

SB

60

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB60

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Advisory vote on capital punishment BRU Elective Operations
 Component Elections
 Sponsor Senator Taylor
 Requester House Finance Committee Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 3.0 | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 3.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURC (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 3.0 | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 3.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY98) cost: _____

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenumiai *Gail Fenumiai*
 Division Division of Elections
 Approved by Lt. Governor Fran Ulmer *Fran Ulmer*
 Agency Office of the Lieutenant Governor

Phone 465-3935
 Date 1/23/98
 Date 1/23/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

BILL NO. HCS SB 60 (JUD)

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date: _____
Title: " An Act providing for an advisory vote on the issue of capital punishment."
Sponsor: Senator Taylor
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | ** | ** | ** | ** | ** | ** |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | ** | ** | ** | ** | ** | ** |

| | | | | | | |
|----------------------|----|----|----|----|----|----|
| CAPITAL EXPENDITURES | ** | ** | ** | ** | ** | ** |
|----------------------|----|----|----|----|----|----|

| | | | | | | |
|------------------------|----|----|----|----|----|----|
| CHANGE IN REVENUES () | ** | ** | ** | ** | ** | ** |
|------------------------|----|----|----|----|----|----|

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|----|----|----|----|----|----|
| 1002 Federal Receipts | ** | ** | ** | ** | ** | ** |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | ** | ** | ** | ** | ** | ** |

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

| | | | | | | |
|-----------|----|----|----|----|----|----|
| FULL-TIME | ** | ** | ** | ** | ** | ** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/28/98

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS: (continued)

HCS SB 60 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Public Defender Agency.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a 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. (See, for example, SB 52, introduced in the 19th Legislature.)

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 131. 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 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.

Capital felony trials are bifurcated, that is, two separate trials are actually held. The first determines guilt or innocence; the second determines whether aggravating factors exist to justify execution; whether mitigating factors exist that outweigh the aggravating factors, and whether to impose a period of imprisonment or death. The experiences of other states is that these trials require far more defense resources than first degree murder cases that do not involve the potential for execution.

Many states that have a death penalty provide a minimum of two defense attorneys to each capital defendant to insure that the required heightened procedural safeguards are met. The American Bar Association Standards for Criminal Justice: Providing Defense Services (3d. Ed.) note the following:

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

capital felony cases. In some states where death row populations are high, the situation has reached crisis proportions. After conducting a national survey, for example, attorneys in Florida arrived at an annual caseload standard of five cases per attorney when the defendant was not under a warrant of death, and three cases per attorney when a warrant for execution had been issued. In California, where the Office of the State Public Defender handled capital appeals in the California Supreme Court, one study concluded that the attorneys handling such cases should be responsible for only two to three briefs per year in such cases.

(at p. 73; footnotes omitted.)

During the investigation and preparation phase of the case, crime scene evidence will have to be examined and the forensic examinations performed by the state will have to be scrutinized. Psychiatric experts are essential to deal with competency, insanity or diminished capacity issues. Motion practice in death penalty cases has been estimated to be five times more labor and cost-intensive than in non-capital homicide trials. Trial itself in capital cases is an extremely time consuming process, lasting in excess of six months in some cases. Serious scheduling conflicts will arise in staff resources to provide simultaneous representation in a number of cases.

A sentencing, or penalty phase trial is categorically different in breadth and procedure from any comparable proceeding in a non-capital trial. Heightened due process requirements continue. In addition to the expert witnesses employed during the trial phase, such expertise will be necessary when mental health issues do not rise to the level of perfect defenses but are important in establishing mitigators. Additionally, extensive investigation and presentation of the defendant's family friends, co-workers, neighbors, and school and social workers is minimally required. The analysis of defendants' entire life and the gathering of historical detail is absolutely mandated. In a recent California case 240 such witnesses were located and interviewed, and 120 of those were called as actual witnesses in a single penalty phase.

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. There is also 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;
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 Supreme Court;
11. Request for clemency/commutation to Executive Branch of government;
12. Emergency stays to the United States Supreme Court prior to execution.

While precise numbers may be difficult to predict, the conclusion is inescapable: to meet the extraordinary workload difficulties of capital cases extraordinary resources must be allocated.

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 is appointed 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

FISCAL NOTE

STATE OF ALASKA

BILL NO. HCS SB 60 (JUD)

1998 LEGISLATIVE SESSION

the first year. Even if only 4 cases proceed to trial in that year, preparation must begin immediately. 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 given the broad geographic area served by these teams. 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 its fiscal note 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.

3. Supplies and Equipment

These expenses naturally accrue when additional staff are required. The estimates which follow are very conservative projections without consideration of inflationary factors.

4. Training

Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, 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 on an on-going basis.

