnesses were there in support of Nelson Charles or if they were memorializing Cecilia Johnson, the woman killed by Charles. The crowd was "absolutely silent."

Nelson Charles had asked that any funeral be conducted by the Salvation Army. He was buried in an unmarked grave in Evergreen Cemetery. His wife was in Ketchikan at the time of the hanging. According to the newspaper, she was serving time on a charge of being drunk and disorderly. He left behind a young daughter as well.

AUSTIN NELSON AND EUGENE LAMOORE

Austin Nelson and Eugene LaMoore, the last two men hanged in the Alaska Territory, were separately convicted of the 1946 murder of a Juneau convenience store owner named Jim Ellen. Both Nelson and LaMoore were African-American. Jim Ellen was white. Nelson was tried in 1947, and hanged in 1948. LaMoore was tried in 1948, and hanged in 1950.

Jim Ellen owned a small grocery and liquor store on Willoughby Avenue, in the rougher area of Juneau. Not unlike modern convenience stores, half of the store sold only groceries, and the other half sold only liquor. The two stores had separate entrances, but had a small opening in-between them through which Ellen could pass in order to service customers in either location. He was available even after regular business hours, and "often opened his store to make sales to customers at odd hours," according to the Juneau newspaper.¹¹

Ellen lived in the back room of the store premises. A 52 year-old bachelor, he was, according to the newspaper account, a Greek immigrant, who had come to the United States as a child in 1909, and had been in Juneau since about 1930. He spoke English with a Greek accent, according to the recollection of John Gaffney, who worked for Ellen as a shop boy during high school. Ellen was a veteran of World War I, and a member of the American Legion and the Juneau Elks Lodge. Gaffney recalled:

He was a bachelor and he was reasonably tall and very rugged and strong, and he wasn't a talker much but he had a few friends around here where he used to go on Sunday and socialize a bit. He was a fine man so far as I know.¹²

Ellen was a hardy man, and powerful. Stores like his were then, as they are now, a common target of thieves.¹³ The local newspaper reported several previous robberies of Ellen's store in 1937, 1938, and 1944. In one of those instances, Ellen had successfully resisted two armed robbers, who he chased away after a struggle.¹⁴ As Gaffney remembered: "Jim wouldn't have given up an ant hill for money. He was a very, very strong man. A simple man, but a good man. And, he would have either fought back or done something, however unwise it was, and that's what happened I guess."¹⁵

The murder of Jim Ellen hit a nerve in post-war Juneau. One woman recalled anxiety in

the town

It seemed to me that even the year before that there had been another murder, Clarence [Campbell], and the body was found right in the area where we were building our new house. So when Jim Ellen was murdered, it was this other feeling of, 'God, what's this town coming to with these random murders going on?' It was just after the war, you know, and there had been a lot of unsettled feeling in Juneau because there were many strangers, many people who had worked various construction jobs during the war, were drifting in and out.¹⁶

Ellen's body was found on the floor of his store, on the morning of December 22, 1946. His throat had been cut. Merchandise was scattered around the store, indicating a struggle had taken place. All of the paper money from the cash register was gone, with one exception. The robber had left on the store counter a check, signed over to Jim Ellen by one "Austin Nelson." Austin Nelson was a 24 year-old black man, who had worked at various odd jobs around Juneau. Nelson was immediately arrested on suspicion of murder.

Trial was set for April 10, 1947. In early April, the Court held a hearing to appoint counsel to represent Nelson, who was indigent. Because it was a capital case, the court could appoint two defense lawyers. The first appointment was Henry Roden, who was one of the grand old men of Alaska Law, who had himself served as the compiler of law in the Territory. At 73, however, Roden was somewhat past his prime, too frail, by one report, to walk up the steep hill to the jail to see his client. Roden told the Court that eight days would be long enough for him to prepare his client's defense, but asked that the court appoint someone to assist him. Joseph A. McLean, who had just passed the bar exam just two months earlier, was appointed as his co-counsel. McLean had studied for the bar by serving for a period of years as an intern to Bert Faulkner, a preeminent attorney in Juneau.

Nelson's trial began on April 14, 1947, with the picking of the jury. Seven of the twelve jurors who were chosen for the trial had just served together on another murder jury the week before. Argument by the United States Attorney and introduction of evidence began on the next day, and consumed a total of four days. Henry Roden made no opening argument on behalf of his client. After four hours of deliberation on Friday, April 18, the jury returned with a verdict of guilty. As required by law, the jury was also charged with deciding whether Nelson should be sentenced to life in prison or sentenced to hang. The jury's verdict was death.

The main evidence against Nelson was the testimony of a woman named Marguerite "Dolly" Silvers. Silvers had, in fact, been held in jail for a month before the Nelson trial on a high bond, on the grounds that she was a material witness. Such an arrest was extremely unusual, according to one former territorial prosecutor.¹⁷ The basis for it in this case is not known. Silvers testified at Nelson's trial that she had seen Austin Nelson in Ellen's shop late on the night of the murder, when she was walking back home after the bars had closed.

Other witnesses testified that Nelson had once owned a straight-edged razor, that a case for a razor had been found in his rented room, that he had small bloodstains on his clothes, and that he had been seen on Willoughby Avenue on the night of the killing. The government submitted as evidence for the jury's examination a photograph of Ellen lying in a pool of his own blood with his throat cut, a photograph of Ellen lying in the morgue, the blood soaked shirt and pants that Ellen had died in, and a glass vial containing Ellen's blood.

Nelson put forward an alibi defense, to the effect that, although he had been downtown that Saturday night, and had been walking on Willoughby Avenue, he had nothing to do with Ellen's death. One of the witnesses gave highly persuasive testimony in support of Nelson's alibi. He stated that Nelson had been with him for much of the evening, spending some time at a downtown bar, and visiting friends for a drink at a local hotel, and walking down the Avenue to try to collect a debt from a friend. That witness was Eugene LaMoore, a black, 42 year-old fisherman married to a Juneau Tlingit woman, the father of two young children. As remembered by one of the jurors at Nelson's trial, LaMoore's testimony was detailed and credible.

"He made a tremendous witness. He was just straightforward. Looked at everybody, looked the prosecuting attorney right in the eye, straightforward answers, no hesitation, very sincere. You couldn't help but believe him."¹⁸

But LaMoore's credibility with the jury was short-lived. Without advance notice, the prosecutor asked LaMoore if, twenty years before, he had been convicted of a felony in California. Obviously unprepared for this inquiry, LaMoore denied it. The next morning, LaMoore returned to the courtroom and corrected his testimony of the previous day, admitting to the 1927 conviction. As a young man, LaMoore had, in fact, been convicted of robbery there.

LaMoore's failure to admit the conviction, however, destroyed his credibility with the jury regarding everything else he had said about Austin Nelson. Even 50 years later, the scene was

vivid in the mind of one of the men who served on Nelson's jury:

As far as LaMoore was concerned, I think the rest of the jury felt like I did. They were stunned when [United States Attorney] Gilmore brought him back in because I think we believed the guy when he testified the first time around. He was just -- if anybody could have saved this guy's neck, it was [LaMoore].

On that same day, Eugene LaMoore was arrested by the U.S. marshal. He was charged with committing perjury by the local FBI agent. The fact that he had retracted that statement on the following day was disregarded. Bond on the perjury charge was set at \$10,000, a very high bond in 1947.¹⁹

Nelson's lawyers argued to the jury that the case against Nelson was purely circumstantial, that the Government had never explained the fact that none of the money taken from the store was found, that no murder weapon had been found, and that the murderer's bloody footprints, which had been found on the linoleum floor of the store, and cut out by the police, had never been introduced by the prosecutor. But those arguments made no impression. A guilty verdict was returned by the jury, without the recommendation for mercy which would have required the judge to impose a life sentence.

Sentencing was held on Tuesday, April 22, 1947. Before imposing sentence, Judge Pratt asked Austin Nelson if he had anything to say on the subject. Nelson's answer was transcribed by the court reporter:

Yes I have, your Honor. Your honor, I was prosecuted and condemned for a crime I have not committed. I haven't the least idea of what it is all about. I knew nothing about it. I guess I have been prosecuted for somebody else. I am innocent. That is all."

Nelson continued:

If it is possible for a new trial, there is an attorney I can get to take the trial. He isn't here, but I am positive he will take it to prove my innocence, because I absolutely don't know anything about it.

Forced to respond to this disconcerting dialogue, Judge Pratt answered:

The jury has found you guilty, Mr. Nelson, and they made that finding without the

recommendation that you were guilty without capital punishment. Having so found you guilty, there is only one sentence the Court can pronounce, and that is the sentence of death.

Therefore, it is the sentence and judgment of the Court that you suffer the death penalty by hanging by the neck until dead, upon the 1st day of July, 1947. Please sit down.

Nelson persisted:

Your honor, is there no way for me to get a new trial whatsoever?

The Judge told him to ask his attorney, and, again, to sit down.

Nelson's conviction was not appealed. Like most of the men hanged in Alaska, Nelson had no money with which to pay for an appeal, and there was no provision for a public lawyer for appeal.

Meanwhile, LaMoore was now incarcerated in the federal jail, in a cell by himself, shackled in leg irons - a short length of chain with iron bracelets on each side which were locked around each of his ankles, and later shackled in a ball and chain. He was repeatedly interviewed by the FBI agent and by local law enforcement authorities, not about the perjury charge for which he had been charged and imprisoned, but about the murder of Jim Ellen. LaMoore denied any involvement.

But something happened. LaMoore changed his tune. On July 1, 1947, the day that Austin Nelson was supposed to die, Eugene LaMoore signed a typed confession stating that he, too, had been participated in the robbery of Jim Ellen, and that, during the robbery, Nelson had killed Ellen, although LaMoore had begged him not to.

Nelson's hanging was held off. The Government said that he was now a necessary and material witness against LaMoore, who was now charged with first degree murder. A grand jury indicted LaMoore for murder on January 6, 1948, nine months after he had been jailed on the perjury complaint. On January 12, Henry Roden and Joe McLean were appointed to represent LaMoore, the same two lawyers who had represented Austin Nelson. LaMoore's trial began two weeks later, on February 2, 1947.

The government's case against LaMoore hinged completely on the confession LaMoore had

given at the federal jail. Aside from the confession, there was almost no evidence suggesting that LaMoore was involved in the Ellen murder. No murder weapon was introduced. No money from the robbery was found. A number of witnesses testified that they had seen LaMoore out on the town that Saturday night, sometimes in the company of his wife, and sometimes in the company of Austin Nelson, but this was consistent with LaMoore's own testimony, the same testimony he gave at Nelson's trial, of spending the evening socializing with friends and with his wife, and walking with Nelson to collect a debt. Two witnesses testified that, on the night of Ellen's murder, LaMoore was wearing a coat that he didn't have any longer. One policeman testified that there had been bloody footprints on the floor of Ellen's store, which looked to be about the same size as LaMoore's feet. But the linoleum flooring with those footprints that had been cut out by the police on the day of the murder was never introduced by the government, and there was no explanation offered for its absence.

The only potentially significant evidence against LaMoore was the confession. At his trial, LaMoore retracted his confession. He said that he had only confessed to postpone the death of Austin Nelson, after Nelson had been, for the first time, brought in to see him, and had begged LaMoore to help save his life. LaMoore also said that he had been persuaded to issue the confession by a lawyer, a lawyer who had told LaMoore that he would advise him, but who now denied that he had done anything except type up what LaMoore wanted to say.

LaMoore's attorneys, then, had two attacks on the confession. The first was that it was involuntary, and the second implied argument was that it was obtained only by luring LaMoore to issue a statement with the hope of getting a good lawyer to assist him.

Testimony at the trial, and court papers in the trial file, show that, in the last days before his hanging, Nelson for the first time implicated LaMoore in the Ellen murder. LaMoore testified that Nelson had been brought to see him, and burst into tears, and apologized for telling lies, and begged for his life.

[Nelson] would not sit down. He stood behind his chair and cried and called himself many dirty names. He told me to forgive him, 'but help me save my life.' It hurts me to say this. He said, 'Help me save my life. It will come out all right.'¹²⁰

LaMoore said that he decided to help Nelson. At trial, he testified in response to the questions of his attorney :

Q: Is that what induced your alleged confession?

A: Yes. The man would have hung ²¹

During cross-examination by the prosecutor, LaMoore was uncowed, often reversing the questions asked by the prosecutor. He stated that he had refused to swear to his confession, because he knew he had lied in dictating it. In response to questioning by the prosecutor about whether or not his confession was true, the following exchange took place

A: That was untrue

Q: You told [Deputy U. S Marshal Hellan] a lie, did you?

A: That was a lie. He asked me to swear to it, and I refused.

Q: Did you mean to lie to him?

A: To help that boy save his life if possible.

Q: And your admitting to Mr. Hellan that you participated with him in the robbery and the murder, you thought you helped Austin Nelson by that?

A: He is alive, isn't he?

Q: Well, yes.

A: It undoubtedly helped

Q: Your making that statement got him a stay of execution?

A: That man was framed, and you know it.

Q: Just answer the questions ²²

Then the prosecutor asked:

Q: Didn't you think you were taking a chance to help?

A: I take a chance walking across the streets.

Q: You were willing to take that chance?

A: I have took chances before ²³

LaMoore also claimed that his confession was obtained by using a famous lawyer who told him to make the statement. His defense attorneys put forth uncontroverted evidence that LaMoore's confession was only obtained after Hellan called on one of the most prominent lawyers in Juneau to come down to the jail, and talk to LaMoore, who had had no lawyer, in

connection with the unfilled murder charge. That lawyer was Herbert L. "Bert" Faulkner. Bert Faulkner met with LaMoore privately, and then they called in Hellan, and Bert Faulkner sat down with LaMoore and typed the statement that LaMoore dictated.

LaMoore testified that he had believed Faulkner to be his attorney, and that when Faulkner told him to give the statement, he did so. Faulkner testified that he told LaMoore he would not be his attorney, but that he was just coming to see him because he had been requested to do so.

LaMoore's junior attorney, Joe McLean, had expected that Henry Roden would take on the venerable Mr. Faulkner, since Faulkner was a close friend of McLean's as well as his teacher and mentor. But when the time came, Roden refused to do it, to the chagrin of McLean. McLean asked a few questions of his teacher, and sat down.²⁴ He never got before the jury the fact that Faulkner was a close friend of deputy marshal Walter Hellan, and that Faulkner had close ties with the marshal's office from his own early years as a deputy marshal, or that Faulkner had close ties with the prosecutor's office even then.

Dolly Silvers, the witness who had been jailed for a month before the Nelson trial to make sure she was available, was called by LaMoore's attorney to testify. She stated that she had walked down Willoughby Avenue on that night, and had seen into the lighted windows of Jim Ellen's store, where she saw Jim Ellen with only one other man, Austin Nelson. No one else was there, she said. This was the same thing she had stated at the request of the prosecutor at Nelson's trial. Now, however, the same testimony was unwelcomed by the prosecutor. He attacked her, suggesting that she was a drunk and unreliable as to events or when they occurred.

Austin Nelson had been kept alive at the request of the prosecutor on the grounds that "... it would be impossible to prove a murder charge against LaMoore without the testimony of said Austin Nelson." ²⁵ He was expected to be "the Government's star witness" by the Juneau newspaper, in its first report of the LaMoore trial.²⁶ Although he was alive in the federal jail across the street from the courthouse in which LaMoore's trial was held, Nelson was never called to testify at the trial by the government.²⁷

The trial of Eugene LaMoore took three days total. The jury was selected on February 2, 1948. Presentation of evidence began on the next day, and was completed by lunchtime of the following day, when the jury began its deliberations. The jury sent the judge a note asking whether or not the judge could decide on the punishment. Judge Folta responded with a note

stating that the jury had to do that. The court file suggests that, for a period of time, the jury was deadlocked. After the judge sent the jurors back to deliberate, asking them to reach a verdict, a death verdict was returned five hours later. On hearing the verdict, Eugene LaMoore burst into tears.²⁸

On February 10, less than a week after the end of the LaMoore trial, the court scheduled the execution of Austin Nelson for March 1.

Nelson was hanged in the federal jail at 5.40 on the morning of March 1, 1948. He fought all the way from his cell to the scaffold, according to witnesses, and blacked the eye of Deputy U.S. Marshal Sidney Thompson. Walt Sinn, a city policeman who assisted with the execution, recalled how Thompson was behind Nelson, and leaned forward when Nelson leaned forward, and then was surprised by Nelson's suddenly throwing his head backward, to strike Thompson in the face. He remembered the mechanism constructed for the execution in great detail, almost 50 years after the event.

The scaffold was built over a stairway going down into the basement. And the trap door was of course over the cavity there. As I remember, the scaffold was constructed of two half doors, that had hinges for each half door on the opposite side of the opening that the person would drop through, and that they were held together by a bolt mechanism. To insure a rapid drop, a rapid opening of that scaffold, as I remember there were big heavy eyescrews screwed into each half near the opening end, and a line was put through that and ran over to an adjacent wall where there was a pulley, and the line was run through the pulley, and of course at the bottom was a sandbag attached. And each half was equipped in the same way. In other words, when the mechanism would trip to permit that scaffold to open, and the sandbags would certainly enhance its ability to open that real fast. So there was a weighted system to pull the pins out quicker.

After Nelson was put on the scaffold, Sinn descended into the basement, below the scaffold. He waited for Marshal Mahoney to touch a switch above him, which illuminated a light bulb below. At that signal, Sinn was to pull the rope opening the trapdoor. He recalled

So I watched for the light, and I could hear what went on up above. A Catholic priest was there talking to the, Nelson. Nelson was mostly listening to the priest, I think, who was administering some type of rites I believe.

When the light bulb flashed, Sinn tripped the trapdoor. He recalled that Nelson dropped down right in front of him.

There was no reflex action whatsoever, except I can remember hearing fluid hit the floor, and it turned out of course that he was ... urinating. It was very quiet except for that.

Sinn accepted his execution duties without anxiety.

I didn't feel I felt the man had been tried, and that he'd gotten a fair trial, and this was the decision of the court, or of Judge Folta, I believe was the judge at the trial, and so I had no reservations. I certainly wasn't emotionally disturbed. I felt no hostility towards the man except that this was part of the law, the way it is.

He remembered being surprised at how long it took before Nelson's heart stopped beating.

A doctor, I can't remember if it was Doctor Whitehead or another of the local doctors was there with a stethoscope and remained there, and as I remember, the heart beat for quite some time it seems to me, eleven minutes or something? I was surprised at what good condition that man was, he was a strong and young man, so possibly that was why.

Mr. Sinn was able to answer a great many detailed questions during our telephone interview. When asked how he accounted for the vividness of his memory, he laughed, and said, "I have no idea."²⁹

One woman, a young social worker in Juneau at the time, whose husband would later be one of the first State Troopers in Alaska, remembered the day on which Nelson was hanged.

I remember that day. To me, it seemed that the hanging cast a pall over the whole town. I remember it was not a nice day. There was a feeling of malaise, or dourness, or maybe the best word is the German word, *angst*. That was my impression at the time.³⁰

Nelson was buried in an unmarked grave in Evergreen cemetery. One man, now a hundred years old, remembers the burial.

I was pallbearer for both of those boys [Nelson and LaMoore]. The funeral was right out there in that little cemetery in Juneau. There was a priest or a minister. Nelson he was Catholic. Eugene LaMoore, I don't know what religion he was. But they buried him out there.

We didn't take the Catholic in church. When we goes up there, my car was taking the pallbearers. The hearse had the body. The priest said, "There's no need taking

them in the church, nobody's there except the hearse driver.' We gets in my car and goes out there, and the father puts cross on his grave. And that's the truth."³¹

An unsuccessful appeal was brought from Eugene LaMoore's conviction by Joe McLean, who received no fee or reimbursement of the cost of travelling to argue the case to San Francisco.