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. Continued additional staff will have to be added to this agency beyond the fourth year of implementation of the capital crime law. Despite our best predictive efforts, this cost estimate might very well understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Fiscal Impact

First Year Cost Summary

Development of two Capital Defense Teams, one in Anchorage and one in Fairbanks.

| PFT Positions | (2) Atty V | (2) Atty IV | (2) Invest | (2) A Atty I | (2) Paralegal | (2) Sec I | Total |
|---------------------------|---------------|----------------|---------------|-----------------|------------------|--------------|---------------|
| 100 - Salaries & Benefits | 188.4 | 176.8 | 121.6 | 114.3 | 108.8 | 75.1 | 785.0 |
| | <hr/> 188.4 | <hr/> 176.8 | <hr/> 121.6 | <hr/> 114.3 | <hr/> 108.8 | <hr/> 75.1 | <hr/> 785.0 |
| 200 - Travel | | | | | | | |
| Staff Travel & Per Diem | 15.0 | 15.0 | 15.0 | 10.0 | 10.0 | 6.0 | 71.0 |
| | <hr/> 15.0 | <hr/> 15.0 | <hr/> 10.0 | <hr/> 15.0 | <hr/> 10.0 | <hr/> 6.0 | <hr/> 71.0 |
| 300 - Contractual | | | | | | | |
| Communications | 7.2 | 7.2 | 7.2 | 4.8 | 4.8 | 2.4 | 33.6 |
| Copy & Discovery | 11.2 | 11.2 | 11.2 | 5.6 | 5.6 | 5.6 | 50.4 |
| Office Space Leases | 11.2 | 11.2 | 6.2 | 7.8 | 6.2 | 6.2 | 48.8 |
| Westlaw | 3.2 | 3.2 | 0.0 | 3.2 | 3.2 | 0.0 | 12.8 |
| PC Network Maint | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 18.0 |
| | <hr/> 35.8 | <hr/> 35.8 | <hr/> 27.6 | <hr/> 24.4 | <hr/> 22.8 | <hr/> 17.2 | <hr/> 163.6 |
| 400 - Supplies | | | | | | | |
| Office Supplies | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 2.4 | 20.4 |
| Law Library | 2.4 | 2.4 | 2.4 | 2.0 | 2.0 | 0.0 | 11.2 |
| New Position Supplies | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 18.0 |
| | <hr/> 9.0 | <hr/> 9.0 | <hr/> 9.0 | <hr/> 8.6 | <hr/> 8.6 | <hr/> 5.4 | <hr/> 49.6 |
| 500 - Equipment | | | | | | | |
| New Position Equipment | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 30.0 |
| Personal Computer | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 48.0 |
| | <hr/> 13.0 | <hr/> 13.0 | <hr/> 13.0 | <hr/> 13.0 | <hr/> 13.0 | <hr/> 13.0 | <hr/> 78.0 |
| TOTAL | 261.2 | 249.6 | 186.2 | 170.3 | 163.2 | 116.7 | 1147.2 |

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Second Year Cost Summary
Additional Costs

Development of Capital Appellate Team in Anchorage

| FTE Positions | (1) Atty V | (1) Atty IV | (1) Paralegal | (1) Secretary | Total |
|---------------------------|---------------|----------------|------------------|------------------|--------------|
| 100 - Salaries & Benefits | 88.3 | 82.8 | 51.7 | 36.9 | 259.7 |
| | <hr/> 88.3 | <hr/> 82.8 | <hr/> 51.7 | <hr/> 36.9 | <hr/> 259.7 |
| 200 - Travel | | | | | |
| Staff Travel & Per Diem | | 3.5 | 2.5 | 0.0 | 9.5 |
| | <hr/> 3.5 | <hr/> 3.5 | <hr/> 2.5 | <hr/> 0.0 | <hr/> 9.5 |
| 300 - Contractual | | | | | |
| Communications | 3.6 | 3.6 | 2.4 | 1.2 | 10.8 |
| Copy & Discovery | 18.0 | 18.0 | 9.0 | 2.8 | 47.8 |
| Office Space Leases | 5.6 | 5.6 | 3.1 | 3.1 | 17.4 |
| Westlaw | 2.4 | 2.4 | 2.4 | 0.0 | 7.2 |
| PC Network Maint | 1.5 | 1.5 | 1.5 | 1.5 | 6.0 |
| | <hr/> 31.1 | <hr/> 31.1 | <hr/> 18.4 | <hr/> 8.6 | <hr/> 89.2 |
| 400 - Supplies | | | | | |
| Office Supplies | 1.3 | 1.8 | 1.8 | 1.2 | 6.6 |
| Law Library | 3.6 | 3.6 | 1.0 | 0.0 | 8.2 |
| New Position Supplies | 1.5 | 1.5 | 1.5 | 1.5 | 6.0 |
| | <hr/> 6.9 | <hr/> 6.9 | <hr/> 4.3 | <hr/> 2.7 | <hr/> 20.8 |
| 500 - Equipment | | | | | |
| New Position Equipment | 2.5 | 2.5 | 2.5 | 2.5 | 10.0 |
| Personal Computer | 4.0 | 4.0 | 4.0 | 4.0 | 16.0 |
| | <hr/> 6.5 | <hr/> 6.5 | <hr/> 6.5 | <hr/> 6.5 | <hr/> 26.0 |
| TOTAL | 136.3 | 130.8 | 83.4 | 54.7 | 405.2 |

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Third Year Cost Summary
Additional Costs

Development of second Capital Appellate Team in Fairbanks and the addition of trial lawyers and staff in Anchorage and Fairbanks due to increased caseload.

| FTE Positions | (3) | (1) | (2) | (1) | (1) | (3) | Total |
|---------------------------|--------------|--------------|--------------|-------------|-------------|--------------|---------------|
| | Atty V | Atty IV | Invest | A Atty I | Paralegal | Sec I | |
| 100 - Salaries & Benefits | 288.5 | 94.0 | 121.6 | 53.5 | 57.1 | 113.3 | 728.0 |
| | 288.5 | 94.0 | 121.6 | 53.5 | 57.1 | 113.3 | 728.0 |
| 200 - Travel | | | | | | | |
| Staff Travel & Per Diem | 18.5 | 3.5 | 15.0 | 5.0 | 2.5 | 6.0 | 50.5 |
| | 18.5 | 3.5 | 15.0 | 5.0 | 2.5 | 6.0 | 50.5 |
| 300 - Contractual | | | | | | | |
| Communications | 10.8 | 3.6 | 7.2 | 2.4 | 2.4 | 3.6 | 30.0 |
| Copy & Discovery | 29.2 | 18.0 | 11.2 | 2.8 | 9.0 | 5.6 | 75.8 |
| Office Space Leases | 16.8 | 5.6 | 6.2 | 3.9 | 3.1 | 9.3 | 44.9 |
| Westlaw | 5.6 | 2.4 | 0.0 | 1.6 | 2.4 | 0.0 | 12.0 |
| PC Network Maint. | 4.5 | 1.5 | 3.0 | 1.5 | 1.5 | 4.5 | 16.5 |
| | 66.9 | 31.1 | 27.6 | 12.2 | 18.4 | 23.0 | 179.2 |
| 400 - Supplies | | | | | | | |
| Office Supplies | 5.4 | 1.8 | 3.6 | 1.8 | 1.8 | 3.6 | 18.0 |
| Law Library | 6.0 | 3.6 | 2.4 | 1.0 | 1.0 | 0.0 | 14.0 |
| New Position Supplies | 4.5 | 1.5 | 3.0 | 1.5 | 1.5 | 4.5 | 16.5 |
| | 15.9 | 6.9 | 9.0 | 4.3 | 4.3 | 8.1 | 48.5 |
| 500 - Equipment | | | | | | | |
| New Position Equipment | 7.5 | 2.5 | 5.0 | 2.5 | 2.5 | 7.5 | 27.5 |
| Personal Computer | 12.0 | 4.0 | 4.0 | 8.0 | 4.0 | 12.0 | 44.0 |
| | 19.5 | 6.5 | 9 | 10.5 | 6.5 | 19.5 | 71.5 |
| TOTAL | 409.3 | 142.0 | 186.2 | 81.5 | 88.8 | 169.9 | 1077.7 |

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Additional Case Costs

First Year: 4 Trials

| | | |
|-----------------------------------|---|-------|
| Expert Witness Fees | = | |
| \$60,000 per case x 4 cases | = | 240.0 |
| Witness travel and per diem | = | |
| \$50,000 per case x 4 cases | = | 200.0 |
| Witness fees | = | |
| \$2,500 per case x 4 cases | = | 10.0 |
| Deposition/Court Reporter charges | = | |
| \$20,000 per case x 4 cases | = | 80.0 |
| Training and Consultation | = | 50.0 |

Second Year: 6 Trials plus 4 Appeals

| | | |
|-----------------------------------|---|-------|
| Expert Witness Fees | = | |
| \$60,000 per case x 6 cases | = | 360.0 |
| Witness travel and per diem | = | |
| \$50,000 per case x 6 cases | = | 300.0 |
| Witness fees | = | |
| \$2,500 per case x 6 cases | = | 15.0 |
| Deposition/Court Reporter charges | = | |
| \$20,000 per case x 6 cases | = | 120.0 |
| \$30,000 per case x 4 case | = | 120.0 |
| Training and Consultation | = | 50.0 |

Third Year: 7 Trials plus 6 new appeals

| | | |
|-----------------------------------|---|-------|
| Expert Witness Fees | = | |
| \$60,000 per case x 7 cases | = | 420.0 |
| Witness travel and per diem | = | |
| \$50,000 per case x 7 cases | = | 350.0 |
| Witness fees | = | |
| \$2,500 per case x 7 cases | = | 17.5 |
| Deposition/Court Reporter charges | = | |
| \$20,000 per case x 7 cases | = | 140.0 |
| \$30,000 per case x 6 case | = | 180.0 |
| Training and Consultation | = | 50.0 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Cumulative Cost Summary

| | Year 1 | Year 2 | Year 3 | Year 4 |
|---------------------------|---------------|---------------|---------------|---------------|
| 100 - Salaries & Benefits | 785.0 | 1044.7 | 1772.7 | 1772.7 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| | 785.0 | 1044.7 | 1772.7 | 1772.7 |
| 200- Travel | | | | |
| Staff Travel | 71.0 | 80.5 | 131.0 | 131.0 |
| Witness Travel | 200.0 | 300.0 | 350.0 | 350.0 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| | 271.0 | 380.5 | 481.0 | 481.0 |
| 300 - Contractual | | | | |
| Staff Contractual | 163.6 | 252.8 | 432.0 | 432.0 |
| Outside Services | 380.0 | 665.0 | 807.5 | 807.5 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| | 543.6 | 917.8 | 1239.5 | 1239.5 |
| 400 - Supplies | 49.6 | 52.4 | 94.9 | 78.4 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| | 49.6 | 52.4 | 94.9 | 78.4 |
| 500 - Equipment | 78.0 | 26.0 | 71.5 | 17.5 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| | 78.0 | 26.0 | 71.5 | 17.5 |
| Grand Totals | 1727.2 | 2421.4 | 3659.6 | 3589.1 |
| PFT Positions | 12.0 | 16.0 | 27.0 | 27.0 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 6Q (JUD)