LaMoore was hanged in the federal jail on April 14, 1950, just after 5:00 a.m. Two of the men who assisted in the hanging were drafted from the Juneau city police beat that they usually walked at night. When contacted recently, one of those men reported dryly that he had witnessed "half a hanging." He explained that both he and his partner had done only what they had to do to assist in taking LaMoore to the scaffold. They had taken LaMoore out of the "dilly coop," a cage within a cell, in which he was kept at the federal jail. LaMoore was wearing a ball and chain, bracketed to one ankle. U.S. Deputy Marshal Sidney Thompson, whose eye had been blacked by Nelson, was nervous. His hands shook as he tried to remove the shackle, and he couldn't get it off. He said to LaMoore, "Gene, you're always messing with this. How do you get it off?" LaMoore reached down and removed the shackle, which he had successfully corroded over the three years he spent in the jail, by regularly working sugar and other substances into the hinge. He had carried that ball in a sling made of a towel looped over his shoulders, but he had been able to remove it at will when no one was looking.

"Was LaMoore trembling?" I asked the former patrolman. He answered, "Not any more than the rest of us." Even Marshal Mahoney looked shaken up, he said. Once LaMoore was standing on the scaffold, the two city patrolmen both retreated down the corridor to the furthest point from the actual execution, unwilling witnesses to the final act.³² The widow of the other patrolman who had been there that night recounted how disturbing the whole thing had been to her husband. She asked, "Doesn't anyone think about the people who have to do these things?"³³

After the hanging of Eugene LaMoore, the U.S. marshal's office made arrangements with the State of Washington. If there were to be any more executions, they would be done there, and not in Juneau. The marshal's office had had enough.³⁴

Like Nelson Charles and Austin Nelson, Eugene LaMoore was buried in an unmarked grave in Evergreen Cemetery. LaMoore's wife put their son and their daughter into an orphanage. Her family in Juneau would have nothing to do with them. She died young, perhaps of alcohol-related

complications

Between 1939, when Nelson Charles was hanged, and 1950, when Eugene LaMoore was hanged, there were many other homicides in Juneau and in Southeast Alaska. None of the other wrongdoers, however, was executed. Forrest Smith was sentenced in 1939 to serve 20 years for the murder of T.O. Colling in a dispute related to Smith's wife. Guy Prince, a man who lived off the income of a trust fund set up for him by his wealthy California family, got 20 years for strangling his wife with a nylon stocking in 1946. George Meeks, convicted of the robbery and murder of a construction worker, was sentenced to life in prison (1948). All of these men were white. Robert Boochever, now a senior judge on the Ninth Circuit Court of Appeals, was U. S. Attorney Pat Gilmore's assistant on the trials of Austin Nelson, Eugene LaMoore, and George Meeks. In a recent conversation, he stated that he believed that, if George Meeks had been black, he would have been sentenced to hang like the Nelson and LaMoore. Instead, he was sent to the penitentiary.¹⁵

There were no more hangings in the Juneau or anywhere else in the Territory, even during the seven year period before the death penalty was abolished by the Legislature in 1957.

1. This project would not have been possible without the generous support from The Alaska Humanities Forum, The National Endowment for the Humanities, and the Alaska Native Justice Center. Significant assistance has also been provided by Judge Thomas Stewart, Professor Steve Haycox, Bruce Merrell, Kimberly Martus, Vicki Otte, the Alaska Civil Liberties Union Foundation, Alaskans Against the Death Penalty, and many others, including several Anchorage law firms that provided transcription assistance. Donna Bucy generously loaned me the clipping scrapbook assembled by Walter Hellan, who was in the U.S. marshal's office in Juneau throughout the period studied, and who participated in each of these executions.

Thanks in particular should go to the more than 50 people who agreed to be interviewed for this project, and spoke to me about events, thoughts, and emotions which are rarely discussed with others. Special thanks go to John Gaffney, whose brilliant essay, "Thoughts Inspired by an Execution," written by him shortly after witnessing the hanging of Nelson Charles in 1939, gives depth and immediacy to the whole of this history.

2. Kermit S. Kynell. A Different Frontier: Alaska Criminal Justice, 1935-1965. University Press of America, Lanham, MD, 1991.

3. After the executions of Hardy and Bird, three men were hanged in Fairbanks: Mairo Segura, in 1921, "John Doe" Hamilton in 1921, and Constantine Beaver, in 1929. After that date, there were no more hangings in Fairbanks. Three hangings took place thereafter in Juneau, those of Nelson Charles in 1939, Austin Nelson in 1948, and Eugene LaMoore in 1950. Nobody was hanged after 1950, although the death penalty was not abolished until 1957.
4. Telephone interview with Vic Fischer, March 1994.
5. Interview with George Sundborg, in Seattle, June 1994.
6. The poor condition of the jail in 1914 was well-detailed in the highly readable reminiscences of Hjalmar Rutzebeck, in *Alaska Man's Luck*, (Capra Press, 1985) and was not much changed 30 years later. In January of 1948, the grand jury reported that the jail was in an "obsolete condition," badly overcrowded, and in need of paint, lighting, water fountains, and soap. Grand Jury Report, filed January 9, 1948.
7. *The Daily Alaska Empire*, November 7, 1939.
8. *The Daily Alaska Empire*, November 10, 1939.
9. *The Daily Alaska Empire*, November 10, 1939, p. 1.
10. Al Anderson was interviewed at his home in Sudden Valley, Washington, in June, 1994.
11. *The Daily Alaska Empire*, December 23, 1946.
12. Telephone interview with John Gaffney, in July 1994.
13. Tony Simin, the owner of a similar store in Douglas, was killed in 1942 during an apparent burglary. A Native man, William Paddy, was convicted of murdering Simin, and was sentenced to hang by the trial jury. His death sentence was commuted to life after a successful request for clemency in March of 1945.
14. *The Daily Alaska Empire*, November 26, 1937.
15. Telephone interview with John Gaffney, in July, 1994.
16. Isabelle McLean, interviewed in Seattle, Washington in June, 1994.
17. Telephone interview with Judge Seaborn Buckalew, September 1995.
18. Interview with Curtis Shattuck, October, 1994.
19. By contrast, bond was set at \$3500 when a perjury charge was brought against Deputy U.S. Marshal Sidney Thompson in 1953. Thompson was charged and convicted for lying to a

grand jury investigating corruption in Ketchikan. U.S. Attorney Pat Gilmore, Jr., the prosecutor who obtained death verdicts against Nelson and LaMoore, was barred from participating in the grand jury investigation by Federal Judge George Folta. Gilmore left the U.S. Attorney's Office shortly thereafter, and returned to his home in Ketchikan. Interview with Judge James Fitzgerald, June, 1994

20. Testimony of Eugene LaMoore, transcript of trial of Eugene LaMoore, Case No. 2472-B, p. 122.

21. Trial transcript, p. 122.

22. Trial transcript, p. 126.

23. Trial transcript, p. 125.

24. Interview with Joseph A. McLean, June 1994 at his home in Seattle, Washington.

25. Affidavit of U.S. Attorney Pat Gilmore, Jr., filed on June 30, 1947 in connection with the motion to stay the execution of Austin Nelson.

26. *The Daily Alaska Empire* February 2, 1948.

27. The reasons for the decision not to call Nelson are not known. It could be speculated, however, that the prosecutor was not sure what Nelson would say, since the only time that Nelson had ever admitted any involvement in Ellen's murder was immediately preceding the day first scheduled for his execution. At all other times, including the day on which he was in fact hanged, Nelson claimed he was innocent. Such a witness might not further the government's case against LaMoore, especially where there was a confession already signed by LaMoore.

28. *The Daily Alaska Empire*, February 5, 1948, p. 1.

29. Telephone interview with Walt Sinn, November 1994.

30. Interview by telephone with Harriet Botelho, in October, 1994.

31. Telephone interview, Jasper Frambough, in February, 1995.

32. Interview with P. C., in October, 1994.

33. Telephone interview with Gladys Byington, in Anchorage, October 1994.

34. Interview with Hartley "Pete" Crosby, at his home in Juneau, October 7, 1994.

35. Telephone interview with Robert Boochever, July, 1994.

amnesty international



**The
Death
Penalty:**

A Human
Rights
Issue

This briefing is part of Amnesty International's worldwide campaign for the international protection of human rights.

Throughout the world thousands of people are in prison because of their beliefs. Many are held without charge or trial. Torture and executions are widespread. In many countries men, women and children have "disappeared" after being taken into official custody. Still others have been put to death without any pretence of legality: selected and killed by governments and their agents.

These abuses—taking place in countries of widely differing ideologies—demand an international response. The protection of human rights is a universal responsibility, transcending the boundaries of nation, race and belief. This is the fundamental principle upon which the work of Amnesty International is based.

Amnesty International is a worldwide movement independent of any government, political persuasion or religious creed. It plays a specific role in the international protection of human rights:

- it seeks the *release of prisoners of conscience*. These are people detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence;
- it works for *fair and prompt trials* for all *political prisoners*;
- it opposes the *death penalty* and *torture* or other cruel, inhuman or degrading treatment or punishment of *all prisoners* without reservation.

Amnesty International is impartial. It does not support or oppose any government or political system, nor does it support or oppose the views of the prisoners whose rights it seeks to protect. It is concerned solely with the protection of the human rights involved in each case, regardless of the ideology of the government or the beliefs of its victims.

Amnesty International, as a matter of principle, condemns the torture and execution of prisoners by anyone, including opposition groups. Governments have the responsibility for dealing with such abuses, acting in conformity with international standards for the protection of human rights.

Amnesty International does not grade governments according to their record on human rights; instead of attempting comparisons it concentrates on trying to end the specific violations of human rights in each case.

Amnesty International has an active worldwide membership, open to anyone who supports its goals. Through its network of members and supporters Amnesty International takes up individual cases, mobilizes public opinion and seeks improved international standards for the protection of prisoners.

Information about prisoners and human rights violations emanates from Amnesty International's Research Department in London. No section, group or member is expected to provide information on their own country, and no section, group or member has any responsibility for action taken or statements issued by the international organization concerning their own country.

Amnesty International's work is based on the United Nations Universal Declaration of Human Rights. The organization has formal relations with the United Nations, (ECOSOC), UNESCO, the Council of Europe, the Organization of African Unity and the Organization of American States.

WHEN THE STATE KILLS...

The death penalty: a human rights issue

**amnesty
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briefing**



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When the state kills ...

The death penalty: a human rights issue

The death penalty is irrevocable. It sends innocent people to their deaths. It has no special power to prevent crime. It is a particularly cruel, calculated and cold-blooded form of killing, the ultimate inhuman and degrading punishment. It is imposed to punish prisoners for their political beliefs and when inflicted for criminal offences it often becomes a judicial lottery.

The time has come to abolish the death penalty worldwide. The case for abolition becomes more compelling with each passing year. Everywhere experience shows that executions brutalize those who are involved in the process. Nowhere has it been shown that the death penalty has any special power to reduce crime or political violence. In country after country, it is used disproportionately against the poor or against racial or ethnic minorities. It is often used as a tool of political repression. It is imposed and inflicted arbitrarily. It is an irrevocable punishment, resulting inevitably in the death of people innocent of any crime. It is a violation of fundamental human rights.

Over the past decade, an average of at least one country a year has abolished the death penalty, affirming respect for human life and dignity. Yet too many governments still believe that they can solve urgent social or political problems by executing prisoners. Too many citizens in too many countries are still unaware that the death penalty offers society not further protection but further brutalization. Abolition is gaining ground, but not fast enough.

The death penalty is the premeditated and cold-blooded killing of a human being by the state. The state can exercise no greater power over a person than by deliberately depriving him or her of life. At the heart of the case for abolition, therefore, is the question of whether states should have this right.

When the world's nations came together four decades ago to found the United Nations, few reminders were needed of what could happen when a state believed that there was no limit to what it might do to a human being. The staggering extent of state brutality and terror during



Protest against the execution of John Spink in the USA in May 1979. Over the past decade an average of one country every year has abolished the death penalty, affirming respect for human life and dignity.

the 1930s and 1940s was still unfolding in December 1948, when the United Nations General Assembly adopted without dissent the Universal Declaration of Human Rights.

The Universal Declaration is a pledge among nations to promote fundamental rights as the foundation of freedom, justice and peace. These are rights, rights which belong to each and every individual, young and old. They are not privileges that may be granted by governments for good behaviour and they may not be withdrawn for bad behaviour. Fundamental human rights limit what a state

may do to any individual — man, woman or child.

No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. The movement for abolition cannot be detached from the movement for human rights.

Article 3 of the Universal Declaration proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Amnesty International believes that the death penalty violates these rights.

There can never be a justification for torture or for cruel, inhuman or degrading treatment or punishment. The cruelty of the death penalty is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

Like killings which take place outside the law, the death penalty denies the value of human life. By violating the right to life, it removes the foundation of all the rights enshrined in the Universal Declaration.

The death penalty may also encompass other human rights violations. When a state jails people solely because of their beliefs, it violates the right to freedom of belief and expression. The death penalty finally and unalterably severs a person's right to hold opinions and to speak freely because it takes that person's life.

When a state convicts prisoners without affording them a fair trial, it denies the right to justice and equality before the law. The irrevocable punishment of death removes not only the victim's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

Many governments have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. Today 35 countries have abolished the death penalty for all crimes. Another 18 have abolished the punishment for all but exceptional offences such as wartime crimes. Another 27 countries and territories may be considered abolitionist in practice — they no longer carry out executions. Eighty countries,

therefore — over 40 per cent of all countries in the world — have abolished the death penalty in law or in practice.

Yet 100 countries retain and use the death penalty. Many countries, while retaining the death penalty in law, only rarely carry out executions. In some countries, however, the death penalty is far from exceptional. Each year a very few countries account for most of the executions recorded by Amnesty International. Of the 3,399 executions recorded by Amnesty International worldwide between 1985 and mid-1988, 2,219 — 65 per cent — were carried out in just four countries.

Those governments that impose the death penalty do not so much deny its cruelty as attempt to justify its use. The most common justification offered is that, terrible as it is, the death penalty is necessary. In some countries the penalty is considered a legitimate means of preventing or punishing the crime of murder. Elsewhere it may be deemed indispensable to stop drug-trafficking, acts of political terror, economic corruption or adultery. In yet other countries, it is used to eliminate those seen as posing a political threat to the authorities.

Whatever purpose is cited, the idea that a government can justify a punishment as cruel as death conflicts with the very concept of human rights. The significance of human rights is precisely that some means may never be used to protect society because their use violates the very values which make society worth protecting.

Executing people violates the very values which make society worth protecting

Countless men and women have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes.

The death penalty, by permanently incapacitating a prisoner, obviously prevents that person from repeating the

crime. But there is no way to be sure that the prisoner would have repeated the crime if allowed to live nor is there any need to take the prisoner's life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries.

When the arguments of deterrence and incapacitation fall away, one is left with a more deep-seated justification for the death penalty: that of just retribution for the particular crime committed. According to this argument, certain people deserve to be killed as repayment for the evil done: there are crimes so offensive that killing the offender is the only just response.

It is an emotionally powerful argument. It is also one which,

The practice of extrajudicial execution

This briefing does not deal with the practice of some governments of executing their real or perceived opponents without invoking the death penalty as provided by law. Hundreds if not thousands of people each year are victims of extrajudicial executions — unlawful and deliberate killings carried out by order of a government or with its acquiescence, outside the judicial process and in violation of international standards which prohibit the arbitrary deprivation of life. Amnesty International regularly appeals to the authorities concerned to stop these abuses and to ensure that all complaints and reports of extrajudicial executions are impartially and effectively investigated. Information on these and other human rights violations of concern to the organization may be found in the annual *Amnesty International Report* and in Amnesty International publications on the countries concerned.



Herbert Ernesto Anaya (above), the head of the El Salvador Human Rights Committee, was assassinated by a "death squad" in October 1987. Tens of thousands of people have been the victims of extrajudicial executions — unlawful and deliberate killings by governments — in the 1980s.

if valid, would invalidate the basis for human rights. Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect all of us.

Every society seeks protection from crime. Far from being a solution, the death penalty gives the erroneous impression that "firm measures" are being taken against crime. It diverts attention from the more complex measures which are really needed.

The practice of the death penalty highlights the risks of unfairness and error which exist in all criminal justice systems. No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

The reality of the death penalty is that who is executed and who is spared is often determined not only by the nature of the crime but also by the ethnic

and social background, the financial means or the political opinions of the defendant. The death penalty is used disproportionately against the poor, the powerless, the marginalized or those whom repressive governments deem it expedient to eliminate.

When used to crush political dissent, the death penalty is abhorrent. When invoked as a way to protect society from crime, it is illusory. Wherever used, it brutalizes those involved in the process and conveys to the public a sense that killing a prisoner already rendered defenceless is acceptable.

The death penalty is a symbol of terror and, to that extent, a confession of weakness. It is always a violation of the most fundamental human rights.

Each society and each of its citizens has a choice about the sort of world people want and will work to achieve: a world in which the state is permitted to kill as a legal punishment or a world based on respect for human life and human rights — a world without executions. □

The cruelty of the death penalty

International law states that torture or cruel, inhuman or degrading treatment or punishment can never be justified. The cruelty of the death penalty is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

If hanging a woman by her arms until she experiences excruciating pain is rightly condemned as torture, how does one describe hanging her by the neck until she is dead? If administering 100 volts of electricity to the most sensitive parts of a man's body evokes disgust, what is the appropriate reaction to the administration of 2,000 volts to his body in order to kill him? Does using the legal process to impose these cruelties make their inhumanity justifiable?

Hanging and shooting are the most common methods of execution in use today. Death by

electrocution, poisonous gas and lethal injection of poison are used in the USA alone. Under Islamic law, beheading is prescribed in five countries and stoning in seven countries. Occasionally there are reports of other methods being used. Three prisoners were executed by being pushed off a cliff, according to a report in the

more than nine minutes to die because, as medical reports revealed afterwards, his slight weight did not suffice to break his neck. He died of strangulation. As he stood on the gallows beforehand, facing the crowd, the *Arab Times* reported, "for a moment his face expressed all the incomprehension, anguish and desper-

much of that time was conscious, moving about and complaining of pain". A prison doctor, who was present at the execution, was later reported to have said that the catheter needle may have become clogged, slowing down the execution.

Efforts have been made to minimize the suffering caused to a prisoner who is executed. That is why electrocution was introduced in the USA in 1889 — it was considered more humane than hanging — and why prisoners facing the electric chair in the Philippines before the death penalty was abolished in 1987 could choose to be anaesthetized first.

In other countries, however, the pain of execution has been deliberately increased. In Nigeria execution — usually by firing-squad in public — is the mandatory punishment for prisoners convicted of armed robbery. In July 1986 the

If hanging a woman by her arms until she experiences excruciating pain is condemned as torture, how does one describe hanging her by the neck until dead?

Iranian press in October 1987; they were said to have chosen this method in preference to being crushed to death or beheaded.

But, whatever the method of execution used, prisoners can suffer anguished deaths.

A Thai construction worker hanged in Kuwait in 1981 took

action". Another Thai, executed with him, broke down in tears and protested his innocence before being led to the gallows.

James Autry was executed by lethal injection in Texas on 14 March 1984. The US news magazine *Newsweek* reported that he "took at least ten minutes to die and throughout



The 1950 public execution in Mauritania of Abdou Malou, who had been convicted of murder. Shooting by firing squad does not necessarily result in immediate death. The squad may have been told to aim at the body rather than the head (it is an easier target), and may be shooting from a considerable distance. In Taiwan, for example, a prisoner was found to be breathing over an hour after the first two volleys had been fired. In 1953 a British Royal Commission reported shooting by firing squad as it does "not present even the first requisite of an efficient method, the certainty of immediate death".



Two death row inmates play chess between cells in Louisiana's Angola State Penitentiary. US death row inmates do not serve prison sentences but are merely housed in prison until execution. The conditions in which condemned prisoners are kept can increase the inherently cruel, inhuman and degrading experience of being under sentence of death.

Executions brutalize

Executions brutalize all who are involved in the process. They were resumed in the United States, after a 10-year moratorium, in 1979 when John Spinklin met his death in Florida's electric chair.



John Spinklin

These words began a morning radio show in May 1979 in Florida. It was 24 hours before John Spinklin went to the electric chair.

"Hey, Spinklin, you maggot, you listening this morning, Spinklin? Just think, in just over 24 hours, Spinklin, you're going to fry, maggot! You're going to fry! And there's nothing those bleeding hearts can do to save you. Get used to the sound, Spinklin, think of yourself... cooking."

Two years later, in South Africa, tear gas was used to force four terrified men out of their cells and to the gallows.

In 1984 an Iraqi doctor testified that he had witnessed and was forced to participate in bleeding condemned prisoners to death. Their blood was sent to the Iraqi blood bank. This doctor testified that he knew of approximately 1,000 such operations having taken place during 1982 and 1983, directly controlled by Security Headquarters in Baghdad.

Military Governor of Niger State ordered that people convicted of armed robbery should be executed slowly, by successive volleys of bullets fired at intervals, starting with shots aimed at the ankles. In response to protests about this particularly cruel method of execution, a state official said that the aim had been to cause suffering to the condemned men and to deter other criminals, and that two people had been executed in this way.

Stoning to death is one of the methods of execution practised in Iran. The procedure is designed to ensure that death does not come quickly from a single blow. The Islamic Penal Code of Iran stipulates: "In the punishment of stoning to death, the stones should not be so large that the person dies on being hit by one or two of them; they should not be so small either, that they could not be defined as stones". A report allegedly from an eye-witness to

a stoning reads: "The lorry deposited a large number of stones and pebbles beside the waste ground, and then two women were led to the spot wearing white and with sacks over their heads... [they] were enveloped in a shower of stones and transformed into two red sacks... The wounded women fell to the ground and Revolutionary Guards smashed their heads in with a shovel to make sure that they were dead."

The cruelty of execution is not restricted to the prisoner's death agonies. Its unique pain — which developing more humane methods of killing cannot reduce — lies in the grief and terror with which many of the victims approach their deaths.

From the moment sentence is pronounced the prisoner is forced to contemplate the prospect of being put to death at an appointed time. The mental suffering this causes cannot be quantified. Why else is the



Vahid Djalali, sentenced to death for murder in 1980, is prepared for his execution in Iran. After his head is shaved and his mustache cut off, he will put on the uniform of a condemned prisoner.

Secret Executions

One hundred countries retain and use the death penalty. In many countries executions are announced in advance and in some they are carried out in public. In others executions are carried out in secret.

Hundreds of executions are reported in Iraq every year, but the government only publishes the names of a small number of those executed for criminal offences. Political trials and executions are often carried out in secret.



Saddam Muhammad Hassan al-Husseini, executed in Iraq in 1993.

Statistics about the death penalty in the USSR have been an official secret since 1934. Some information is published by the press, and a judge from these reports death sentences are regularly imposed and carried out. In October 1987 the official news agency TASS published a selection of crime statistics, the first such official information to be made public in almost 50 years. The report stated that 4,862 people had been convicted of intentional homicide between January and June 1987, but it did not state how many had received death sentences.

threat of execution one of the most powerful weapons in the armour of the torturer? Whether a death sentence is carried out six minutes after a summary trial, six weeks after a mass trial or 16 years after lengthy legal proceedings, the person executed is subjected to uniquely cruel, inhuman and degrading treatment and punishment.

A prisoner in Jamaica, Nathan Foster, under sentence of death for seven and a half years, went into a state of panic when an official read him the warrant for execution in

The threat of execution is one of the torturer's most powerful weapons

February 1988. During the ensuing struggle with prison guards his arm was broken. The plastered arm was strapped behind his back as prison guards brought him to the gallows to be hanged 10 days later.

The abbot of a Buddhist monastery in Thailand, who had given the last sermon to over 200 prisoners before execution between 1967 and 1985, described the agony manifested by many of them: "When the time for their execution came, they would not be able to stand on their feet and had to be helped to the execution stake. This happened similarly to Chinese people convicted of narcotics offences. They usually lost self-control and cried out wildly".

Prisoners sentenced to death are treated as men and women without a future. Often they are separated from the general prison population and held in special places, known in some countries as "death row". There they may be subjected to prolonged isolation and enforced idleness which adds to the torment of waiting to be executed.

The conditions in which condemned prisoners are kept can increase the inherently cruel, inhuman and degrading experience of being under sentence of death.

A prisoner sentenced to death in Pakistan in 1982 described sharing a death cell measuring about 7ft by 6ft with six other men. "There was no fan, no toilet facilities and no



Beholding by sword is provided as a method of execution in at least five countries, including the Yemen Arab Republic (shown here). Several blows are sometimes needed to sever the head, depending on the weight of the sword and the strength and accuracy of the executioner.

water in the cell. We had only a dirty mat and a flea-ridden blanket to sleep under... There was one window with an iron grille which looked out onto the prison yard. We were not allowed to talk to the other prisoners...

"Sometimes the jail authorities would march the condemned prisoners who were about to be executed in front of our cells, just before they went to the gallows. Although we couldn't see the executions taking place, we could hear the sound of the lever on the gallows being pulled and so we knew what was happening. This was a very traumatic experience for us. We could also hear the

'She didn't go well...'

"... They brought the woman through as the lights came on. Into the silence and darkness outside our windows there was a sudden whimpering and crying, deep robs of crying moving across the yard.

"A woman, a young woman it sounded like, gulping deep whoops of weeping. I thought at first I was asleep, dreaming the nightmare cries, then I turned in my tight-drawn blankets and saw the black polished floor and the light bright in the ceiling and I lay puzzled, listening, then cold with horror as I realised where I was and what it was, and I followed the cries past my

window in the yard below and round the corner, disappearing inside. And I lay, cold still, imagining how she waited up the iron stairs and along the passage, and then through the two heavy doors leading into the gallows.

"They had to bring her through, said the (prison warden) later, strapped up in a strait-jacket. She was an African who had smothered her child. She had hysterics when they hanged her, he said. She didn't go well."

Extract from *Handcuffs: Seven Years in a South African Prison*, by Hugh Lewis.



Shahida Parveen was sentenced to death by stoning after being convicted, in November 1987, of the offence of adultery. She had divorced her first husband and married Mohammad Sarwar, who was also sentenced to death. The divorce papers had been signed by the couple before a magistrate, but the first husband had failed to register them with the local council. He then filed a complaint which resulted in the couple's trial and sentence. The couple were finally acquitted in August 1988.

painful crying of the relatives of the condemned prisoners who would come to say goodbye to their loved ones."

For some prisoners the torment of waiting to be executed stretches over many years. It was nearly 17 years after he was arrested, early one morning in May 1985, when Mohammad Munir was secretly executed by firing-squad on a deserted island near Jakarta, Indonesia's capital.

Mohammad Munir was a trade unionist, founding an Indonesian carworkers' union and another for shipyard workers before going on to head a trade union federation led by the banned Indonesian Communist Party (PKI). The party, which Mohammad Munir represented in the Indonesian parliament, was blamed by the authorities for an attempted coup in 1965. He was one of thousands arrested in the years afterwards. He was charged with rebellion, convicted in 1973 and sentenced to death. He and his family were given only four days' notice of the execution and allowed to meet

for three hours on the day he was killed.

Such executions, of prisoners who had spent years as condemned men, have since continued in Indonesia and the number executed for political offences has risen steeply. Ten of the 13 prisoners executed in 1986 and 1987 had spent over 18 years in jail. Most had been convicted of subversion. In October 1988, two former members of the Indonesian presidential guard were executed for involvement in the 1965 coup attempt. They had spent more than 20 years under sentence of death.

The execution of a prisoner is the ultimate cruel, inhuman and degrading punishment. The assertion that the death penalty is cruel cannot be challenged; it is borne out not only because of the horror of it, but because it is impossible to argue logically on the one hand that to kill a prisoner in cold blood is not cruel, while at the same time maintaining that for one person to kill another is so cruel that execution is the only appropriate punishment. □

The last hours of James Terry Roach

James Terry Roach was executed in South Carolina on 10 January 1986. In 1977, when he was 17 years old, he had pleaded guilty to the murders of two white teenagers and to additional charges, including sexual assault and kidnapping.

He was sentenced to death despite a finding by the trial judge that he had acted under the domination of an older man, was mentally retarded and had a personality disorder.

One of his lawyers stayed with him on the night of his execution and gave the following account of those last hours.

"Although Terry was twenty-five years old by the time of his death, he seemed very childlike. In general, his demeanor and his reactions to the people around him appeared to me to comport with the finding, made at his last psychological evaluation, that his IQ was 70 — a score which placed his intellectual functioning at about the level of a twelve-year-old child. When his family minister showed him some prayers from the Bible that they would read together, Terry asked him which ones he thought would be especially likely to help him into heaven: his questions about this seemed based on the childish assumption that one prayer was likely to 'work' better than another, and that he just needed some advice about which ones would work best.

"Terry was a very passive young man,



James Terry Roach

and that showed all through the night. Although he was obviously very frightened, he was as cooperative as possible with the guards, and he tried to pretend that all of the ritual preparation — the shaving of his head and right leg, the prolonged rubbing in of electrical conducting gel — was all a normal sort of thing to have happen. He wanted the approval of those around him, and he seemed well aware that this night he could gain everyone's approval by being brave and

keeping his fear at bay.

"Still, when the warden appeared in the cell door at 5.00am and read the death warrant, while Terry stood, each wrist immobilized in a manacle known as a 'claw', his left leg began to shake in large, involuntary movements. After that, everything happened quickly. I walked to the chair with him, and talked to him as much as I could. After he had read his final statement we had a couple of last words... I left him and walked to the witness area, where I gave him a 'thumbs-up' sign. He signalled back with his fingers, as much as the straps permitted...

"A few seconds later the current hit. Terry's body snapped back and held frozen for the whole time that the current ran through his body. After a few seconds, steam began to rise from his body, and the skin on his thigh just above the electrode began to distend and blister. His fists were clenched and very white. His body slumped when the current was turned off, and jerked erect again when it was resumed. When he was declared dead, several guards wrestled his body out of the chair and onto a stretcher, while taking care to conceal his face (no longer covered by the mask) from the view of the witnesses and me by covering it with a sheet. I left the death house at about this time in the company of the warden. As we stepped out of the building, I heard the whoops of a crowd of about 150 or 200 demonstrators who had apparently come to celebrate the execution, yelling and cheering outside the prison gates."



The cruelty of execution is not restricted to the prisoner's death agonies. Its unique pain — which developing more "humane" methods of killing cannot reduce — lies in the grief and terror with which many of the condemned approach their deaths. (Above) a prisoner in Nigeria is prepared for execution by firing squad. (Below) a prisoner is led from a Cairo court after hearing that he will die on the gallows for rape.



The death penalty in practice

The death penalty is applied selectively. It is imposed disproportionately on the poor, racial minorities, social and political minorities and on political prisoners.

Even if the effects of racial discrimination or economic inequality could be eliminated, other possible sources of error and inconsistency would remain in any criminal justice system devised and administered by fallible human beings. Arbitrary decisions which deprive people of their liberty are unacceptable and should be corrected. Arbitrary decisions which deprive people of life are intolerable and without remedy.

One of the most compelling reasons for abolishing the death penalty is the risk of executing the innocent. A study published in 1987 concluded that 23 innocent people are known to have been executed in the USA alone this century.

It is impossible to determine the exact number of innocent people who have been put to death. Judicial reviews or investigations of cases rarely occur once a prisoner has died. What is certain is that abolition is the only way to ensure that such mistakes do not occur.

Cases in which incompetence, corruption and duress led to innocent people being sentenced to death have recently been exposed by news

investigators had extracted a confession from him during night-time interrogations and beaten his 15-year-old brother to obtain corroborative evidence. When the real culprit emerged, some years later, they suppressed the information to conceal what they had done.

A similar case was brought to light in the Belorussian republic with the execution, in 1988, of Gennady Mikhasevich on charges of multiple murder, rape and robbery. The case received wide public attention because 14 people had already been convicted of these crimes, one of whom had been executed. Newspapers said the 14 were beaten and tortured until they confessed to the crimes. One of the 14 had gone blind in prison and another had been released with apologies after serving a 10-year term.

In Japan, Sakae Menda was sentenced to death in March 1950 for a murder committed in 1948. Thirty-three years later, in 1983, he was found not guilty and released. For over three decades he had lived with the prospect of execution. He had applied for a retrial five times before his request was granted in 1979. Sakae Menda had

'I shall ask for the abolition of the death penalty until I have the infallibility of human judgment demonstrated to me.' Marquis de Lafayette

media in the USSR, as part of an emerging debate on the merits of abolishing the death penalty.

Vladimir Taisev, a villager from the Belorussian republic of the USSR, was sentenced to death for murdering his wife after he had reported her missing. He spent 18 months awaiting execution before his sentence was commuted, but was only released in 1987 after spending over 14 years in prison. According to the press,

originally confessed to the crime, but later retracted his confession and said that he was innocent. Other evidence presented at the original trial was questioned and an alibi was produced for the time of the murder. He was acquitted after the retrial court accepted his alibi and decided that his original confession was not credible.

Edward Earl Johnson was executed in the USA in May 1987. There are serious doubts about his guilt of the crime for

Neil Leifer/The Observer



One of the most compelling reasons for abolishing the death penalty is the risk that innocent people will be executed. Willie Darden (above) went to Florida's electric chair for murder despite evidence that might have proved his innocence. He survived an unprecedented six death warrants and spent over 14 years on death row before his execution in March 1988.

which he convulsed to death in Mississippi's gas chamber.

Edward Johnson was arrested in 1979, when he was 18 years old, and convicted the following year of murdering a white police officer. Edward

Johnson was black. He was tried by a jury of 10 white and two black jurors in a county with a population that is 45 per cent black.

The police officer had been killed when he tried to arrest a

black man who was allegedly attempting to assault a woman. In the struggle the police officer was shot and the assailant fled.

Edward Johnson was arrested with other black men in the area and brought before the only eye-witness to the crime — a white woman outside whose house the shooting occurred. The woman had known him all his life and stated that he was not the murderer. She said the man she had seen was heavily

a result Edward Johnson was convicted of murder and sentenced to death.

Before his trial the prosecution offered Edward Johnson a life sentence in return for his pleading guilty to the crime. However, his trial lawyers apparently advised him, wrongly, that he would be sentenced to life-without-parole if he accepted the offer. Had he done so, however, Edward Johnson would have been eligible for

Abolishing the death penalty is the only way to ensure that innocent people are not executed

built with a full beard. Edward Johnson was slim and had never had a beard.

Two days later he was re-arrested and taken away alone by the police. He later testified that they had taken him to some woods, and threatened to shoot him unless he confessed to the crime. He signed the confession because "I was scared. I was convicted before I even went to trial". He did not see a lawyer until after he had been brought to court to be charged.

Edward Johnson recanted his confession at the first opportunity. However, the eye-witness to the crime, who initially said he was not her assailant, had changed her story on hearing of his confession and identified him as the black man who had tried to attack her. As

parole in 1986, the year before he was executed.

According to the lawyers who took over the last stages of his case his many earlier appeals had been unsuccessful partly because of legal mistakes made by their predecessors. His final lawyer was brought in on the case only three weeks before his scheduled execution, when there was little time left for detailed investigations. Edward Johnson died proclaiming his innocence.

A week after the execution, his new lawyer located a woman whom Edward Johnson had always claimed he had been with, in a pool hall, when the crime was committed. None of his previous lawyers had attempted to find her or to persuade a court to hear her testimony. She

Youth is no protection

The notion that young people should not suffer the death penalty stems from the recognition that they are not fully mature — hence, not fully responsible — and that they are more likely to be rehabilitated.

This notion has been incorporated into international human rights texts dealing with the death penalty. The United Nations Economic and Security Council (ECOSOC) safeguards and other international instruments stipulate that offenders under the age of 18 at the time of the crime should not be sentenced to death.

At least 72 countries currently have laws specifically setting a minimum age of 18 below which the death penalty may not be used. A further 12 countries may be presumed to exclude the use of the death penalty against

offenders under 18 because of their accession to international human rights treaties. This has not prevented juvenile offenders being sentenced to death and sometimes executed.

The USA, Bangladesh, Pakistan, Barbados, Iran and Iraq have all executed prisoners for crimes committed when they were under 18. In August 1988, 28 of the 2,110 prisoners on death row in the USA were there because of crimes they had committed when they were juveniles.

Mohammad Selim was hanged in Dhaka Central Jail, in Bangladesh, when he was reportedly just 17 (although the government later said he was older). He had been convicted of a murder committed in February 1985, the month after his sixteenth birthday.

Mohammad Selim was tried

by one of the military courts established in March 1982 when martial law was declared in Bangladesh. There was no judicial appeal for those convicted by martial law courts and the president refused Muhammad Selim's petition for clemency.

In Barbados courts may sentence to death people who were under 18 at the time of the offence. Two such prisoners are currently on death row and another was hanged in 1982.

The two juvenile offenders currently on death row are Patrick Greaves and Michael Taylor who were convicted jointly of a murder committed in March 1984 when both were aged 17. They were sentenced to death in October 1984 and their sentences were upheld by the Barbados Court of Appeal in November 1986. Another juvenile offender, Martin Marsh, also aged 17 at the time of the crime, was hanged in September 1982.



Mohammad Selim, executed in Bangladesh in 1988



The death penalty has been widely used by governments to eliminate their political opponents. After the 1979 foundation of the Islamic Republic of Iran thousands of political prisoners were executed. (Above) condemned Kurdish opponents of the government face the firing-squad.

said that she had gone to the courthouse to testify at the trial, but was told by a white police officer to go home and mind her own business.

The death penalty has also been widely used for political purposes. Rulers have executed their political rivals, or have tried to use the threat of the death penalty to silence their opponents. Members of opposition parties have been eliminated as a matter of political expediency. The death penalty has been used to consolidate

power after coups and attempted coups. Death sentences have been imposed after coups in at least 14 countries during the past decade and executions carried out in at least 12 of these countries.

Mahmoud Mohamed Taha, the 76-year-old leader of the Republican Brothers Movement in the Sudan, was prepared to die for his beliefs. A persistent critic of President Gaffar Nimeiri's government, he was arrested with four other members of the movement on

5 January 1985. The movement advocated a new approach to Islam and had engaged in non-violent political activities. On 7 January the five prisoners went on trial, charged with "undermining or subverting the constitution", a capital offence. They admitted distributing leaflets calling for the repeal of Islamic laws introduced in 1983, appealing for a peaceful political solution to the conflict in southern Sudan and advocating an Islamic revival.

The five prisoners were found guilty of subversion the next day and sentenced to death. On 16 January the Court of Appeal confirmed the sentences, ruling that the five men were also guilty of "heresy" by advocating an unacceptable form of Islam, an offence they had not been charged with. The court gave the defendants one month in which to "repent or die". On 17 January President Nimeiri confirmed the sentences and cut the deadline for repentance to three days.

Mahmoud Mohamed Taha refused to repent. He was hanged before a large crowd in Kober Prison in Khartoum North on 18 January, less than two weeks after his arrest. He was executed despite a provision in the country's laws excluding

people over 70 from being sentenced to death. The four men convicted with him were spared. After being

▶ page 12

Executed to reduce prison overcrowding

States which retain the death penalty impose it for a wide range of offences. Since 1985 prisoners have been sent to their deaths to punish them for their political or religious beliefs and for a wide range of criminal offences: murder, forgery, rape, drug-trafficking, adultery, theft, corruption, running a brothel, kidnapping — crimes which may or may not involve the loss of life.

In Nigeria prisoners under sentence of death have been executed to reduce prison overcrowding.

Disturbances at Benin City Prison in January 1988 were followed by the public execution of 12 prisoners; officials told the press that the executions had been carried out to reduce overcrowding, one of the causes of unrest inside the prison. In November 1984, a Nigerian government official had reportedly said that 55 prisoners in Anambra State were executed to reduce prison overcrowding.