| | |
|---|--|
| Revision Date: _____ | Dept. Affected: <u>Department of Law</u> |
| Title: <u>"An Act providing for an advisory vote on the issue of capital punishment."</u> | BRU: <u>Criminal Division</u> |
| Sponsor: <u>Senator Taylor</u> | Component: <u>Office of Special Prosecutions & Appeals</u> |
| Requester: <u>House Finance Committee</u> | COMPONENT SERIAL NO. <u>2203</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | | 561.9 | 936.4 | 1,424.2 | 1,424.2 | 1,424.2 |
| TRAVEL | | 245.2 | 467.9 | 594.4 | 594.4 | 594.4 |
| CONTRACTUAL | | 423.3 | 985.4 | 1,350.7 | 1,240.7 | 1,240.7 |
| SUPPLIES | | 9.2 | 15.3 | 23.2 | 23.2 | 23.2 |
| EQUIPMENT | | 52.0 | 39.0 | 45.5 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 1,291.5 | 2,444.0 | 3,438.0 | 3,282.5 | 3,282.5 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|--------------------------|------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | 1,291.5 | 2,444.0 | 3,438.0 | 3,282.5 | 3,282.5 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MPTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 1,291.5 | 2,444.0 | 3,438.0 | 3,282.5 | 3,282.5 |

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

| POSITIONS | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0.0 | 8.0 | 14.0 | 21.0 | 21.0 | 21.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HCS SB 60 (JUD) would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a 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. (See, for example, SB 52, introduced in the 19th Alaska Legislature.)

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 1/28/98
 Date: 1/28/98

PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

In preparing a fiscal note for SB 52, murder cases from 1994 were reviewed. The department's criminal division had 17 first degree murder cases in 1994 in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year, but the average number of murder cases in the years 1994-97 is the same as in 1994, so those figures were used.

Overview

Capital felony trials would be bifurcated, that is, 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, all of which would require trials. 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. 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 taken the position that "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-eight 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 and during sentencing proceedings, 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 sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart 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,

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 6Q (JUD)

ANALYSIS CONTINUATION:

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 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 addition, 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. 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 capital murder trials.

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 over 11 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out, and this period of delay has increased in recent years, despite efforts to streamline federal death penalty appeals.

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 the first phase of a bifurcated trial 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 perhaps as few as 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 potential capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

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 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 potential capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to 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 capital murder trials (10) should equal the number of new capital offenses charged, 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. The trial staff would be increased by one attorney, one paraprofessional, and one legal secretary. 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 by adding two attorneys, one paraprofessional, and one legal secretary.

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 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 per diem 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.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

(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, the total 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 considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably 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 10 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 per diem, \$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.
- Standard witness fees paid to others, \$2,500 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.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

(10) The full-time equivalent attorney and paraprofessional cost estimates are based on the department's FY98/99 standard cost schedule (\$133,517 per attorney; \$88,486 per paraprofessional) and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, listed in (6) above, and one-time equipment costs are not included in the rate, and are added separately.

FISCA NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (First Year, Capital Trials)

ASSUMPTION: 4 trials, trial preparation, preparation on 17 potential capital felonies

| OBJECT | 3 <u>Attorney</u> | 3 <u>Paraprofessional</u> | 2 <u>Secretary</u> | TOTAL |
|------------------------------|----------------------|------------------------------|-----------------------|--------------|
| 100 - Salaries & Benefits | 339.6 | 222.2 | | 561.9 |
| | <u>339.6</u> | <u>222.2</u> | 0.0 | <u>561.9</u> |
| 200 - Travel | | | | |
| Administrative travel | 1.0 | 0.7 | | 1.7 |
| Direct case travel | 22.5 | 15.0 | 6.0 | 43.5 |
| | <u>23.5</u> | <u>15.7</u> | 6.0 | <u>45.2</u> |
| 300-Contractual | 54.4 | 38.8 | | 93.3 |
| | <u>54.4</u> | <u>38.8</u> | 0.0 | <u>93.3</u> |
| 400 - Supplies | 5.4 | 3.7 | | 9.2 |
| | <u>5.4</u> | <u>3.7</u> | 0.0 | <u>9.2</u> |
| 500 - One time New Equipment | 19.5 | 19.5 | 13.0 | 52.0 |
| | <u>19.5</u> | <u>19.5</u> | <u>13.0</u> | <u>52.0</u> |
| TOTAL | 442.6 | 300.0 | 19.0 | 761.5 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (Second and Third Year Additions, Capital Trials)

ASSUMPTION:

Year 2 - 8 trials, preparation on 17 new potential capital felonies
Year 3 - 10 trials, preparation on 10 new charges

| OBJECT | <u>Second Year</u> | | | | <u>Third Year</u> | | | |
|---------------------------|-------------------------|-------------------------|-------------------------|-------|-------------------------|-------------------------|-------------------------|-------|
| | <u>1</u> <u>Atty</u> | <u>1</u> <u>Para</u> | <u>1</u> <u>Secy</u> | TOTAL | <u>1</u> <u>Atty</u> | <u>1</u> <u>Para</u> | <u>1</u> <u>Secy</u> | TOTAL |
| 100 - Salaries & Benefits | 113.2 | 74.1 | 0.0 | 187.3 | 113.2 | 74.1 | 0.0 | 187.3 |
| | 113.2 | 74.1 | 0.0 | 187.3 | 113.2 | 74.1 | 0.0 | 187.3 |
| 200 - Travel | | | | | | | | |
| Administrative travel | 0.3 | 0.2 | 0.0 | 0.6 | 0.3 | 0.2 | 0.0 | 0.6 |
| Direct case travel | 7.5 | 5.0 | 3.0 | 15.5 | 7.5 | 5.0 | 3.0 | 15.5 |
| | 7.8 | 5.2 | 3.0 | 16.1 | 7.8 | 5.2 | 3.0 | 16.1 |
| 300-Contractual | 18.1 | 12.9 | 0.0 | 31.1 | 18.1 | 12.9 | 0.0 | 31.1 |
| | 18.1 | 12.9 | 0.0 | 31.1 | 18.1 | 12.9 | 0.0 | 31.1 |
| 400 - Supplies | 1.8 | 1.2 | 0.0 | 3.1 | 1.8 | 1.2 | 0.0 | 3.1 |
| | 1.8 | 1.2 | 0.0 | 3.1 | 1.8 | 1.2 | 0.0 | 3.1 |
| 500 - New Equipment | 6.5 | 6.5 | 6.5 | 19.5 | 6.5 | 6.5 | 6.5 | 19.5 |
| | 6.5 | 6.5 | 6.5 | 19.5 | 6.5 | 6.5 | 6.5 | 19.5 |
| TOTAL | 147.5 | 100.0 | 9.5 | 257.0 | 147.5 | 100.0 | 9.5 | 257.0 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (Second and Third Year Additions, Appellate Review Process)

ASSUMPTION:

Year 2 - 4 trials begin appellate review process
Year 3 - 8 trials on appeal, with 6 new cases each following year

| OBJECT | <u>Second Year</u> | | | | <u>Third Year</u> | | | |
|---------------------------|-------------------------|-------------------------|-------------------------|--------------|-------------------------|-------------------------|-------------------------|--------------|
| | <u>1</u> <u>Atty</u> | <u>1</u> <u>Para</u> | <u>1</u> <u>Secy</u> | TOTAL | <u>2</u> <u>Atty</u> | <u>1</u> <u>Para</u> | <u>1</u> <u>Secy</u> | TOTAL |
| 100 - Salaries & Benefits | 113.2 | 74.1 | 0.0 | 187.3 | 226.4 | 74.1 | 0.0 | 300.5 |
| | 113.2 | 74.1 | 0.0 | 187.3 | 226.4 | 74.1 | 0.0 | 300.5 |
| 200 - Travel | | | | | | | | |
| Administrative travel | 0.3 | 0.2 | 0.0 | 0.6 | 0.7 | 0.2 | 0.0 | 0.9 |
| Direct case travel | 3.5 | 2.5 | | 6.0 | 7.0 | 2.5 | | 9.5 |
| | 3.8 | 2.7 | 0.0 | 6.6 | 7.7 | 2.7 | 0.0 | 10.4 |
| 300-Contractual | 18.1 | 12.9 | 0.0 | 31.1 | 36.3 | 12.9 | 0.0 | 49.2 |
| | 18.1 | 12.9 | 0.0 | 31.1 | 36.3 | 12.9 | 0.0 | 49.2 |
| 400 - Supplies | 1.8 | 1.2 | 0.0 | 3.1 | 3.6 | 1.2 | 0.0 | 4.9 |
| | 1.8 | 1.2 | 0.0 | 3.1 | 3.6 | 1.2 | 0.0 | 4.9 |
| 500 - New Equipment | 6.5 | 6.5 | 6.5 | 19.5 | 13.0 | 6.5 | 6.5 | 26.0 |
| | 6.5 | 6.5 | 6.5 | 19.5 | 13.0 | 6.5 | 6.5 | 26.0 |
| TOTAL | 143.5 | 97.5 | 6.5 | 247.5 | 287.0 | 97.5 | 6.5 | 391.0 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

| | | |
|--|---|-------|
| Witness travel and per diem \$50,000 per case X 4 cases | = | 200.0 |
| Expert witness fees \$60,000 per case X 4 cases | = | 240.0 |
| Witness fees (witnesses of fact) \$2,500 per case X 4 cases | = | 10.0 |
| Deposition/court reporter charges \$20,000 per case X 4 cases | = | 80.0 |

Year 2: (8 cases underway)

| | | |
|--|---|-------|
| Witness travel and per diem \$50,000 per case X 8 cases | = | 400.0 |
| Expert witness fees \$60,000 per case X 8 cases | = | 480.0 |
| Witness fees (witnesses of fact) \$2,500 per case X 8 cases | = | 20.0 |
| Deposition/court reporter charges \$20,000 per case X 8 cases | = | 160.0 |

Year 3: (10 cases underway)

| | | |
|---|---|-------|
| Witness travel and per diem \$50,000 per case X 10 cases | = | 500.0 |
| Expert witness fees \$60,000 per case X 10 cases | = | 600.0 |
| Witness fees (witnesses of fact) \$2,500 per case X 10 cases | = | 25.0 |
| Deposition/court reporter charges \$20,000 per case X 10 cases | = | 200.0 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

| | | |
|--|---|-------|
| Outside counsel to uphold death penalty law \$50,000 per case X 1 case | = | 50.0 |
| Deposition/court reporter charges \$30,000 per case X 4 cases | = | 120.0 |

Year 3: (8 cases underway)

| | | |
|--|---|-------|
| Outside counsel to uphold death penalty law \$50,000 per case X 1 case | = | 50.0 |
| Deposition/court reporter charges \$30,000 per case X 8 cases | = | 240.0 |

Year 4: (14 cases underway)

| | | |
|--|---|-------|
| Deposition/court reporter charges \$30,000 per case X 6 cases | = | 180.0 |
|--|---|-------|