The death penalty has also been used to consolidate power after coups and attempted coups. (Above) the bodies of some of those executed after an April 1980 coup in Liberia are buried in a mass grave.



Public execution on Libreville beach, Gabon, in December 1982.

Public execution is the most brutal expression of the logic that the death penalty deters would-be criminals. It brings the reality of the death penalty to a wide audience because public executions are well-attended events. In Nigeria, where many prisoners have been publicly shot, thousands have come to witness the spectacle. There have been similar spectacles during the past decade in the People's Republic of China, although public executions are prohibited by law. In Pakistan, where public executions were reintroduced in January 1988 after a 10-year respite, thousands flocked to see two men hang in Punjab State.

Wholesale public executions were resumed in Nigeria in 1984, after a military

Public executions

government seized power, in an effort to curb the increase in armed robbery. A decree was passed setting up Robbery and Firearms Tribunals empowered to impose mandatory death sentences for armed robbery, without any right of appeal against conviction.

The executions have since continued on a large scale. According to government figures, 355 death sentences were carried out in 1984 and 301 in 1985. Although Amnesty International knows of some 200 executions in the three years to the end of

1988, the true figure was undoubtedly higher. Most of these executions were carried out in public by firing-squad and some were attended by thousands of people, including children.

There is, however, no evidence that public executions have reduced the number of armed robberies. In Lagos alone there were 352 cases of armed robbery in 1984, when public executions began again, as against 247 in 1983.

A.A. Adeyemi, Professor of Law and Criminology at the University of Lagos in Nigeria, compared statistics on the annual number of murders and executions between 1967 and 1985, and found that "murder incidents have consistently increased for most of this time" even though murder had been punishable by death and almost everyone knew this.

Armed robbery, too, had increased after it became a capital offence throughout Nigeria in 1970. Professor Adeyemi found that between 1967 and 1970 an average of 994 armed robberies were committed each year, but that the annual average rose to 1,500 between 1971 and 1985. He concluded that studies on murder and armed robbery "demonstrated clearly that no efficacy can be shown for the operation of the death penalty for these offences".

Some reports claim that public executions have had an adverse effect in brutalizing society and in transforming the victims into objects of public esteem.

Public executions have been carried out in China this decade. In 1983 a nationwide anti-crime campaign was launched to curb the rising crime rate. New legislation was introduced to speed up the procedures for trying and executing "criminals who seriously endanger public security". Defendants were denied the right to receive a copy of the indictment before trial, and the time limit for appeals was reduced from 10 to three days.

During 1983 several thousand executions were carried out, some in public. One mass public execution was observed by Liu Fong Da, a teacher, who later co-wrote an account of what he had seen, under the title "Execution day in Zhengzhou". The following is an extract from his article, which was published in the *American Spectator* in December 1986.



Prisoners on their way to the public execution site in Xian, China. The large Chinese characters on the side of the truck say "Death sentence". Although illegal, several public executions were staged during a 1983-1984 official anti-crime campaign.

"The morning of September 23, 1983 was clear and warm in north China. I could see by the number of expectant people pouring onto the streets that for some time the peasants and workers, the cadres and students and small children of Zhengzhou had known: an execution day was coming.

"I estimated later that close to half the city's population — about a million people — must have left their jobs and classrooms. People crowded into every available place — along the sidewalks, on steps, jammed in doorways.

"A shout went up the four-lane main street: 'It's coming!' At once everyone froze, still and silent. People stood on tiptoe and small children sat on shoulders...

"The main attraction followed immediately: 45 flatbed trucks, one after another, rolled by at no more than five miles per hour... At the front of each truck bed, just behind the cab, stood a condemned man bound with heavy rope... holding in place a tall narrow sign. On the top half of each sign was an accusation: 'Thief', 'Murderer', 'Rapist'. On the bottom half was the accused's name, marked through with a large red 'X'...

"Three miles outside the city a dry creekbed widens out in a cornfield. Corn the height of a man grows on the banks, up to their edges. The horde following the parade swept onto the site, flattening the corn on the banks. I followed along in the crowds, wondering 'Why are we trampling food to watch people killed?'...

"Three flares suddenly shot high into the sky from the road somewhere behind the prisoners... the accused were now marched rapidly down the ramp, the signs still tied behind them. Some had lost the use of their legs from fear. These the policemen dragged to their places...

"Three yellow flares went up. The two escorting policemen caught each man behind the knee, forcing him to a kneeling position, and then separated to each side. In unison 149 green-uniformed policemen stepped forward and put rifle barrels within 10 inches of the backs of the accused's heads.

"The 45 shots rang out in one voice. Together, the bodies jerked forward and splayed out in different ways on the grass... Suddenly, the people surged down from the banks and closed in, shouting. The front rows broke through the police line to where the bodies lay, and stopped short in horror as they got near enough to make out the details. But the pressure behind them was too great; many were pushed ahead and forced to trample the bodies. Some fell sprawling over them. One man beside me was pushed out of his shoes. Kids screamed at the sight of blood and pieces of skull. Some blood got on my shoes. To protect the bodies, a policeman pulled out one of the numbered stakes, scooped up some brains on the circular sign, and held the people at bay with it. They reared back 10 or 15 feet in a circle around him...

"This one performance was finished. Across China that September and October there were many shows. This one in



A father takes leave of his son, convicted of armed robbery and about to face the firing squad in Nigeria. Death is the mandatory sentence for armed robbery and execution is usually in public.

Zhengzhou ran twice again... Inside China many have guessed at the number killed during that golden autumn of 1983. Some put it at 80,000. Some at 150,000. But this is only guesswork."

Although public executions now appear to have stopped in China, executions are still widely publicized in the national and local media, and "mass sentencing rallies" attended by thousands of people are held

to publicly parade condemned prisoners beforehand.

In 1984 and 1985 official reports claimed that the anti-crime campaign had resulted in a drop in the crime rate. However, recent official reports show that violent and major crimes are on the increase, despite the extensive use of the death penalty in recent years and the wide publicity given to executions. □



Public beheading in Saudi Arabia. The corpses of those executed by beheading are displayed for 45 minutes. Public executions are often staged as a deterrent against crime but research carried out in the USA suggests that executions may have a "brutalizing" effect on society, resulting in more violence.



One of hundreds of political prisoners executed in Iran in the second half of 1988. The body was unearched by relatives searching for their dead. It was lying in an unmarked grave in Jodeh Khayatan Cemetery, Tehran. The executions took place in secret, in prisons throughout Iran. Some of those killed had been tried and were serving prison terms. Others had been detained without trial.

forced to watch the hanging they "repented" on television.

In August 1986, Eugenio Abeso Mondu was executed by firing-squad in Equatorial Guinea.

Eugenio Abeso was a former military officer and a member of parliament. He was executed for allegedly leading an unsuccessful plot to overthrow the government of President Obiang Nguema Mbasogo in July 1986. Opposition sources claimed that the alleged plot

was a pretext for arresting hundreds of real or suspected political opponents of the government.

He was tried under the "most summary" proceedings in Equatorial Guinean military law. His trial was televised. Although he pleaded guilty and confessed to the charges, little evidence was produced to corroborate his confession. He was convicted barely one month after the unsuccessful coup was alleged to have taken place and

was executed one day later.

In political cases, the death penalty is often applied after summary trials or other unfair proceedings. Defendants on trial for their lives must obviously be afforded scrupulously fair trials. When accepted standards for a fair trial are ignored or set aside the death penalty becomes open to political abuse and the risk of executing the innocent is increased.

Despite the undisputed acceptance at the international level of safeguards for fair trials in all death penalty cases, thousands of prisoners have been executed after procedures which were manifestly unfair. Cases have been heard in secret, without adequate legal representation for the defendant and sometimes no legal representation at all, and before judges who are not always competent or independent. Proceedings have been speeded up, leaving insufficient time to prepare a defence. Defendants have been denied the right to appeal against conviction and sentence.

At least 37 countries have special or military courts empowered to pass death sentences without affording full fair trial safeguards or without the right to appeal. These courts have often supplanted the regular criminal courts and removed safeguards the criminal courts provided.

Often such courts are set up in times of political tension,

The right to a fair trial

Article 14 of the International Covenant on Civil and Political Rights (ICCPR) spells out standards for a fair trial. Anyone facing a criminal charge has a right to:

- a fair and public hearing by a competent, independent and impartial tribunal;
- be presumed innocent until proved guilty;
- be informed promptly of the nature and cause of the crimes with which the defendant is charged;
- have adequate time and facilities for the preparation of a defence;
- communicate with counsel of the defendant's choosing;
- free legal assistance for defendants unable to pay for it;
- examine witnesses for the prosecution and to present witnesses for the defence;
- have conviction and sentence reviewed by a higher tribunal.

during periods of civil unrest or after coup attempts. Often they operate in a highly-charged political atmosphere which militates against a defendant receiving a fair trial. Executions have been carried out within hours or even minutes of sentencing, leaving no time for those condemned to appeal or ask for clemency.

In the 10 years since the foundation of the Islamic

'A life spent without a cause is a curse...'

The best known political execution of recent times is that of Zulfikar Ali Bhutto, Pakistan's former Prime Minister, who was sent to his death in 1979. General Zia ul-Haq, the military leader who had deposed him in a coup, rejected appeals for clemency from the UN Secretary-General, Pope John Paul II and leaders of most European and Arab countries as well as the USA.

Less well publicized was the hanging, two years later, of Abdul Hameed Baluch. The government claimed his was not a political case, but Abdul Hameed believed he was dying for a political cause.

In one of the last letters he

wrote, in the death cell of Central Jail, Mach, in June 1981, Abdul Hameed begins:

"Now, as I write, there are armed men around, who watch my every action. I have eight hours to live. After these eight hours I shall be taken to the gallows. I do not regret nor do I think that I should get more time. For life spent without a cause and in captivity is a curse."

Abdul Hameed was a 21-year-old student president of the Baluch Student Organization. He was convicted of murder and sentenced to death by a special military court in Pakistan, the conduct of which did not conform to international standards for fair

trial. The name of his alleged victim was changed twice during his trial, both times because the man previously named was found to be alive.

The confusion over the victim's identity prompted the Baluchistan High Court to stay the execution and order that Abdul Hameed be retried by an ordinary criminal court. Three months later the Constitution was amended and new martial law provisions removed defendants' right to appeal to a higher tribunal against conviction by a military court. The same amendment removed two of the Baluchistan High Court judges.

Abdul Hameed appealed to the Supreme Court, but was executed before his appeal could be heard. He went to the gallows on 11 June 1981, amid widespread protests.



Abdul Hameed Baluch



Former government official Reginald Townsend, on trial for his life before a special military tribunal in Liberia in 1980. He was not allowed a lawyer and when he attempted to speak in his own defence he was ordered to "keep it short". He was executed shortly afterwards.

Republic of Iran in 1979, Amnesty International does not know of one instance where a political prisoner facing the death penalty has been defended by a lawyer.

After 1979 special courts, known as Islamic Revolutionary Courts, were set up to try people charged with a series of offences including crimes against state security and the Islamic offence of "corruption on earth" and being "at enmity with God", a broad term which could be applied to political opponents of the government. Thousands of political prisoners tried by these courts have been executed.

Often executions were carried out so soon after sentencing as to leave no time to appeal or petition for clemency. In some cases a presumption of the guilt of the accused meant that the trial lasted a matter of

minutes and consisted only of the reading out of the charge and the passing of sentence. Many prisoners were tried and executed in secret for their non-violent political opposition to the government and some are reported to have been executed for their religious beliefs.

Towards the end of 1988,

began to circulate that mass executions were taking place in secret. Amnesty International received reports that the bodies of executed prisoners were being buried in shallow mass graves. When the ban on prison visits was lifted only some visitors were able to see their relatives. Some were informed

sentences. Others had been imprisoned but never tried. They included an unknown number of prisoners of conscience.

Senior Iranian authorities made statements apparently defending the summary execution of political prisoners. In August 1988 the Iranian Chief Justice was reported to have said that public opinion favoured summary executions of some political prisoners. He was quoted as saying: "The judiciary is under very strong pressure from the public opinion asking why we even put them on trial, why some of them are jailed, and why all are not executed. The people say they should all be executed without exception".

Some of those executed were convicted on the basis of confessions extracted under torture. Iran is not the only country in which prisoners have been condemned to death on

In political cases executions are often carried out after unfair trials

Amnesty International received reports of a new wave of political executions in Iran, believed to be the largest number carried out since the early 1980s. Between mid-July and late October, family visits to political prisoners were banned and it was impossible to obtain precise information about the prisoners. At the same time reports

that the prisoners had been executed. They were given the prisoners' wills and belongings and informed where they had been buried. Others were given no information.

Most of the victims were associated with political organizations opposed to the government. Some had already been tried and were serving prison



The courtroom in Amasya, Turkey, filled with some 750 defendants from the town of Fatsa. They were charged with setting up a left-wing administration in the town. Eight of the defendants were sentenced to death in August 1988. The main evidence against them is contained in their "confessions", made under torture. Most of the 700 prisoners sentenced to death in Turkey since 1980 were convicted on evidence obtained under torture.



This photograph of the 1985 public execution of 10 convicted armed robbers in Calabar, Nigeria, was on sale in the town shortly afterwards. Many of those convicted by Nigeria's Robbery and Firearms Tribunals cannot afford defence lawyers and very low fees are paid to the lawyers the tribunals appoint to act for them. This frequently results in an inadequate defence.

evidence obtained under torture. In late 1986 Amnesty International received reports that at least two of 11 members of Kurdish opposition groups executed in Iraq between August and November had been tortured. Mahdi Ibrahim

Muhammad and 'Abd Taha Ibrahim were said to have had their finger nails extracted and their eyes gouged out.

Iraq is another country where prisoners on trial for their lives cannot expect a fair hearing. Most death sentences are

imposed by permanent or temporary special courts. Access to a government-appointed lawyer is severely restricted (in some instances confined to the day of the trial), and confessions extracted under torture are frequently used as a basis for conviction. Defendants charged with capital offences are frequently denied the right to call witnesses on their behalf or to submit evidence refuting the charges.

Prisoners' relatives have consistently testified over a number of years that they remained unaware of the fate and whereabouts of their relatives until they had either been released or executed. Thirteen members of the Kurdistan Popular Democratic Party were executed on 31 March 1985 although they had been sentenced to 15 years' imprisonment. Their relatives were only informed of the executions three days later, after the bodies were returned to them with instructions not to hold public mourning. Some families have been asked to make payments on receiving the bodies of their executed relatives to cover state expenses such as the cost of coffins and the bullets used to shoot them.

Amnesty International has also received reports of dozens of prisoners being executed after summary trials, and sometimes no trials at all. In one case 15 school and university students were reported to have been arrested and summarily executed in public in Arbil, northern Iraq. The incident took place shortly after an attempt on the life of the Governor of Arbil in late March 1986.

More summary executions were reported at the beginning of 1987. In one case, the 29 victims were young people, aged between 17 and 23. Their bodies were returned to their families at the end of January. Some had had their eyes gouged out and bore the marks of torture.

The 29 were among 300 youths and children reported arrested in September and October 1985 in Sulaimaniya, northern Iraq. The government has denied that the incident occurred, maintaining that "All children in the Iraqi province of Kurdistan enjoy the same care and protection without any

discrimination as all other Iraqi children". However, the fate and whereabouts of all but the 29 remain unknown.

When the death penalty is inflicted for other than political reasons it often becomes a lottery. Who lives and who dies is determined not only by the nature of the crime, but also by factors such as defendants' ethnic origin, political beliefs, financial means, or their value as objects of exemplary punishment. No criminal justice system has shown itself capable of consistently and fairly selecting who should live and who should die.

However elaborate are the procedures to try death penalty cases fairly, however many safeguards are included to ensure that no mistakes are made, they are worthless to a defendant whose lack of financial resources puts them beyond his or her reach.



Edward Earl Johnson died in Mississippi's gas chamber in May 1987. Lawyers who took over the final stages of his case said that his many appeals had been unsuccessful partly because of earlier legal mistakes.

Execution of the mentally ill

It is generally accepted that people who are not of sound mind should not be held criminally responsible for their acts. A related principle is that a prisoner under sentence of death who is of unsound mind should not be executed, on the grounds that such a person is incapable of understanding the nature of the punishment.

However there is no general agreement on how to diagnose insanity, or on the extent to which "diminished responsibility" should apply to lesser forms of mental illness or other abnormalities such as very low intelligence. In view of the scarcity of facilities for diagnosing mental illness in many parts of the world, it is likely that a substantial number of mentally incapacitated people are sentenced to death and executed.

In the USA, the evidence suggests that many prisoners under sentence of death may be mentally handicapped or suffer from mental illness. Since 1984 at least six people diagnosed as mentally handicapped or as borderline cases and at least five prisoners suffering from mental illness have been executed.

In Jamaica a number of prisoners are reported to have developed signs of mental illness while on death row and at least one mentally ill prisoner has been executed. Stafford Pyne was hanged on 28 June 1983 in St Catherine's Prison, Spanish Town, despite an opinion given by a psychiatrist five days earlier that he was suffering from schizophrenic illness. He had had a history of mental illness both in prison and before his arrest, for which he had received treatment as early as the age of 14.

In country after country it is the most vulnerable members of society, the poorest or otherwise disadvantaged, the least able to defend themselves, who pay the hardest price the state can exact. In Malaysia it is usually the small traders, the waitresses, the cobblers and the crabshells who go to the gallows for drugs offences, while the drugs barons remain at liberty.

In South Africa death



Mamike Moloise, supported by relatives, walks to Pretoria Central Prison, South Africa, on the day of her son's execution. Benjamin Moloise was hanged in October 1985, despite appeals by the United Nations Security Council and many governments. He was convicted of killing a security police officer. He denied the charge and claimed that he had confessed to it under duress.

sentences are imposed disproportionately on black defendants by an almost entirely white judiciary. Most black defendants are too poor to hire their own lawyers. If they are on trial for their lives the court will in practice appoint a defence lawyer to act for them, although it is not legally required to do so. However, court-appointed law-

national analysed the circumstances of more than 120 prisoners on death row in Jamaica. Most of them came from the very poorest sectors of the community and poverty had forced most of them to leave school at an early age. When arrested most were either unemployed, or employed in semi-skilled or unskilled work; some were

Judicial Committee of the Privy Council in England.

The legal aid fees paid to lawyers in Jamaica are extremely low, many times less than the minimum fee charged by a privately retained lawyer. As few experienced lawyers are prepared to take on such cases, they tend to be assigned to newly qualified, inexperienced lawyers. The very low level of funding means that the lawyers spend little time preparing the cases.

Prisoners and their families sometimes go to great lengths, selling their possessions or seeking help from relatives abroad, to try to raise money for private legal representation. In a number of cases the lawyers have withdrawn before the proceedings are over because their fees have not been paid in full. Several prisoners have been unrepresented at both their trials and their appeals, due to difficulties in raising or settling fees.

No criminal justice system has shown itself capable of consistently and fairly selecting who should live and who should die

yers are usually the most junior members of the bar and are paid much less than those hired by defendants themselves. Their fees allow little time for consulting with defendants before the trial and no money is available for preparing other aspects of the case such as interviewing witnesses, or investigating alibi or forensic evidence.

In 1988 Amnesty Inter-

small farmers.

Most prisoners in Jamaica are too poor to pay for private legal representation. They are represented by court-appointed legal aid lawyers at their trials and their first appeals against conviction and sentence to the Court of Appeal of Jamaica, but there is no financial aid for prisoners to take their cases to the final court of appeal, the

Doctors and the death penalty

Doctors are members of a profession whose aim is to preserve life. Many consider participation in an execution to be unethical and abhorrent.

Although in some countries the role of doctors is confined to certifying death, in others doctors take part in executions by examining prisoners before execution, monitoring the execution, and advising executioners whether to continue the process of killing.