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
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 - Salaries & Benefits | 561.9 | 749.1 | 936.4 | 936.4 | 0.0 | 187.3 | 487.8 | 487.8 |
| | 561.9 | 749.1 | 936.4 | 936.4 | 0.0 | 187.3 | 487.8 | 487.8 |
| 200 - Travel | | | | | | | | |
| Staff Travel & Per Diem | 45.2 | 61.3 | 77.4 | 77.4 | 0.0 | 6.6 | 17.0 | 17.0 |
| Witness Travel | 200.0 | 400.0 | 500.0 | 500.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| | 245.2 | 461.3 | 577.4 | 577.4 | 0.0 | 6.6 | 17.0 | 17.0 |
| 300 - Contractual | | | | | | | | |
| Staff Contractual | 93.3 | 124.3 | 155.4 | 155.4 | 0.0 | 31.1 | 80.3 | 80.3 |
| Outside Services | 330.0 | 660.0 | 825.0 | 825.0 | 0.0 | 170.0 | 290.0 | 180.0 |
| | 423.3 | 784.3 | 980.4 | 980.4 | 0.0 | 201.1 | 370.3 | 260.3 |
| 400 - Supplies | 9.2 | 12.2 | 15.3 | 15.3 | 0.0 | 3.1 | 7.9 | 7.9 |
| | 9.2 | 12.2 | 15.3 | 15.3 | 0.0 | 3.1 | 7.9 | 7.9 |
| 500 - Equipment | 52.0 | 19.5 | 19.5 | 0.0 | 0.0 | 19.5 | 26.0 | 0.0 |
| | 52.0 | 19.5 | 19.5 | 0.0 | 0.0 | 19.5 | 26.0 | 0.0 |
| TOTAL | 1,291.5 | 2,026.5 | 2,529.0 | 2,509.5 | 0.0 | 417.5 | 909.0 | 773.0 |
| PFT | 8 | 11 | 14 | 14 | 0 | 3 | 7 | 7 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

| | | | |
|------------------------------------|--|----------------------|---|
| Revision Date (Note if correction) | <u>01/27/98</u> | Dept. Affected | <u>Corrections</u> |
| Title | <u>"An Act providing for an advisory vote on the</u> | BRU | <u>Administration and Operations</u> |
| issue of capital punishment....." | | Component | <u>Spring Creek Correctional Center</u> |
| Sponsor | <u>Senator Taylor</u> | Component Serial No. | <u># 0772</u> |
| Requester | <u>Senate Finance</u> | | |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|--------------|----------------|----------------|----------------|----------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | 365.0 | 1,080.0 | 3,652.6 | 3,652.6 | 3,652.6 |
| TOTAL OPERATING | 0.0 | 365.0 | 1,080.0 | 3,652.6 | 3,652.6 | 3,652.6 |

| | | | | | | |
|-----------------------------|--|-----------------|--|--|--|--|
| CAPITAL EXPENDITURES | | 18,000.0 | | | | |
|-----------------------------|--|-----------------|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|-----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 18,365.0 | 1,080.0 | 3,652.6 | 3,652.6 | 3,652.6 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 18,365.0 | 1,080.0 | 3,652.6 | 3,652.6 | 3,652.6 |

Estimate of any current year (FY96) cost: 0.0

POSITIONS

| | | | | | |
|-----------|---|----|----|----|----|
| Full-time | 0 | 39 | 48 | 48 | 48 |
| Part-time | | | | | |
| Temporary | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*

This legislation provides for an advisory vote on the issue of capital punishment. This bill also requires agencies to provide three (3) specific fiscal costs.

1. Annual Fiscal Costs for Capital Punishment
2. Total Costs for one (1) Capital Punishment Case
3. Estimated Total Cost for Mandatory 99-year term of imprisonment without parole.

Please see attached

| | |
|--|-----------------------|
| Prepared by <u>Dwayne B. Peeples</u> | Phone <u>465-3339</u> |
| Division <u>Administrative Services</u> | Date _____ |
| Approved by Commissioner <u>Margaret M. Pugh</u> | Date _____ |
| Agency <u>Department of Corrections</u> | |

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

Assumptions

This legislation is based on ten capital punishment cases annually. The average time spent under sentence prior to execution for 1996 was ten (10) years. This would result in 100 inmates being housed on death row prior to the first execution.

According to the Bureau of Justice Statistics, the average age at the time of arrest for a capital offense is 28 years old. The average lifespan of an inmate incarcerated for life is approximately 68 years of age which would result in a forty (40) year incarceration.

DOC Annual Fiscal Cost for Capital Punishment:

Operating

10 inmates X \$100.07 per day X 365 days = \$365,255

Capital

100 beds X \$180,000 per bed = \$18,000,000 for a 100 bed maximum security death row.

\$300,000 for the execution portion of the facility.

TOTAL = \$18,300,000

DOC Cost for one (1) Capital Punishment Case (Ten Year Duration):

Operating

1 inmate X \$100.07 per day X 365 days X 10 years = \$365,255

DOC Cost to Incarcerate one (1) Inmate for Life:

Operating

1 inmate X \$100.07 per day X 365 days X 40 years = \$1,461,022

FY00

10 inmates X \$100.07 per day X 365 days = \$365,255

\$18,300,000 for new death row and execution facility

FY01

20 inmates X \$100.07 per day X 365 days = \$730,000

\$350,000 for training staff for the new death row facility.