The World Medical Association has declared "that it is unethical for physicians to participate in capital punishment, although this does not preclude physicians certifying death". The WMA resolution was passed in 1981. Medical organizations in over 20 countries are now on record as opposing the participation of doctors in execution.

Safeguards and restrictions on the death penalty

Although the community of nations has not yet decided to prohibit the death penalty outright, they have over the years agreed on a series of restrictions and safeguards relating to its use. Many of these measures have been included in the ICCPR and other human rights treaties. In 1984 the main measures were brought together in a list of safeguards on the application of the death penalty adopted by the United Nations Economic and Social Council. These safeguards were endorsed by the UN General Assembly later that year.

The ECOSOC safeguards stipulate that the death penalty must only be imposed for the most serious crimes "with lethal or other extremely grave consequences", and must not be

imposed retroactively. Prisoners must not be sentenced to death unless there is "clear and convincing evidence" of their guilt. They must be afforded "all possible safeguards to ensure a fair trial", at least equal to the safeguards contained in Article 14 of the ICCPR. Everyone sentenced to death must have the right to appeal to a higher court and the right to seek pardon or commutation of sentence. Executions must not be carried out while any appeal or petition for clemency is pending.

Under these safeguards no one may be sentenced to death for a crime committed when they were under 18 years old. Death sentences must not be carried out on pregnant women, new mothers or people who have become insane.

In the USA the quality of legal representation can be crucial in determining whether or not a death sentence is imposed. Here too, most defendants on capital charges cannot afford to retain private defence lawyers and are assigned court-appointed lawyers to represent them at trial. It is estimated that over 90 per cent of all prisoners sentenced to death in the USA have no financial resources of their own.

Court-appointed lawyers in the USA are paid far less than privately retained lawyers. Many have little or no experience in criminal law and lack

specialized field of practice and even the most well-intentioned attorneys often are unable to recognize, preserve and defend their clients' rights."

Capital defendants in the USA receive no aid for legal appeals beyond the confirmation of their sentences by the first appeal court. Prisoners who wish to appeal against conviction or sentence on constitutional grounds have to seek "volunteer" lawyers prepared to work without payment.

There is an exception to this. In Florida, which has one of the highest rates of execution, the state funds lawyers to take cases past the automatic first appeal stage, through a state office known as the Capital Collateral Representative.

This office was established in 1985 and currently employs 10 lawyers and several investigators. As a result of their efforts 50 per cent of death sentences have been reversed because of prosecutorial misconduct, ineffective defence counsel at trial or the discovery of new evidence. One prisoner had his conviction overturned and was released after spending 13 years on death row.

These results give an example of what can be achieved when expert criminal lawyers act for death row inmates. They also highlight the arbitrary nature of the death penalty. □

Why states kill

One of the most common justifications given for executing prisoners is that the death penalty is a valuable deterrent against crime.

The evidence, however, does not support the argument that the death penalty is a more effective deterrent against crime than other punishments. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act

find none who remembered thinking they might be sentenced to death before committing the crime. "Despite their knowledge of the existence of the death penalty", he concluded, all the prisoners had been "incapable, because of their impulsiveness and their inability to live except in the present, of being inhibited by the thought of capital punishment".

This is echoed in a speech made to the parliament of Papua New Guinea in 1980, by its then Minister of Justice. He said that most killings in the country were

Murders are often committed in moments of passion, when extreme emotion overcomes reason

of stealing. Some murderers are highly unstable or mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

Dr Sadataka Kogi, a Japanese prison psychiatrist, studied 145 convicted murderers between 1955 and 1957. He could

committed "under the sway of a violent emotion such as anger, the desire for revenge or fear of a sorcerer"; the death penalty was unlikely to be a deterrent "for those unplanned killings as a result of sudden outburst of emotion".

There is another flaw in the



In Cairo, prison officials prepare to execute Samiha Abdul-Hamid, convicted of murdering her husband. The death penalty is often described as an important deterrent against crime, but it is wrong to assume that those who commit serious crimes do so after rationally calculating the consequences.

Most US prisoners on capital charges cannot afford private lawyers

the resources to conduct an adequate defence. At least four prisoners who had inadequate legal assistance were executed during 1987. The previous year Supreme Court Justice Thurgood Marshall urged his colleagues to require that experienced criminal lawyers be appointed to defend prisoners on capital charges. He expressed the view that "Capital defendants do not have a fair opportunity to defend their lives in the courtroom... death penalty litigation has become a

argument that the death penalty deters would-be criminals. People who plan serious crimes in a calculated manner may decide to proceed despite the risk in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of punishment but to increase the likelihood of detection and conviction.

The death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify and incriminate them.

If the death penalty did deter potential offenders more effectively than other punishments, one would expect to find that in countries with similar legal systems, those which have the death penalty for a particular crime would have a lower rate of that crime than those which do not. Similarly, a rise in the rate of crimes hitherto punishable by death would be expected in states which abolish the penalty, and a decline in crime rates would be expected among states which introduce the punishment for those crimes.

However, recent crime figures from abolitionist countries fail to show that abolition of the death penalty produces a rise in the crime rate. In Canada, the homicide rate per 100,000 population fell from a peak of



Australian Nolah Blake, on her way to the Thai court where she and Thai national Supoj Kittidejdaunkern were sentenced to death for drug-trafficking in 1988. The death penalty is most often introduced today for drug offences.

3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.74 in 1983, and in 1986 it reached its lowest level in 15 years.

The offences for which the death penalty is most often introduced today are drug offences. Of the more than 20 countries which have introduced the death penalty for drug-related offences, 10 have done so in the past decade.

There are wide disparities in the way drug offences are punished. Some countries have not sentenced anyone to death, while others regularly carry out executions. Some national statutes restrict the death penalty to trafficking in poppy-based drugs; others include cocaine and even cannabis, a drug whose use in some countries is treated as a minor offence or is not even criminalized. Some

statutes attempt to limit the death penalty to the most serious offences by restricting it to cases involving more than a specified amount of drugs; some have no minimum amount or an amount so low that addicts can be punished by death with no specific evidence that they have engaged in trafficking.

In Malaysia the death penalty has been mandatory since 1983 for possessing drugs above a

Incapacitation

The death penalty, by permanently incapacitating a prisoner, obviously prevents that person from repeating the crime. But there is no way of assessing the likelihood of the prisoner repeating the crime if allowed to live nor is there any need to take the prisoner's life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries.

A recent study of 239 men released on parole at various times in the 1960s and 1970s after serving some part of a sentence of life imprisonment in Great Britain found that out of the 192 men who had been

convicted of murder, two had murdered again after release. Investigation of both cases revealed possible errors of judgment, either in the decision to release the men or in their subsequent supervision. Both men were back in prison, where they were likely to remain for the rest of their lives. In contrast, most of the other men released "settled back into the community quite well".

Incarceration in prisons and other institutions which isolate offenders from society has one great advantage over the death penalty as a means of incapacitation: the mistakes which result from fallible judicial systems can be corrected at least partially. But the death penalty takes the lives of offenders who might have been rehabilitated as well as the lives of the innocent.



Mihály Nyiri, sentenced to death in Budapest and executed in 1983 for the murder of a nine-year-old child. Execution obviously prevents a prisoner from repeating the crime. But there is no way of knowing that the prisoner would have done so were he or she allowed to live.

certain amount. An increasing number of people have been sentenced to death, more than 59 in 1988. For many years the government has been waging a highly publicized campaign against drug abuse. Posters are prominently displayed in ports, airports and in the streets drawing public attention to the mandatory death penalty. The Deputy Prime Minister has stated that "drug abuse is a threat to national security on a par with Communism". Many have been hanged, including a 68-year-old Chinese grandmother.

In spite of the executions carried out in Malaysia and elsewhere, there is no evidence of a decline in drug-trafficking which could be clearly attributed to the threat or use of the death penalty.

Death was the penalty for the illicit manufacture and sale of narcotics in the Philippines between 1972 and 1987. In a debate before its abolition, one of the men instrumental in introducing the death penalty for drugs offences explained why he had changed his mind. Commissioner Teodulo Natividad had written the Dangerous Drugs Act which, from 1972, provided the death penalty for manufacturers and sellers of narcotics. He said: "I remember the one who was executed, Lim Seng, and I hoped by his death there [would] be less narcotic addiction in our country, but today we have more. There is now a Narcotics Command, a whole Command to deal with narcotics addictions. So therefore the life of that man that was snuffed out to discourage drug addiction had been lost in vain..."

It is sometimes said that the



Relatives of Kehar Singh are stopped outside Tihar Central Jail, New Delhi. Kehar Singh and Satwant Singh were hanged for the murder of former Indian Prime Minister Indira Gandhi. The assassination of public officials and other acts of political violence often lead to calls for the perpetrators to be killed in revenge. But such executions frequently lead to reprisal killings. After Kehar Singh and Satwant Singh were executed, Sikh opponents of the government lynched several Hindus.

death penalty is a useful tool in the state's efforts to deal with political violence — that the prospect of execution will deter violent political opposition.

Bombings, kidnapping, assassinations of public officials, aircraft hijackings and other politically-motivated acts of violence often kill or maim not only the intended targets of attack but bystanders as well. They often lead to calls for revenge, for the perpetrators to be punished with death. But, as public officials responsible for

fighting such crimes have repeatedly pointed out, executions are as likely to increase acts of terror as to stop them.

British authorities ruling Palestine in the 1940s hanged several members of the underground Zionist Irgun organization who had been convicted on charges of bombings and other violent attacks. Menachem Begin, former Irgun leader and later Prime Minister of Israel, told a former British government minister that executions had "galvanized" his

group, which subsequently hanged several British soldiers in retaliation. Menachem Begin was reported to have said: "[the hangings] got us the recruits that we wanted and made us more efficient and dedicated to the cause... you were not sentencing our terrorists to death, you were sentencing a lot of your own people and we decided how many".

In Angola in 1980 nine members of the opposition group UNITA were convicted of organizing a bombing campaign. The nine were executed on 22 August, the day after sentencing. On 23 August UNITA "sentenced" and immediately executed 15 people described as government soldiers.

The first major report on the death penalty prepared for the United Nations, published in 1962, concluded that "All the information available appears to confirm that [removing various offences from the list of capital crimes] has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death".

Over 20 years later, that conclusion has not changed. The most recent study of research findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention and Control in 1988, has concluded that "this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".



School students in China witness a prisoner being sentenced to death. Mass sentencing rallies attended by hundreds of people are held to publicly parade condemned prisoners before execution. However, official reports show that violent crime is rising despite the extensive use of the death penalty.

Retribution

When the arguments for deterrence and incapacitation are discounted, there is a more deep-seated justification for the death penalty: that of just retribution for the particular crime committed. Execution is deemed to be a repayment for an evil deed — by killing the prisoner society shows its condemnation of the crime.

Basing the death penalty on retribution makes impossible demands on the criminal justice system. Demand for the death penalty as a matter of justice runs up against the injustice and arbitrariness of the penalty in practice. A society's restraints on using the death penalty in certain cases, along with the biases inherent in all legal systems and the sheer fallibility of human judgment, preclude the possibility of creating a system which can mete out death in a fair way.

In the USA Thorsten Sellin examined statistics on prosecutions, convictions and executions for murder and concluded that "retributive capital justice is tainted by bias and by the influence of factors beyond the control of courts of justice, such as the poverty of the defendant, which prevents him from engaging competent counsel skilled in the art of criminal defence".

He noted that relatively few killers were executed. In California, for example, of 7,053 people imprisoned between 1950 and 1973 for felonious homicide, 61 per cent were sentenced to death and only 1.5 per cent were executed. More recent figures show a similarly stark contrast: although 25 prisoners were executed in the USA in 1987, the Federal Bureau of Investigation reported 20,100 murders and non-negligent manslaughters during the same year. The wide gap between the number of executions and murders in the USA indicated to Thorsten Sellin "an actual, if not philosophical, repudiation of retribution by death... we seem to be torn between a desire to see murderers suffer the ultimate penalty and a reluctance to exact it. Even those who ardently advocate retribution by death often paradoxically stress that it should be used sparingly, for fear that otherwise it would dull our moral sensitivity and lose its terrifying force".

Such analyses suggest a sacrificial element in the use of the death penalty. Since it is impossible to follow through fully the logic of the retribution argument, a token number of prisoners are executed to satisfy



In Beirut, Lebanon, in 1983, Ibrahim Tarruf fought his execution to the last, screaming his innocence. He had been convicted of murder. One justification of 'red' for the death penalty is that by killing the prisoner society shows its condemnation of the crime. But execution can never be a condemnation of killing — it is killing.

threshold for deciding who lives and who dies. In Singapore and Malaysia, for example, the death penalty is mandatory for possession of more than 15 grams of heroin: only a tiny difference in the amount found on a person can mean the difference between life and death.

'As one whose husband and mother-in-law have both died the victims of murder assassination, I stand unequivocally opposed to the death penalty... An evil deed is not redeemed by an evil deed of retaliation.' Coretta Scott King, widow of Martin Luther King, Jr

popular demand.

Even a decision to execute everyone convicted of a particular crime would fail to meet the fundamental requirement of fairness. By ruling out mitigating circumstances and refusing to consider the limitations of any attempt to define crimes precisely, mandatory death sentences render judicial fairness even more difficult to achieve. They may create an arbitrary

in its simplest form the argument for retribution is often an mere desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction, in public policy and legal codes, of personal vengeance.



Bulletproof in Malaysia warning that drug traffickers will hang. The same message is painted on the country's stamps.

Towards a world without executions

Amnesty International opposes the death penalty in all cases. In Amnesty International's view, the death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life. Amnesty International calls



Joyce Mafgesi hears the news that her brother Francis has been saved from South Africa's gallows. Francis (Jim) Mafgesi is one of the Sharpeville Six—six black prisoners who were convicted of murder on the grounds that they shared a "common purpose" with the actual killers of a black town councillor. The case provoked an international campaign to save their lives and their death sentences were commuted in November 1988.

on all countries which retain the death penalty to:

- stop all executions immediately;
- commute all outstanding death sentences;
- abolish the death penalty in law.

The United Nations has endorsed the goal of abolition. In 1977 the UN General Assembly reaffirmed its main objective of "progressively

restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment."

Restrictions and safeguards on the application of the death penalty, which must be observed in all cases, have been adopted at international and regional levels. In accordance with internationally agreed upon human rights standards, governments which have not yet abolished the death penalty are obliged to ensure that:

- every prisoner accused of an offence punishable by death is afforded all facilities for a fair trial in accordance with international standards before an independent, competent and impartial tribunal;
- everyone sentenced to death has the right to appeal to a court of higher jurisdiction;
- everyone sentenced to death has the right to seek pardon or commutation of sentence;
- the death penalty is not used against people who were under 18 years old at the time of their offence;
- the death penalty is not used against people who are not of sound mind;

■ the scope of the death penalty does not extend beyond the "most serious crimes"—those with lethal or other extremely grave consequences.

The death penalty has been abolished in practice in over 40 per cent of the world's countries. In others, governments have taken various measures to restrict the use of the death penalty. Amnesty International welcomes any measures which save the lives of prisoners who would otherwise have been executed and which bring closer the goal of worldwide abolition. Such measures include:

- increased use of clemency in death penalty cases;



International public opinion generates pressure to stop executions. Lawyer Vera Chirwa and her husband, a former Minister of Justice, were sentenced to death in Malawi in 1981. Their sentences were commuted in 1984 after international appeals.

■ progressive restriction of the number of offences punishable by death;
 ■ establishment of official commissions or similar bodies with the task of examining aspects of the death penalty such as its relation to crime rates, its discriminatory application to various sections of the population and the suitability of alternative punishments. There should be a moratorium on executions pending the outcome of these discussions.

An historic step towards abolition...

On 28 April 1983 the movement for worldwide abolition of the death penalty took an historic step. On that day the Sixth Protocol to the European Convention on Human Rights was opened for signature by member states of the Council of Europe. It was a decisive rejection of the abuses of the death penalty during the Second World War.

The Sixth Protocol is the first binding international agreement for the abolition of the death penalty. By ratifying it, a state accepts an obligation under international law to abolish the

death penalty for peacetime offences.

Twelve of the 22 Western European countries belonging to the Council of Europe had ratified the Sixth Protocol by January 1989. Three other member states had signed the Protocol and indicated their intention to ratify it at a later date. Western Europe is on its way to becoming the first region of the world to free itself completely from judicial executions.

Two similar treaties are in preparation. They are a draft optional protocol to the Inter-

national Covenant on Civil and Political Rights, due to be considered by the United Nations in 1989, and an optional protocol to the American Convention on Human Rights, to be discussed by the Organization of American States in 1989.

Abolitionist treaties strengthen the prohibition of the death penalty by adding to national abolition the force of international law. Accession to these treaties can help a country which has abolished the death penalty to resist any calls for its reintroduction. □



An all-night vigil in protest at an execution in South Carolina, USA. The political will to abolish the death penalty comes ultimately from within a country. International treaties and resolutions which abolish or restrict the death penalty provide a framework for safeguarding human rights. However, it is a country's citizens and leaders who must decide that ending executions will protect human rights.

Information from Amnesty International

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ON THE FRONT LINE:
Law Enforcement Views
on
the Death Penalty

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February 1995

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ON THE FRONT LINE: *Law Enforcement Views on the Death Penalty*

"I think that the only purpose for the death penalty, as I see it, is vengeance--pure and simple vengeance. But I think vengeance is a very personal feeling and I don't think it is something that civilized government should engage in"

-Janet Reno, Attorney General of the United States¹

"The death penalty does little to prevent crime. It's the fear of apprehension and the likely prospect of swift and certain punishment that provides the largest deterrent to crime."

-Frank Friel, Former Head of Organized Crime Homicide Task Force, Philadelphia²

"Take it from someone who has spent a career in Federal and state law enforcement, enacting the death penalty . . . would be a grave mistake. Prosecutors must reveal the dirty little secret they too often share only among themselves: The death penalty actually hinders the fight against crime."

-Robert M. Morgenthau, District Attorney, Manhattan, NY³

"I am not convinced that capital punishment, in and of itself, is a deterrent to crime because most people do not think about the death penalty before they commit a violent or capital crime."

-Willie L. Williams, Police Chief, Los Angeles, CA⁴

INTRODUCTION

A new national survey of police chiefs from around the country discredits the repeated assertion that the death penalty is an important law enforcement tool. While politicians have extolled the importance of capital punishment in fighting crime, they have failed to assess the actual priorities of those in law enforcement and have saddled the taxpayers with an enormously costly death penalty at the expense of more effective crime fighting strategies.

In January, 1995, Peter D. Hart Research Associates conducted a national opinion poll of randomly selected police chiefs in the United States. In that poll, the chiefs had the opportunity to express what they believe really works in fighting crime. They were asked where the death penalty fit in their priorities as leaders in the law enforcement field. What the police chiefs had to say may be surprising to many lawmakers, and to much of the public as well. The Hart Poll found that:

- Police chiefs rank the death penalty last as a way of reducing violent crime, placing it behind curbing drug abuse, more police

officers on the streets, lowering the technical barriers to prosecution, longer sentences, and a better economy with more jobs.

- The death penalty was rated as the **least cost-effective** method for controlling crime.
- Insufficient use of the death penalty is not considered a major problem by the majority of police chiefs.
- Strengthening families and neighborhoods, punishing criminals swiftly and surely, controlling illegal drugs, and gun control are considered much more important than the death penalty.
- Although a majority of the police chiefs support the death penalty in the abstract, when given a choice between the sentence of life without parole plus restitution versus the death penalty, **barely half of the chiefs support capital punishment.**
- Police chiefs do not believe that the death penalty significantly reduces the number of homicides.

- Police chiefs do not believe that murderers think about the range of possible punishments.
- Debates about the death penalty distract Congress and state legislatures from focusing on real solutions to crime.

In sum, while many police chiefs support the death penalty philosophically, a strong majority do not believe that it is an effective law enforcement tool in practice.

In the report below, the various findings of this poll will be explored in depth, along with a broader analysis of what really works in reducing crime. The results of this opinion poll are confirmed by the statements of individual leaders in the law enforcement community, by research in the field of criminology, and by the recommendations of many of the nation's leading law enforcement agencies.

LAW ENFORCEMENT PERSPECTIVES ON FIGHTING CRIME

A National Poll of Police Chiefs in the U.S.

In 1994, crime was the nation's number one concern. Despite political gridlock on many other issues, President Clinton was able to move a \$30 billion crime bill through Congress, including a major expansion of the federal death penalty. The elections in November produced a cascade of candidates tripping over each other to sound even tougher than their opponent on crime. Campaign advertisements reached new

lows in mongering fear in the electorate in order to boost the chances of "law and order" politicians. Candidates used the death penalty as a club, even against those who supported it.

But few, if any, politicians took the time to ask those in law enforcement what they thought would really work in preventing crime. Was the death penalty, in fact, the top

priority for law enforcement that it was for the politicians?

Police Views on Crime Prevention

Law enforcement officers are society's front line in fighting crime. They see it up close every day, and they have a personal stake in reducing violence. So, it is natural to ask them: "What, in your opinion, works in the battle against crime?"

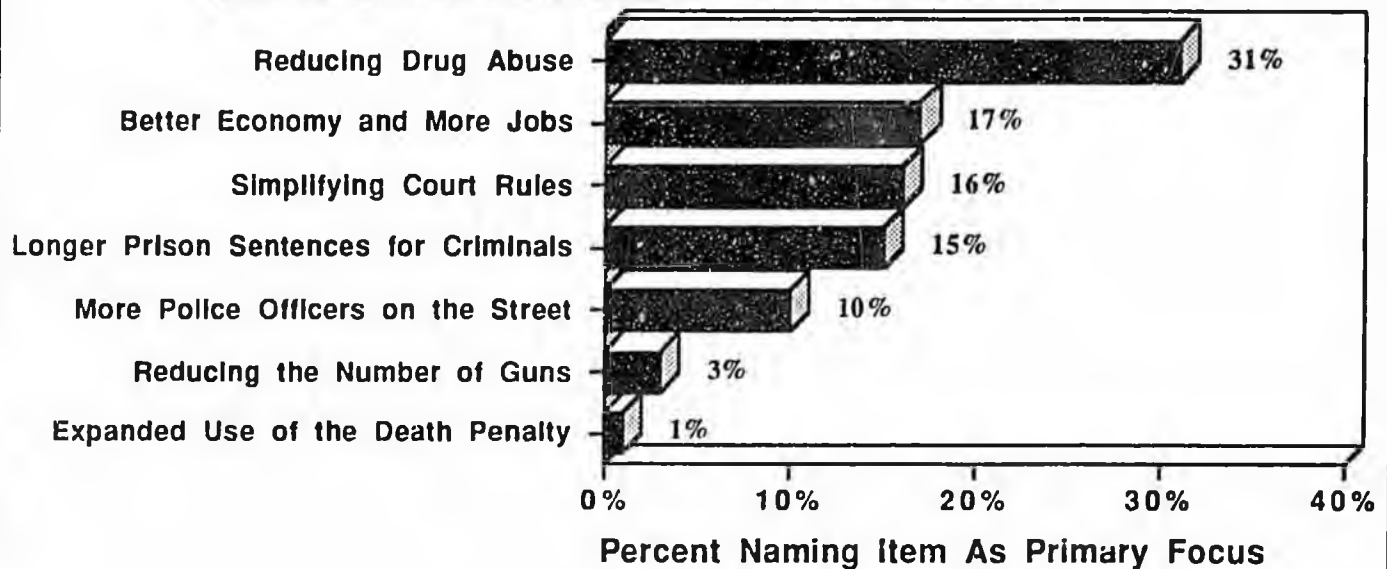
This question was approached from a variety of directions. Police were first given an open-ended opportunity to state the areas that would have the biggest impact on reducing violent crime in their jurisdiction. Sentencing reform, including truth in sentencing, elimination of parole and stiffer sentences was the most often cited area of reform (33% of respondents). Other areas of emphasis included the development of family values and parenting skills (23%), education (15%), and more police (13%). The death penalty was mentioned by fewer than 2% of the chiefs and followed twenty-five other areas of concern.

The police chiefs were also asked to select their primary

choices from a list of possible ways to reduce violent crime. The need to reduce the prevalence of drug abuse was their first priority. They also chose longer prison sentences for criminals, fewer technical legal barriers to the prosecution of criminals, more police officers on the street, a better economy with more jobs, and reducing the number of guns over an expanded use of the death penalty as better ways to lower crime. Capital punishment ranked a distant last, with only 1% of the chiefs citing it as their primary focus for stopping violent crime. These results are illustrated in Figure 1 below.

In a similar vein, the poll explored what the police chiefs see as the main obstacles to their success as they try to protect citizens and fashion a safer society. Again, drug and alcohol abuse surfaced as the most frequently mentioned problem facing police forces today. Fully 87% chose this as a serious problem (*i.e.*, "top two or three problems" or as a "major problem") which they encounter in their work. Family problems or child abuse was the second major obstacle for police, with 77% citing this as a serious problem in their jurisdiction.

Figure 1 Primary Focus for Police Chiefs in Reducing Violent Crime



The police chiefs were evenly split between those stating that a lack of law enforcement resources was a serious problem (49%) and those who thought it was at most a minor problem (50%). About 45% of the police chiefs stated that the availability of too many guns was a serious problem. Interestingly, most of the chiefs did not see gangs as a major problem in their efforts. Only 7% reported that gangs were one of their top two or three problems.

Other areas which were cited as major problems included crowded courts and slow justice. On the other hand, ineffective prosecution and high unemployment were only rated as minor problems. Again, the death penalty ranked near the bottom as a serious concern for law enforcement officers. Insufficient use of the death penalty was rated as either a minor problem or no problem at all by 63% of the respondents. (See Figure 2).

Figure 2 Major Problem Areas for Police Chiefs



■ Top Two or Three Problems ■ Major Problem

Cost-Effective Crime Prevention: Spending Priorities For Police

No one is more keenly aware of the fact that preventing crime costs money than police chiefs. Faced daily with budget decisions and the rising costs of salaries, training and equipment for a police force, chiefs must constantly balance emergency responses

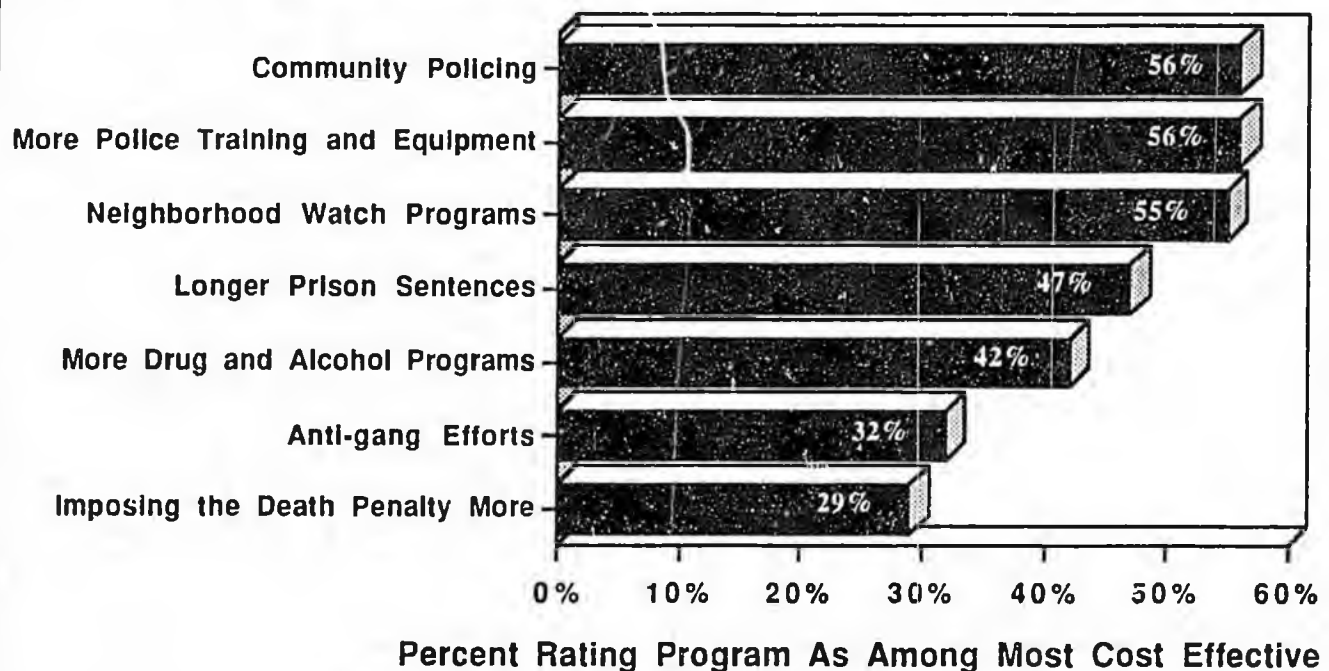
and long-term needs. The Hart Poll sought to discover not only what police chiefs ideally want in the fight against crime, but also what are the most cost-effective methods available to them.

Among strategies used for controlling crime, the death penalty ranked last in terms of its cost-effectiveness. The related areas of community policing and expanded training

with more equipment for police, received the highest cost-effective ratings by the police chiefs among ways to reduce crime. Fifty-six percent of the respondents rated these areas as cost-effective (i.e., they gave it an 8, 9, or 10 out of a possible 10). Imposing the death penalty more often was thought to be cost-effective by

only 29% of the chiefs. Neighborhood watch programs ranked almost as high as community policing in terms of effectiveness for the dollars spent. The chart below illustrates the relative cost effectiveness which the police gave to these various measures.

Figure 3 **Police Chiefs' Cost-Effective Priorities**



Reliable estimates indicate that the cost of the death penalty to taxpayers is over \$2 million per execution, with the bulk of the costs occurring at the trial level.⁵ That figure is a measure of the extra costs

attributable solely to capital punishment, beyond the costs of a typical murder case without the death penalty and the costs of incarceration resulting from a life sentence.

There are increasing demands for the limited crime fighting resources. Many states and counties are strapped for funds and are facing severe budget crises. Hard choices have to be made among various strategies for fighting crime. If \$2 million is spent on the death penalty, then that same money is not available for more police officers, or for bullet proof vests, or for speedier trials, or neighborhood watch programs, or community policing.

The average salary for a new police officer is about \$42,000 per year, including benefits.⁷ Thus, \$2 million translates into approximately 48 additional police officers, a far more likely and immediate deterrent to crime than one remote execution. Similarly, the same \$2 million could buy thousands of bullet-proof vests, or provide improved lighting in high-crime areas, or could be used as seed money for neighborhood watch programs.

Community Policing: Experience Supports Chiefs' Priorities

In the survey, police chiefs voiced their support for more police on the streets, and for

community policing in particular, as an effective way of fighting crime. The value of community policing is confirmed by success stories from various communities. Community policing has been cited by a number of cities as the chief reason why they have experienced a reduction in crime.

Community policing was introduced in New York City in 1990 and for four years since then crime has gone down in virtually every category.⁸ Boston, too, cited the expansion of its police force as one reason for its drop in crime.⁹ In Fort Worth, Texas, crime dropped by 24 percent in 1993 to its lowest level in ten years. Police cited the department's involvement in the Justice Department's "Weed and Seed" program, employing a combination of drug interdiction and social programs in targeted areas. They also added 55 officers designated as neighborhood patrol officers and utilized 1,500 community residents in a "Citizens on Patrol" program.¹⁰

In San Jose, California, community policing was credited with an 11 percent drop in crime.¹¹ In Prince George's County, Maryland, police Capt. Terry Evans described community policing

"It currently costs three times as much -- more than \$2 million per inmate -- to carry out the death sentence than to keep an inmate in prison for 40 years. In other words, it's cheaper to lock 'em up and throw away the key. . . . it's something to consider."

-Former Texas Attorney General, Jim Mattox⁶

as, "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around."¹²

Lee P. Brown, former N.Y. City Police Commissioner, stressed the preventive power of community policing: "I can assure you that in the end the community police officer permanently assigned to the neighborhood is a better deterrent to unrest than a SWAT team waiting in the wings."¹³

In another survey of police officers, this one focusing on officers in Texas and California, Dr. Joseph Zelan found that 78 percent of police officers viewed community policing as positive, and only 1 percent of the respondents were very negative about it. Almost 60 percent of those surveyed believed that community policing would reduce crime rates.¹⁴

Detering Crime

One of the principal reasons that those in law enforcement are not enamored of the death penalty is that they do not believe it is a deterrent to crime. Law enforcement officers believe that the most effective deterrent to crime is swift and

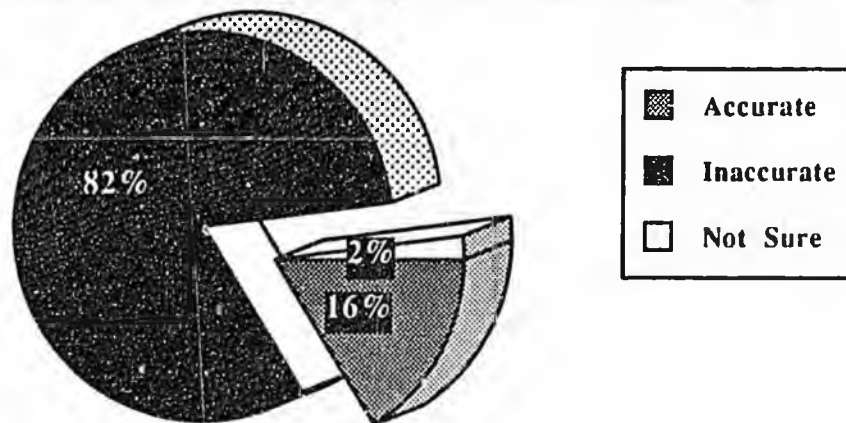
sure punishment. When asked which societal or legal changes would have the greatest impact on reducing violent crime, police chose strengthening families and neighborhoods, along with swift and sure punishment for offenders, as the means that would bring about the most significant effects.

Police wanted more control over illicit drugs, greater latitude for judges in criminal cases, greater economic opportunity, and a reduction in the number of guns in circulation. Expanding the death penalty, on the other hand, was not thought to have a big impact on crime reduction.

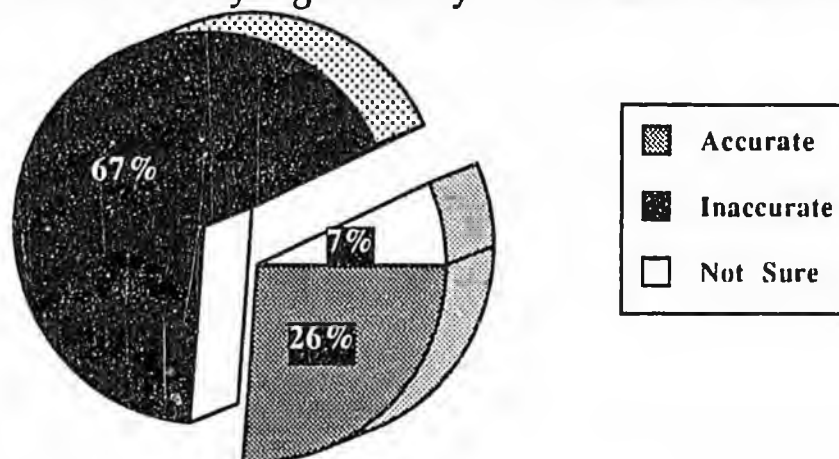
Over two-thirds of the police chiefs did not believe that the death penalty significantly reduces the number of homicides. About 67% said that it was not one of the most important law enforcement tools. And well over 80% of the respondents believe that murderers do not think about the range of possible punishments before committing homicide. The figures below illustrate the lack of confidence which police chiefs place in the death penalty as a deterrent.

Fig. 4 Dispelling the Myths About the Usefulness of the Death Penalty:

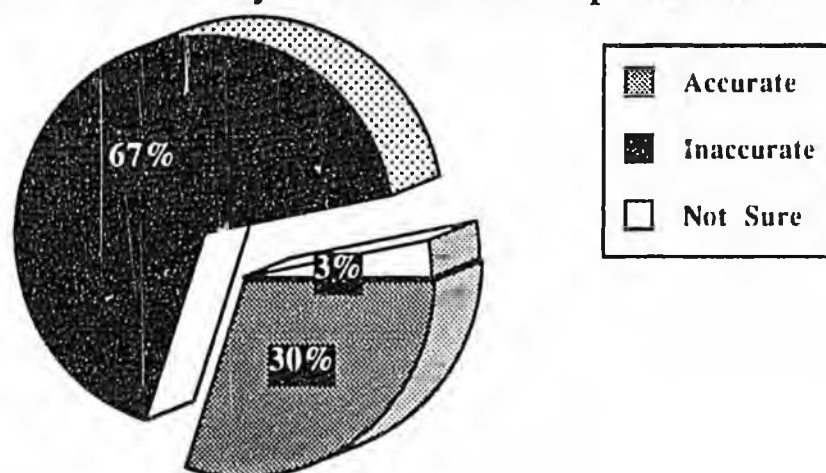
Myth I: Murderers Think About Possible Punishments



Myth II: Death Penalty Significantly Reduces Number of Homicides



Myth III: Death Penalty Is One of Most Important Tools



One of the many problems with the death penalty is that it is anything but swift and sure. Even under current proposals for restricting death penalty appeals, the sentence would be carried out years after it is imposed, on relatively few of all the convicted murderers, and with a substantial likelihood that the sentence will be overturned before the execution is carried out. Sentences of life without parole, in contrast, begin immediately upon sentencing and are rarely overturned on appeal.

Capital cases are a nightmare for the entire justice system. Police chiefs recognize that death penalty cases are particularly burdensome in the early stages. Two-thirds of the police chiefs polled said that death penalty cases are hard to close and take up a lot of police time.

Jim Mattox, former Attorney General of Texas, who supported the death penalty during his term of office and oversaw many of the state's first executions after the death penalty was reinstated, does not believe that murderers in Texas are deterred by the death penalty. Mattox interviewed nearly all the people executed in Texas between 1976 and 1988 and concluded that the sentence of death never crossed

their minds before their crime¹⁵: "It is my own experience that those executed in Texas were not deterred by the existence of the death penalty," he said. "I think in most cases you'll find that the murder was committed under severe drug and alcohol abuse."¹⁶

Lieutenant Gregory Ruff, a police officer in Kansas for 23 years, agrees: "I have seen the ugliness of murder up close and personal. But I have never heard a murder suspect say they thought about the death penalty as a consequence of their actions prior to committing their crimes."¹⁷

Willie Williams, Chief of Police in Los Angeles, echoed the same theme from his years of experience: "I am not convinced that capital punishment, in and of itself, is a deterrent to crime because most people do not think about the death penalty before they commit a violent or capital crime."¹⁸

Youth and the Culture of Violence

Another reason why the death penalty fails as a law enforcement tool is that one of the most violent segments of the population is the least

"I have seen the ugliness of murder up close and personal. But I have never heard a murder suspect say they thought about the death penalty as a consequence of their actions prior to committing their crimes."

*-Police Lieut.
Gregory Ruff,
Kansas*

likely to be deterred by prospective punishments. Many who might face the death penalty live in a culture of violence. The leading cause of death among young black men, for example, is murder.¹⁹ They are more likely to be killed by a rival gang member or by a drug dealer whom they double-crossed than by the state. James Fox, dean of the College of Criminal Justice at Northeastern University, has noted the fast growth in violent crime among teenagers: "Many of them face death every day of their lives. They don't think about the possibility -- as remote as it is -- that they'll someday die for a crime. These kids are all armed and in gangs, and they worry about dying next week."²⁰ In such an environment, the threat of the death penalty adds little to the danger.