TOTAL = \$1,080,000

FY02 - 04

New 100 bed facility opens. Operating costs are estimated at \$3,652,600

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Revision Date: _____ Department Affected: Administration
 Title: "An Act providing for an advisory vote on the issue of capital punishment." BRU: Legal and Advocacy Services
 Sponsor: Senator Taylor Component: Office of Public Advocacy
 Requestor: (H) FIN COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|---------------|---------------|---------------|---------------|---------------|
| PERSONAL SERVICES | | 329.0 | 569.5 | 654.6 | 830.6 | 915.7 |
| TRAVEL | | 178.0 | 187.5 | 190.0 | 201.0 | 203.5 |
| CONTRACTUAL | | 844.7 | 1038.1 | 1169.6 | 1333.9 | 1476.0 |
| SUPPLIES | | 20.7 | 31.8 | 30.3 | 40.5 | 40.5 |
| EQUIPMENT | | 32.5 | 26.0 | 6.5 | 19.5 | 6.5 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 1404.9 | 1852.9 | 2051.0 | 2425.5 | 2642.2 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|---------------|---------------|---------------|---------------|---------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | 1404.9 | 1852.9 | 2051.0 | 2425.5 | 2642.2 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 1404.9 | 1852.9 | 2051.0 | 2425.5 | 2642.2 |

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|------|------|------|
| FULL-TIME | 0.0 | 5.0 | 9.0 | 10.0 | 13.0 | 14.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

Passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The OPA, as a purely reactive agency, must provide legal representation when appointed by the court. OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

The Department of Law has estimated it would seek the death penalty in approximately ten trials annually. Therefore, OPA anticipates it would be responsible for three capital cases in FY 00 and three more in each of the following years. Because almost no one in Alaska could afford the cost of defending capital cases, it is assumed the Public Defender Agency and OPA would represent all capital defendants.

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Administration

Date: 11/26/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS: (continued)

The agency would assign at least two experienced attorneys to each capital case in accordance with the policy -- and legal requirement -- of most states in which the death penalty has become law. Each case will necessitate an exhaustive pre-trial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during pre-trial proceedings, trial and the many appellate stages.

The New York Defender Association has estimated expert witness fees as \$60,000 per case. Further, travel costs would be extraordinarily high because this Anchorage-based death penalty team must provide statewide representation.

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 01, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (non-lawyer) position, a paralegal, and a legal secretary. In FY 02, an additional trial attorney position would be needed to support the initial three-trial positions created in FY 00 and FY 01.

In FY 03, the death penalty defense staff would need to be enlarged by at least one attorney, to complete the formation of two larger teams, together with a paralegal and legal secretary. In FY 04, an additional appellate attorney would be necessary to handle the increasing appellate cases handled by OPA staff.

OPA assumes that it will have only one or less conflict contract case per year. For this reason, the accumulating appellate costs are conservatively estimated at an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only three cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 98 budget of \$7,651.8 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 00

Personal Services - Anchorage

| | |
|---|-------------|
| Attorney V - Salary and Benefits | \$ 90.6 |
| Attorney IV - Salary and Benefits | 85.1 |
| Associate Attorney II - Salary and Benefits | 62.4 |
| Paralegal Assist II - Salary and Benefits | 53.1 |
| Legal Secretary I - Salary and Benefits | <u>37.8</u> |

Subtotal Personal Services 329.0

Travel

| | |
|-----------------------------|--------------|
| Staff Travel and Per Diem | 28.0 |
| Witness Travel and Per Diem | <u>150.0</u> |

Subtotal Travel 178.0

Contractual

| | |
|---|-------------|
| Communications | 15.2 |
| Copy & Discovery | 28.0 |
| Office Space | 16.5 |
| PC Network Maintenance | 7.5 |
| Westlaw | 4.8 |
| Expert Witness Fees (\$74.2 per case X 3 cases per year) | 222.6 |
| Witness Fees (\$2.5 per case X 3 cases per year) | 7.5 |
| Contract Representation for Conflict (\$432.6 per case X 1 case per year) | 432.6 |
| Depositions and Court Reporter (\$20.0 per case X 3 cases per year) | 60.0 |
| Training and Consultation | <u>50.0</u> |

Subtotal Contractual 844.7

Supplies

| | |
|-----------------------|------------|
| Office Supplies | 8.4 |
| Law Library | 4.8 |
| New Position Supplies | <u>7.5</u> |

Subtotal Supplies 20.7

Equipment

| | |
|------------------------|-------------|
| New Position Equipment | 12.5 |
| Computer Equipment | <u>20.0</u> |

Subtotal Equipment 32.5

TOTAL FY 00 \$1404.9

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 01

Personal Services - Anchorage

| | |
|--|-------------|
| Salary and Benefits for 5 current positions | \$ 329.0 |
| Attorney IV - Salary and Benefits | 85.1 |
| Paralegal Assistant II - Salary and Benefits | 53.1 |
| Associate Attorney II - Salary and Benefits | 62.4 |
| Legal Secretary II - Salary and Benefits | <u>39.9</u> |

Subtotal Personal Services 569.5

Travel

| | |
|-----------------------------|--------------|
| Staff Travel and Per Diem | 37.5 |
| Witness Travel and Per Diem | <u>150.0</u> |