The Hart survey showed that police chiefs are very much aware of the problems among youth today. Strengthening families, neighborhoods and churches were among their top priorities throughout the poll. In the open-ended question about changes which would most likely reduce violent crime, police mentioned concerns about the needs of young people and juvenile offenders

ahead of a desire for more police or financial resources.

Richard H. Girgenti, the New York State Director of Criminal Justice, noted that "[d]emographics have always been the best predictor of future crime."²¹ In preparing for challenges in combating crime in the next decade, it is sobering to note that murders by those between the ages of 14 to 17 grew by 124% between 1986 and 1991, while murder among adults 25 and over actually declined.²² Since many teenagers are not even legally eligible for the death penalty, much less deterred by it, and since the number of teenagers in the population will be growing tremendously in the next 10 years, more creative approaches to preventing violent crime are essential.

Deterrence of Police Killings

Even when it comes to the killing of a police officer, the death penalty is not a deterrent. Texas, by far the leading death penalty state, for the past six years has also been the leading state in the number of its police officers killed. By comparison, last year New York, with no death penalty, had about one

third as many officers killed as Texas.²³

A recent study of the deterrence value of the death penalty published in the *Journal of Social Issues* surveyed a 13-year period of police homicides. The researchers concluded: "[W]e find no consistent evidence that capital punishment influenced police killings during the 1976-1989 period. . . . [P]olice do not appear to have been afforded an added measure of protection against homicide by capital punishment."²⁴

Gun Control

In a nation with over 200 million firearms, gun control is also a priority among many law enforcement agencies. About 45% of police chiefs listed the easy availability of guns as a major problem in fighting crime, though only 38% thought that reducing the number of guns would have a

big impact on crime. The International Association of Chiefs of Police, the largest such organization in the world, called for strict control of certain weapons:

"The deadly flow of military assault-type automatic and semi-automatic weapons onto the streets of America and into the hands of violent criminals means that all too frequently the superior firepower belongs to the criminals, not law enforcement."²⁵ They called

"Many politicians say the death penalty would help us in New York by deterring would-be killers. I believe it would make things worse because it is another instruction in brutality. . . . From 1983 to 1992, states that resumed executions averaged three times as many police officers killed than have been killed in New York. How can anyone pretend that capital punishment will make us safer?"

-Thomas A. Coughlin
III, Former Commissioner,
New York State Dept. of
Correc'tional Services²⁸

for a complete ban: "Manufacture and sale of assault weapons to the general public should be prohibited."²⁶ Other police organizations have also supported tighter gun controls.²⁷

While the public is deeply concerned about violent crime, it is really gun-related crime that has shown the most dramatic increases. According to the FBI, the violent crime rate has actually decreased over

the past decade, but crimes with handguns have grown disturbingly. From 1987 to 1992, handgun crimes rose 55 percent.²⁹

A comparison of handgun deaths in the United States as contrasted with other countries demonstrates how serious a problem guns are. In 1992, the United States suffered 13,220 murders by handguns. By comparison, there were only 128 such deaths in Canada, 60 in Japan, only 33 in Great Britain, and just 13 in Australia.³⁰ Some experts in European countries attribute their lower murder rates to stricter gun controls.³¹

A recent profile of the criminal justice systems in the United States and England published by the U.S. Department of Justice highlighted other interesting differences between these two countries. Violent crime was significantly higher in the U.S., with the homicide rate in the U.S. being almost seven times that in England and Wales. England and Wales employed proportionately more law enforcement officers (256 per

100,000 population) than did the U.S. (240 officers per 100,000 population), and spent more per resident on their justice system than did the U.S.³² None of that spending went toward the death penalty, which has been abolished in the United Kingdom.

Support for the Death Penalty, Theoretically and Practically

A clear majority of the police chiefs in the Hart Poll say that capital punishment is not an effective law enforcement tool, even though they support it philosophically. The chiefs were asked which of three statements came closest to their own point of view:

- I support the death penalty and think it works well.
- Philosophically, I support the death penalty, but I don't think it is an effective law enforcement tool in practice.
- I oppose the death penalty.

"We may have put the caboose on the front -- we should have gone after guns first. . . . Decent folk are just tired of living under the threat of the gun."

-James D. Toler,
Chief of Police,
Kansas City,
Missouri³²

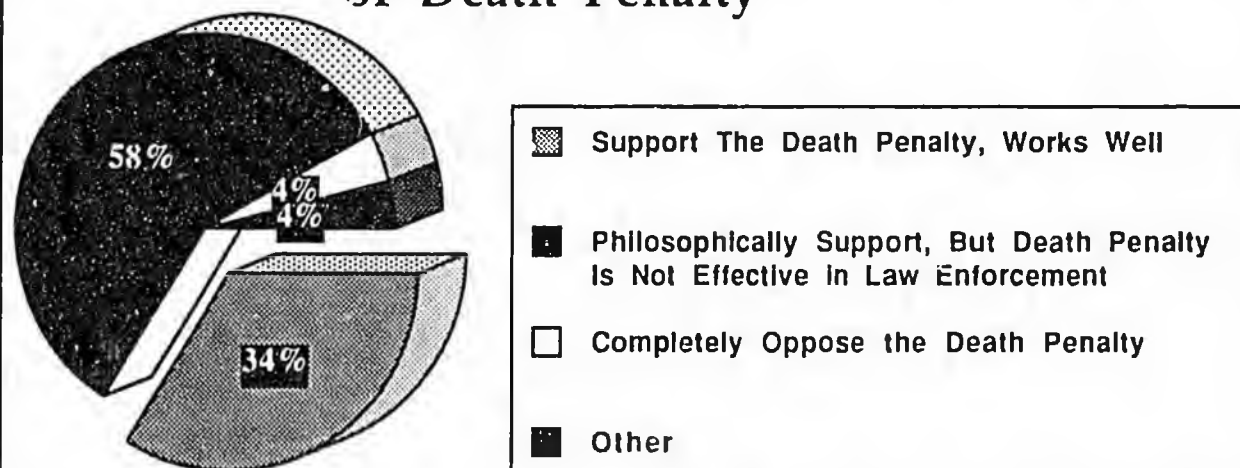
About a third of the respondents approved of the death penalty in practice. On the other hand, 58% of the police chiefs, while supporting the death penalty philosophically, did not think it was an effective law enforcement tool. When combined with the percentage who opposed capital punishment completely, this result corresponded well with the two-thirds of police chiefs who disagreed that the death penalty significantly reduces the number of homicides and the equal number who say that murderers do not think about the range of punishments before committing homicides. (See Figure 5).

Police chiefs recognize that the death penalty has been over-used by politicians. Ronald Hampton, President of the National Black Police

Association in Washington, DC, noted: "[The death penalty] is a political move, insensitive to the real needs of the people in this city."³⁴ Eighty-five percent of the chiefs polled believed that politicians support the death penalty as a symbolic way to show they are tough on crime. In line with their belief that capital punishment is not an important law enforcement tool, the majority of police chiefs believed that time spent on capital punishment in Congress and in state legislatures distracts from finding real solutions to the problems of crime.

Similar to the results of recent opinion polls showing the public's openness to death penalty alternatives,³⁵ the Hart poll showed that police chiefs believe in harsh punishment for those who commit murder,

Fig. 5 Police Chiefs Reject Effectiveness of Death Penalty



though, not necessarily, the death penalty. When offered the alternative sentence of life imprisonment with no possibility of parole, combined with mandatory restitution to the victim's family, support for the death penalty among police chiefs drops to only 50%. And among the majority of police chiefs who do not believe the death penalty is effective in practice, 52% would prefer the alternative sentence over capital punishment.

Law Enforcement Organizations' Proposals for Fighting Crime

Many organizations in the United States are committed to law enforcement and to finding solutions to the problems of crime and violence. In grappling with these issues, a number of these organizations have produced statements and studies on what can be done to reduce crime. The proposed solutions range from a fundamental restructuring of society to more immediate innovations that citizens can implement in their own neighborhoods. Rarely is the death penalty even mentioned in their discussions. Instead, the solutions are changes and

programs that affect a broad range of people and go to the roots of why violent crime has become so prevalent.

Because the root causes of violence are so deeply entrenched and so difficult to change, the death penalty presents a tempting "quick fix" to a complex problem. Nevertheless, many law enforcement groups have taken crime head-on and have proposed a variety of practical remedies.

In A National Action Plan to Combat Violent Crime, police chiefs from Atlanta, Boston, Louisville, Knoxville, Salt Lake City, Chicago, and Washington, DC, along with the U.S. Conference of Mayors, teamed together in 1993 to address the crime emergency and to make recommendations to the President of the United States. Their crime fighting priorities reflect many of the same concerns which were voiced by police chiefs all over the country in the Hart Poll:

1. Funds for additional police officers, and the implementation of community policing, with no cut in other programs that address urban needs and the root causes of crime.

2. Omnibus firearm control measures, including:

- Banning the manufacture, sale and possession of all semi-automatic assault weapons and their component parts.
- Registration of all newly purchased and transferred firearms
- Expansion of the Brady Law to all firearms sales.
- Liability of gun dealers for damages resulting from illegal sales.

3. Expanded drug control efforts, including:

- Expansion of treatment programs so that services are available to all in need
- Mandatory minimum sentences for all repeat drug sale convictions
- Establishment of additional drug courts

4. Restructuring and strengthening the criminal justice system, including:

- Emphasis on juvenile crime; greater prosecution of violent juvenile offenders as adults.
- Expansion of number of prosecutors, court services and personnel
- Expansion of boot camps and other alternatives to prisons

5. Long term crime reduction strategy:

- Reduce unemployment
- Community involvement in preventing crime
- Focus on young people: addressing family violence, jobs, preventing school dropouts
- Expansion of violence reduction and conflict resolution programs

6. Partnerships to prevent violent crime:

- More coordination of efforts among mayors, police chiefs and the federal leaders
- Improved sharing of intelligence and technologies
- Involvement of schools, public health departments, human service agencies, businesses and neighborhood organizations in crime prevention
- Confronting the entertainment industry on the proliferation of violence.³⁶

The International Association of Chiefs of Police (IACP) also issued a series of recommendations in 1993 in response to the problem of violent crime in America. The IACP convened a summit of police executives from around

the country. Participants included representatives of the Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the Drug Enforcement Administration, as well as police chiefs from major cities. Following the summit, the IACP made a series of recommendations, including:

1. **Declaration of a National Commitment** to address violent crime, including the establishment of a Presidential Commission on Crime and Violence.
2. **Restrictions on firearms** purchases, limiting sale and manufacture of automatic and semi-automatic assault weapons.
3. **Fighting drugs** through educational programs, interdiction and detection programs, and incarceration of violent and non-violent offenders.
4. **Combating the influence of gangs** by gathering intelligence, enacting new laws directed at illegal gang activity, enacting juvenile justice reforms, and encouraging multi-jurisdictional cooperation.³⁷

Many of the nation's largest law enforcement organizations supported the crime prevention measures in the recent federal crime bill. When these measures came under attack following the political shifts in the recent elections, the 250,000 member Fraternal Order of Police (FOP) issued a statement strongly opposing efforts to remove the new law's resources and crime prevention programs: "Crime problems require law enforcement *and* social remedies," said Richard Boyd, Director of Member Services for the National FOP.³⁸

One law enforcement group representing more than 35,000 individual members, the National Black Police Association, has a specific policy *against* the death penalty. Instead, they emphasize programs that control drugs, handgun control, and community policing to combat the problems of crime.³⁹

Other law enforcement organizations, such as The Police Foundation and The Police Executive Research Forum, are focused primarily on research. They explore topics and produce publications on such topics as community policing, the effects of drugs on crime, and a host of issues of

concern to those in law enforcement. Again, the death penalty is not one of their areas of concern.⁴⁰

Police chiefs are not alone in their strong reservations about the effectiveness of the death penalty. Robert Morgenthau, Manhattan's District Attorney for the past twenty years, recently said that the failure of the death penalty is actually a well kept secret among many prosecutors as well: "Prosecutors," he wrote in *The New York Times*, "must reveal the dirty little secret they too often share only among themselves: The death penalty actually hinders the fight against crime."⁴¹

Increasingly, crime prevention is a question of resources. "Executions," said Morgenthau, "waste scarce law-enforcement financial and personnel resources."⁴²

CONCLUSION

Police chiefs and law enforcement organizations are deeply concerned about solutions to the crime problem facing this country. They come to this crisis with years of experience on the front line of doing whatever is in their power to reduce crime. They support those programs that will have a clear impact. Community policing,

neighborhood crime programs, gun control, and a focused approach to certain kinds of crime, such as drug crime and youth crime, are among the approaches they recommend most strongly. They are equally clear that the problem of violence is not one which can be left to law enforcement to solve. Stronger families and neighborhoods, intervention on behalf of youth, and a sound economy with sufficient jobs are all necessary steps to a safer society.

Police chiefs are demonstrably less supportive of solutions like the death penalty, which merely sound tough but produce little return for the large amount of money invested. Some in law enforcement are totally opposed to capital punishment; others support it in theory. But few would give it the high priority accorded it in political campaigns and in legislative agendas designed mostly for sound bites and quick fixes.

Methodology of the Hart Poll

A total of 386 daytime telephone interviews were conducted with randomly designated police chiefs and county sheriffs throughout the U.S., excluding Alaska and Hawaii between January 17 and 24, 1995. The margin of error is no more than ± 6 percentage points with a 95% confidence level.

"The death penalty actually hinders the fight against crime."

-Robert M. Morgenthau,
Manhattan
District Attorney

Statement on Law Enforcement and the Death Penalty

A number of individuals who have been leaders in the law enforcement community have begun speaking out about the over-emphasis the death penalty has received from politicians campaigning for office. These officers and former officers agree that crime is a critical problem in America, but they do not see capital punishment as a likely solution. Regardless of their individual views on the acceptability of the death penalty, they do not consider it to be a strong deterrent to crime and believe that other, more effective crime prevention measures should be given priority.

A statement regarding law enforcement and capital punishment, along with the endorsers of that statement, is included below as an indication of the position of a growing number of members of the law enforcement community:

Law Enforcement Statement on Capital Punishment

As law enforcement officers, our primary concern is the protection of the public from crime. Punishment of offenders is a crucial element of this protection, and one which we believe is vitally important in deterring crime.

Recently, attention has focused on one form of punishment: the death penalty. As individuals, we differ widely in our belief in capital punishment. Many of us hold that the death penalty, if fairly and equitably administered, may have a role in American society. Others of us have sincere reservations about the use of this ultimate sanction.

As endorsers of this Statement, however, we share the belief that other law enforcement priorities are far more important and urgent than capital punishment. The death penalty absorbs an inordinate portion of the financial resources and valuable time of the criminal justice system. Because millions of dollars and countless hours of court time go toward the execution of a single individual, we believe that other dimensions of crime prevention are being short-changed.

In many communities, the public would be better served by measures such as the hiring of additional police officers, the implementation of community policing, drug interdiction programs, early childhood intervention programs, weapons control programs, speedier trials, or better funded probation and parole departments, than by an occasional death sentence on an isolated individual, to be carried out, if at all, only many years later. The death penalty may fascinate the media and the public, but it is truly peripheral to our efforts to make this society safer.

Too much attention on one extreme of law enforcement distracts the public from the more critical task of combating daily crime on our city's streets. State and federal legislatures spend an exorbitant amount of time debating the merits of the death penalty. The courts are burdened with lengthy death penalty trials and years of appeals. From the perspective of those of us who see crime up close on a daily basis, there are far higher priorities that deserve the public's attention and support.

We deeply understand the public's concern with the amount of random, violent crime prevalent in our society today. The solutions to this problem are not easy ones, and they require a commitment of money and resources. The sooner we order our crime prevention priorities toward solutions with proven records of effectiveness, the sooner we will be able to make a serious dent in America's crime problem.

ENDORSEMENTS

(List in formation)

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center provides in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is a project of the J. Roderick MacArthur Foundation.



**DON'T KILL
FOR US
ALASKANS SPEAK OUT
AGAINST THE
DEATH PENALTY**

**SPONSORED BY THE ANCHORAGE CHAPTER OF
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THE HUMAN RIGHTS ORGANIZATION**

DON'T KILL FOR US

ALASKANS SPEAK OUT AGAINST THE DEATH PENALTY

PHOTOGRAPHS BY: RACHEL KING

This collection of photographs introduces a number of Alaskans from different political ideologies, religious affiliations, and cultural and ethnic backgrounds who have raised their voices together with a simple plea: "DON'T KILL FOR US." As the messages here demonstrate, there are many reasons to oppose capital punishment. For some, it is simply wrong, morally, to take human life—whether the taking is done by a criminal or by government. For others, the death penalty is an ineffective and costly punishment that does nothing to make us safer and takes our limited time, attention, and resources away from meaningful crime prevention. For yet others, embracing killing as a way to combat killing makes no sense: history has shown, time and again, that violence begets violence, and that peaceful societies must abandon vengeance as a way to solve their problems.

Whatever your stand on the death penalty, we thank you for considering our message. We hope our voices will help foster discussion about the facts surrounding the death penalty, and help dispel the myths that perpetuate the death penalty in this country even as many of our world neighbors abandon it as an anachronistic and brutal practice. We welcome your comments and concerns.

**-Barbara Hood, Exhibit Coordinator
Amnesty International Group 224, Anchorage**

**This project was made possible through the generous support of the
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c/o P.O. Box 202296
Anchorage, AK 99520-2296
JANUARY 1996**



DON'T KILL FOR ME

I Oppose The Death Penalty

"Once the death penalty is executed and a mistake has been made, you can't say 'oops, I'm sorry,' and make everything right. The system does make mistakes. Too often in the criminal justice system it's the poor, the minorities, the uneducated, and the ones who don't have access to the best legal help who pay the price."

**-Arliss Sturgulewski
Former State Senator and
Republican Candidate for Governor**



DON'T KILL FOR ME

I Oppose The Death Penalty

"For a long time I hadn't made up my mind about the death penalty. Then my son Michael was found in Kincaid Park ten years ago, beaten to death. As I grieved for him, it became very clear to me that it is a horrible thing to take a person's life. Now I believe that to cut someone's life off, whether individually or in the name of the state, is a great wrong."

-Shirley Dickens, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"Capital punishment is a fallible and unjust way of trying to decrease crime. For many in the religious community, it also violates the deep belief in God as the creator and the redeemer of humankind. Instead of perpetuating the cycle of violence by taking human life, we must work to build communities of faith and trust where God's grace can heal the personal and spiritual wounds caused by crime."

**-Rev. Art Curlls
Unitarian Universalist Fellowship**

**-Rev. Dennis Holway
Turnagain United Methodist Church**

**-Sister Maureen McParland, O.P.
Catholic Archdiocese of Anchorage**

**-Rev. Carol Ann Seckel
United Methodist Church**



DON'T KILL FOR US

We Oppose The Death Penalty

"The death penalty is not a solution to violent crime in our rural communities; let's focus on preventive measures like supporting sobriety."

**-Professor Kimberly Martus
UAA Justice Center**

**-Caroline Hogan
UAA Justice Student**

**-Vicki Otte, Executive Director
Alaska Native Justice Center**

**-Heather Kendall, Attorney
Native American Rights Fund**



DON'T KILL FOR ME

I Oppose The Death Penalty

"The death penalty will not help law enforcement do its job. During my career as a Police Officer and Homicide Detective, I did not see one defendant in a murder case who would have been deterred from his crime by the death penalty. Killers don't think they're going to get caught, or just can't think past the act of murder itself. Jurors always hold the prosecution to a higher burden of proof in capital cases. Mark Furman, Rodney King and Ruby Ridge are names that inflict a gaping wound on the credibility of law enforcement—names that will contaminate jurors' minds and further elevate the burden of proof demanded of the prosecution. Why risk a murderer going free?"

**-Sgt. Joe Austin (Retired)
Anchorage Police Department**



DON'T KILL FOR ME

I Oppose The Death Penalty

"The death penalty does not deter crime—the only reasons for it are retribution or to prevent the few who might reoffend from killing again. Life sentences without the possibility of parole, or with parole eligibility after 50 years or more, meet both objectives as well as or better than the death penalty. Clearly, some people have demonstrated that there can be no place for them in society; this has always been true.

But killing them diminishes us all."

**-Susan Humphrey-Barnett
Former Commissioner of Corrections, State of Alaska**



DON'T KILL FOR US

We Oppose The Death Penalty

"The NAACP advocates an affirmative, comprehensive approach to crime problems, and specifically that of the Death Penalty. We are strong supporters of the Fairness in Death Sentencing Act (also known as the Racial Justice Act), and Habeas Corpus Reform. This means that the NAACP must become a more active participant in helping to shape policy decisions and legislative actions. In that regard, we support Alaskans Against the Death Penalty, and offer aid and assistance in bringing to light the plight of minorities in death penalty decisions, incarcerations, and crime bill legislation and policy."

Celeste Hodge, Vice President; J. Paul Johnson, President & Chairman of the Board; Cynthia Madrey, Executive Board Member; and Donna Jean Brooks, Legal Redress Chair

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
ANCHORAGE BRANCH**



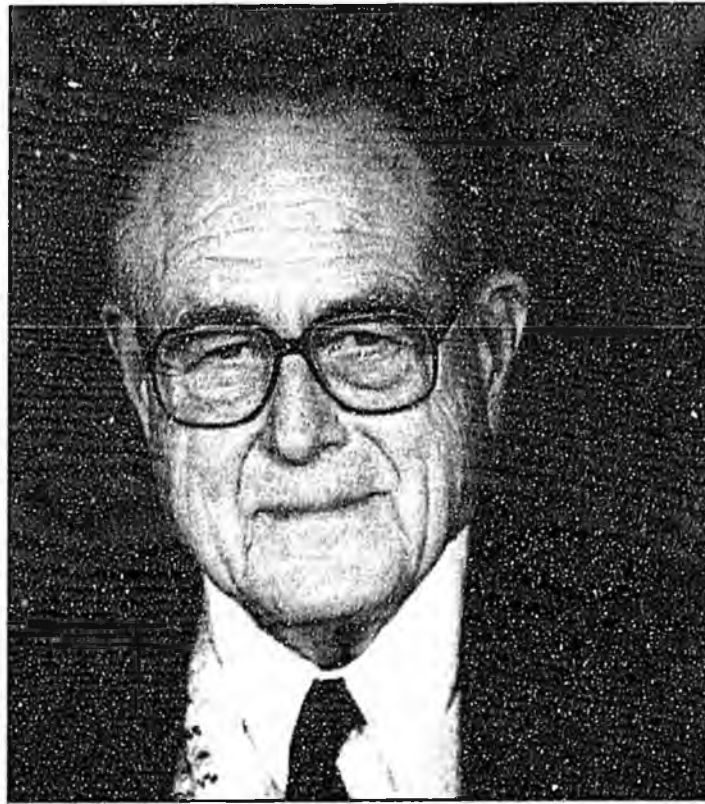
DON'T KILL FOR US

We Oppose The Death Penalty

"We do not believe that the judicial system should order anyone killed, for we do not believe that the courts are perfect. Imperfect justice could kill an innocent person. Such a tragedy is unjust and unacceptable. History proves that judicial systems have been used to kill for class revenge, for racism, for religious and cultural intolerance. Our judicial system should be a model that spurns those aberrations and, by example, will not permit a single unjust killing."

**-Cynthia Ducey, Attorney
Former Prosecutor
Anchorage District Attorney's Office**

**-David Stewart, Attorney
Former Prosecutor & Former
Alaska District Court Judge**



DON'T KILL FOR ME

I Oppose The Death Penalty

"In 1945, I was a young army doctor when our outfit surrounded and liberated a Nazi death camp. I experienced firsthand what can happen when a government gets into the business of executing its own people. Vengeance and killing come from humanity's dark side. An ideal government should function above them or run the risk of becoming like Nazi Germany. An ideal government's job is to very strongly protect its citizens from evildoers by separating them from the people, but this should be done without sacrificing the moral, humane virtues found in humanity's bright side."

-Dr. David Dolese, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"We in the Religious Society of Friends affirm that there is that of God in everyone. We seek to address the causes of violence between human beings, and utterly deny the taking of human life as a redress of wrongs."

**-Anchorage Monthly Meeting
Religious Society of Friends (Quakers)**



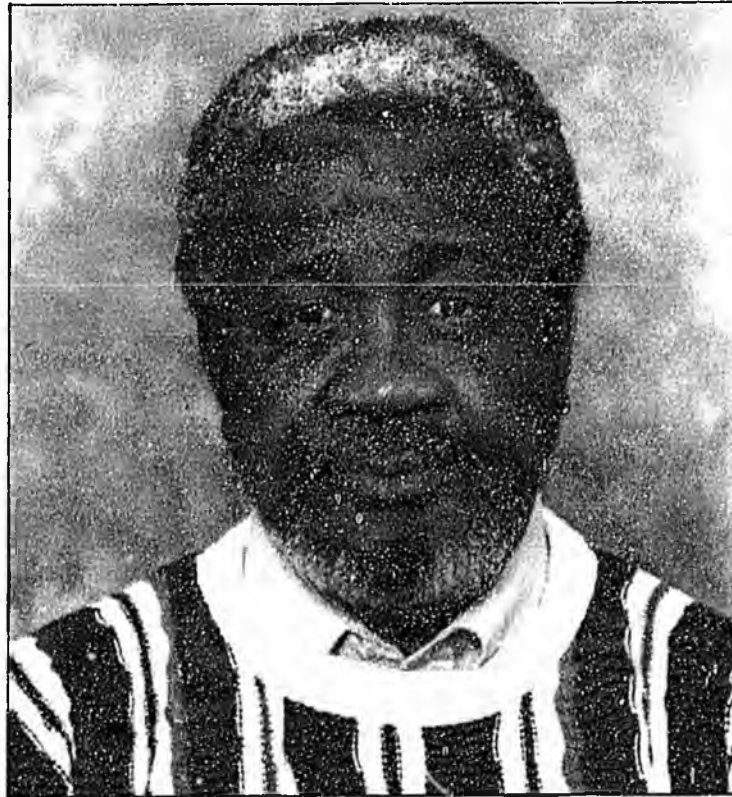
DON'T KILL FOR US

We Oppose The Death Penalty

"The death penalty causes some murderers to go free. When juries know their decision could result in the defendant's execution, they want to be absolutely, completely, 100% certain that he's guilty—and they can make the prosecutor's burden tougher than proof beyond a reasonable doubt. It's also simply wrong."

**-Peter Gruenstein
Former Prosecutor
Anchorage District Attorney's Office**

**-Dan Hickey
Former Chief, Criminal Division
State of Alaska, Dept. of Law**

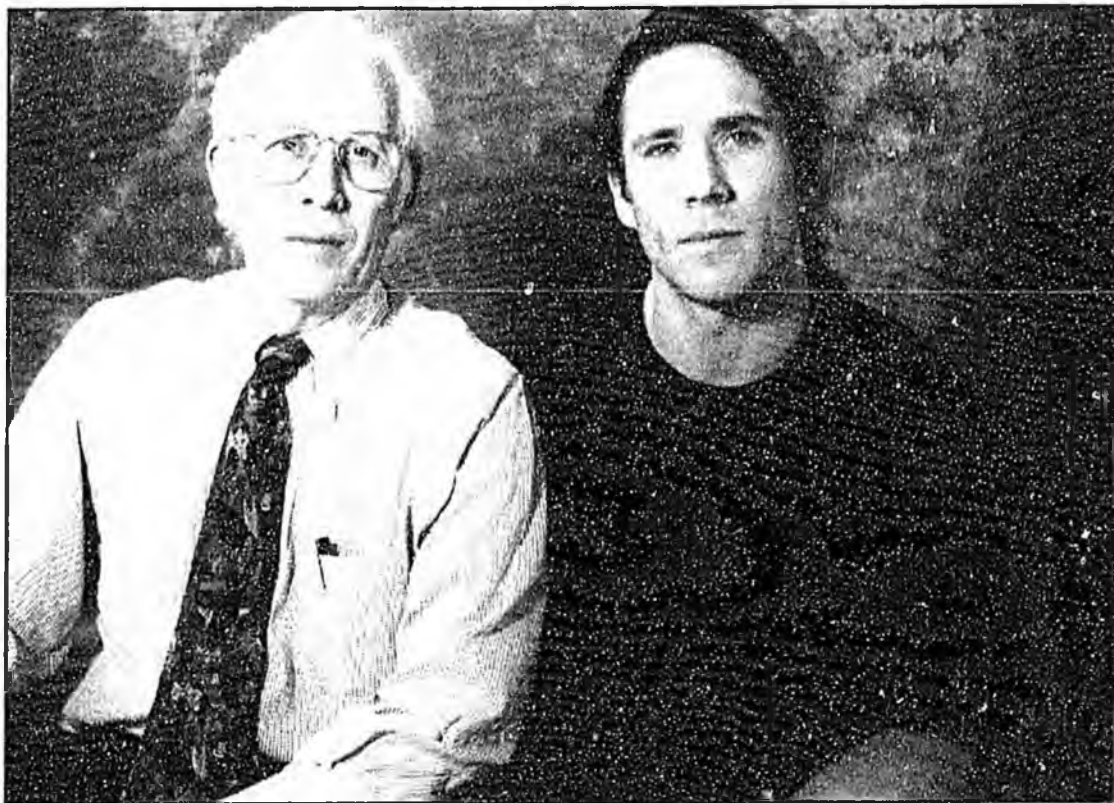


DON'T KILL FOR ME

I Oppose The Death Penalty

"I oppose the death sentence because it is not a deterrent; it is racially and ethnically biased; and it is fiscally prohibitive to the community that adopts it, due to the appeals process (for which the tax payers usually pay)."

**-R. William Green, Retired
Former Assistant Superintendent, Department of Corrections
State of Alaska**



DON'T KILL FOR US

We Oppose The Death Penalty

"Alaska's public revenues are falling and the state budget is not able to provide adequate funding for vital public interests, such as education needs. A 1993 Duke University study found that for each person executed in North Carolina, the state paid over \$2 million *more* than it would cost to imprison him for life. Alaska can use that money to deal with solutions to crime, like drug treatment programs or even prisons. In addition to many other reasons against it, Alaska cannot afford the death penalty."

-Hugh and Ian Fleischer, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"I was born and raised in New Hampshire, but I grew up in Vietnam. There I learned that violence is never the answer. Capital punishment is state-sanctioned violence."

-Michael LeMay, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"Having moved to Alaska from Texas, where executions are carried out on a regular basis but homicide rates remain among the highest in the world, we are proud to live in a state that had the foresight to abolish the death penalty in 1957. Not only do we hope Alaska never goes back to the death penalty, we also hope to see the death penalty abolished in the United States in our lifetime. But until the entertainment industry stops glamorizing violence, it won't happen."

-Kathy Harris-Kainer and Greg Kainer, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Humankind has yet to fashion a justice system sufficiently free of bias, error, and other human shortcomings to administer this sanction with the degree of perfection which its irremediability demands. That the world contains people who deserve to die, I do not deny; that the world contains people who can infallibly sort out such individuals from the rest of us, I do not believe."

-Andy Harrington, Fairbanks



DON'T KILL FOR ME

I Oppose The Death Penalty

"Being a parent is the most wonderful and the hardest thing. I try to teach my children respect for all human life, even the lives of those who have done wrong. Among other reasons, I oppose the death penalty because it violates the sanctity of life."

**-Kim McGee and her son Ari McGee-Vermont, 5
Anchorage**

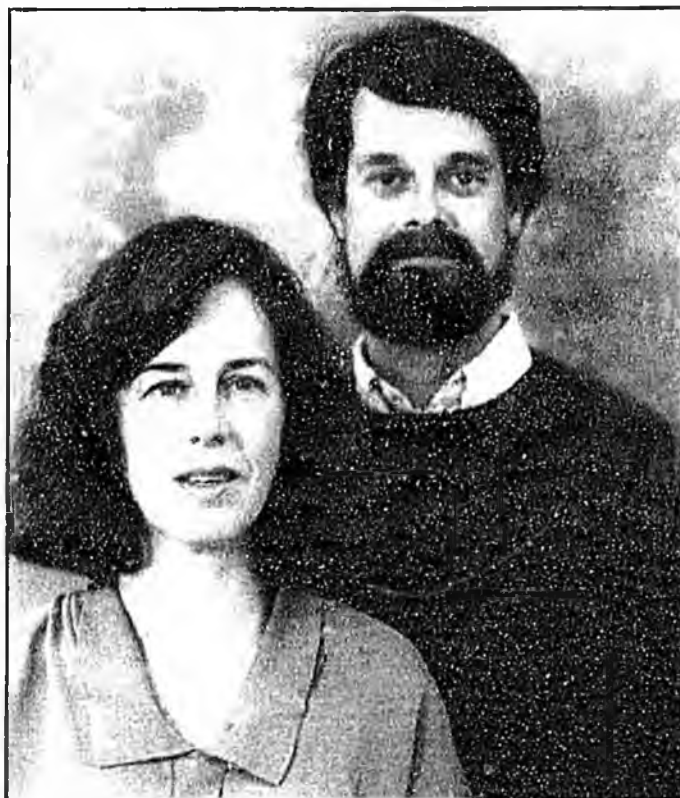


DON'T KILL FOR US

We Oppose The Death Penalty

**"Why should the government kill people to prove
that killing is wrong?"**

**-Sam Parker, 9,
with his parents Jim Parker and Jane Yokoyama, and
brother David, 7**



DON'T KILL FOR US

We Oppose The Death Penalty

"The argument that the 'system' will prevent mistakes is absolute folly in the reality of the American justice system and human experience. Which one of you would give your son, daughter, mother, father, or friend to prove such folly? We must live with the undeniable fact that we as human beings are not perfect, our systems are not perfect, and our mistakes should not be final."

-Mary Ellen Ashton and Fred Dewey, Anchorage

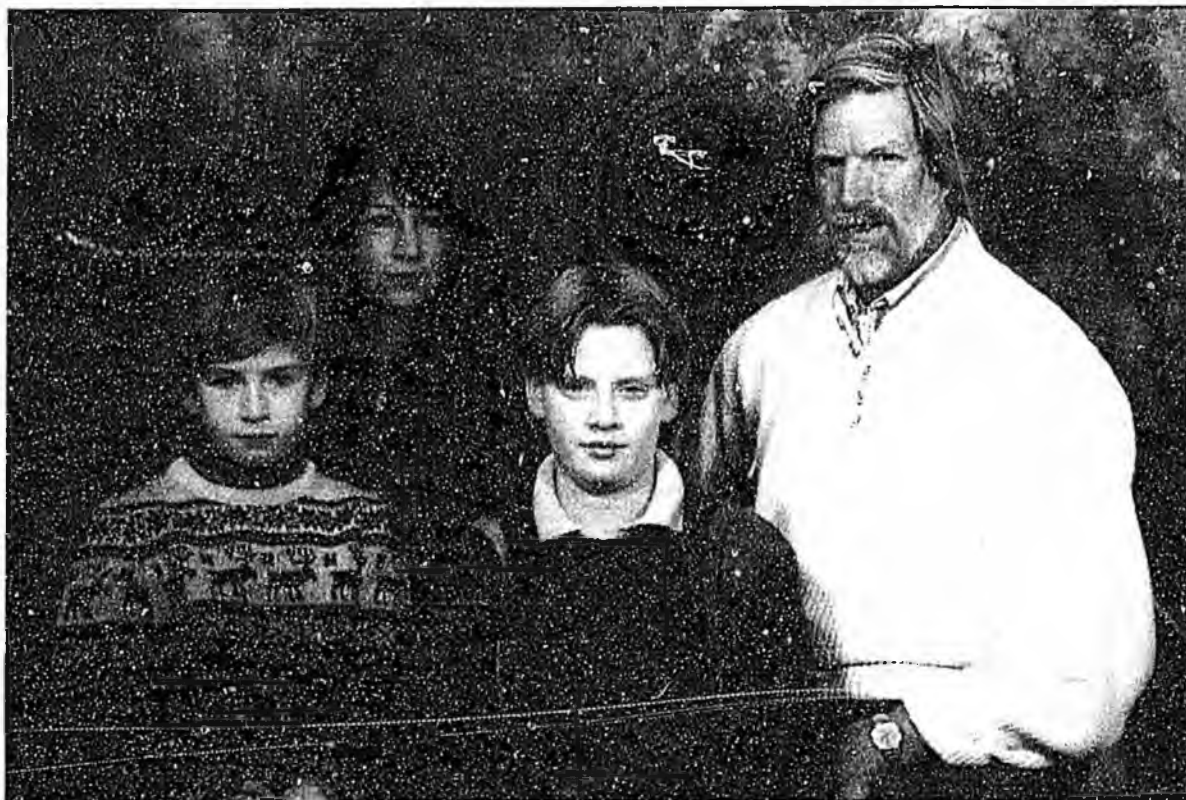


DON'T KILL FOR ME

I Oppose The Death Penalty

-After 13 years as a Public Defender for the State of Alaska, I am very aware that our criminal justice system makes mistakes. With a death penalty there is no ability to correct errors. Alaska should not be a party to the killing of innocent people."

-Barb Brink, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"Our family moved to Alaska from Ohio, a death penalty state. As an attorney, Rich worked on several capital cases in Ohio, and saw first-hand the impact on juries, witnesses, attorneys, judges, and their families. It was one very important reason for moving to Alaska. We would not want to see the violence and despair of death penalty litigation imported to our state. It's an experience we can all live without."

-Zane, Cole, Nancy and Rich Curtner, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Where only the rich can buy the best lawyers, and where white juries pass judgment on non-white men, execution is mostly reserved for the poor and for the dark-skinned. Middle-class white men don't get to death row. You can see this clearly in the history of Territorial Alaska. Of the eight men hanged in this century, only two were white, although most of the murders in the Territory were done by white men."

-Averil Lerman, Attorney & Legal Historian, Anchorage



DON'T KILL FOR US

We Oppose The Death Penalty

"When politicians say that the death penalty is tough on crime, they're ignoring the facts. The death penalty is soft on crime because there is no proof that it deters violence or makes us safer. The opposite seems to be true. Canada's homicide rate has dropped 27% since it abolished the death penalty in 1976. U.S. states that impose the death penalty suffer significantly higher homicide rates than those that don't. Shouldn't it be plain by now that violence indeed begets violence?"

-Dirk Sisson and Barbara Hood, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

**"I don't think civilized people
should kill murderers."**

-Ron Dailey, Engineer, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

"Just say NO! to deadbeats for the death penalty. Society pays when the ultimate penalty is applied—costing us more in legal fees than life imprisonment. The death penalty allows the convicted to escape the psychological burden of crimes committed, and eliminates any possibility of restitution to families of victims."

**-Joni Whitmore, Homer
Alaska Green Party Candidate for U.S. Congress, 1994
Current Democratic Candidate for U.S. Congress**



DON'T KILL FOR ME

I Oppose The Death Penalty

"Because there hasn't been a perfect human yet, there is no way to bring judgment perfectly. Spiritually, those who judge are no different than those who are being judged if the taking of a life is seen as a viable alternative. For spiritual, human reasons, I oppose the death penalty."

-Leslie Reed, Anchorage



DON'T KILL FOR ME

I Oppose The Death Penalty

**"Killings by the state teach violence as a
solution to one's problems.
There are better solutions."**

**-Kevin Cassity
Wilderness Guide, Anchorage**



DON'T KILL FOR US

We Oppose The Death Penalty

"Lots of innocent people have been sent to death by mistake, says 10-year-old Henry. Danny, 17, thinks it is wrong to kill people, whether the killer is a criminal or a court. In Anne's view, when the government kills, brutality becomes 'acceptable,' resulting in a more dangerous society. Jim knows race inevitably determines who is executed and who is spared. Our family stands together against the death penalty."

-Henry, Danny, Anne and Jim McComas, Anchorage