Subtotal Travel 187.5

Contractual

| | |
|--|-------------|
| Communications | 28.0 |
| Copy & Discovery | 73.0 |
| Office Space | 38.9 |
| PC Network Maintenance | 14.7 |
| Westlaw | 10.8 |
| Expert Witness Fees (\$74.2 per case X 3 cases per year) | 222.6 |
| Witness Fees (\$2.5 per case X 3 cases per year) | 7.5 |
| Contract Representation for Conflict (\$432.6 per case plus \$100.0 for appeals) | 532.6 |
| Depositions and Court Reporter (\$20.0 per case X 3 cases per year) | 60.0 |
| Training and Consultation | <u>50.0</u> |

Subtotal Contractual Services 1038.1

Supplies

| | |
|-----------------------|------------|
| Office Supplies | 15.0 |
| Law Library | 10.8 |
| New Position Supplies | <u>6.0</u> |

Subtotal Supplies 31.8

Equipment

| | |
|------------------------|-------------|
| New Position Equipment | 10.0 |
| Computer Equipment | <u>16.0</u> |

Subtotal Equipment 26.0

TOTAL FY 01 \$1852.9

FISCAL NOTE

BILL NO. HCS SB 60 (JUD)

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

| | |
|---|-------------|
| Salary and Benefits for 9 current positions | \$ 569.5 |
| Attorney IV - Salary and Benefits | <u>85.1</u> |

Subtotal Personal Services 654.6

Travel

| | |
|-----------------------------|--------------|
| Staff Travel and Per Diem | 40.0 |
| Witness Travel and Per Diem | <u>150.0</u> |

Subtotal Travel 190.0

Contractual

| | |
|--|-------------|
| Communications | 32.0 |
| Copy & Discovery | 91.0 |
| Office Space | 44.5 |
| PC Network Maintenance | 17.1 |
| Westlaw | 12.3 |
| Expert Witness Fees (\$74.2 per case X 3 cases per year) | 222.6 |
| Witness Fees (\$2.5 per case X 3 cases per year) | 7.5 |
| Contract Representation for Conflict (\$432.6 plus \$200.00 for appeals) | 632.6 |
| Depositions and Court Reporter (\$20.0 per case X 3 cases per year) | 60.0 |
| Training and Consultation | <u>50.0</u> |

Subtotal Contractual Services 1169.6

Supplies

| | |
|-----------------------|------------|
| Office Supplies | 16.8 |
| Law Library | 12.0 |
| New Position Supplies | <u>1.5</u> |

Subtotal Supplies 30.3

Equipment

| | |
|------------------------|------------|
| New Position Equipment | 2.5 |
| Computer Equipment | <u>4.0</u> |

Subtotal Equipment 6.5

TOTAL FY 02 \$2051.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 03

Personal Services - Anchorage

Salary and Benefits for 10 current positions \$ 654.6

| | |
|--|-------------|
| Attorney IV - Salary and Benefits | 85.1 |
| Paralegal Assistant II - Salary and Benefits | 53.1 |
| Legal Secretary I - Salary and Benefits | <u>37.8</u> |

Subtotal Personal Services 830.6

Travel

| | |
|-----------------------------|--------------|
| Staff Travel and Per Diem | 51.0 |
| Witness Travel and Per Diem | <u>150.0</u> |

Subtotal Travel 201.0

Contractual

| | |
|--|-------------|
| Communications | 40.8 |
| Copy & Discovery | 118.0 |
| Office Space | 61.3 |
| PC Network Maintenance | 24.3 |
| Westlaw | 16.8 |
| Expert Witness Fees (\$74.2 per case X 3 cases per year) | 222.6 |
| Witness Fees (\$2.5 per case X 3 cases per year) | 7.5 |
| Contract Representation for Conflict (\$432.6 per case plus \$300.0 for appeals) | 732.6 |
| Depositions and Court Reporter (\$20.0 per case X 3 cases per year) | 60.0 |
| Training and Consultation | <u>50.0</u> |

Subtotal Contractual Services 1333.9

Supplies

| | |
|-----------------------|------------|
| Office Supplies | 21.6 |
| Law Library | 14.4 |
| New Position Supplies | <u>4.5</u> |

Subtotal Supplies 40.5

Equipment

| | |
|------------------------|-------------|
| New Position Equipment | 7.5 |
| Computer Equipment | <u>12.0</u> |

Subtotal Equipment 19.5

TOTAL FY 03 \$2425.5

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS FY -- 04

Personal Services - Anchorage

Salary and Benefits for 13 current positions \$ 830.6

Attorney IV - Salary and Benefits 85.1

Subtotal Personal Services 915.7

Travel

Staff Travel and Per Diem 53.5

Witness Travel and Per Diem 150.0

Subtotal Travel 203.5

Contractual

Communications 44.8

Copy & Discovery 136.0

Office Space 78.4

PC Network Maintenance 25.8

Westlaw 18.3

Expert Witness Fees *\$74.2 per case X 3 cases per year) 222.6

Witness Fees *\$2.5 per case X 3 cases per year) 7.5

Contract Representation for Conflict (\$432.6 per case plus \$400.00 for appeals) 832.6

Depositions and Court Reporter (\$20.0 per case X 3 cases per year) 60.0

Training and Consultation 50.0

Subtotal Contractual 1476.0

Supplies

Office Supplies 23.4

Law Library 15.6

New Position Supplies 1.5

Subtotal Supplies 40.5

Equipment

New Position Equipment 2.5

Computer Equipment 4.0

Subtotal Equipment 6.5

TOTAL FY04 \$2642.2

04/09/97 15:35

19072618292

ADMIN ACCOUNTING

003

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act providing for an advisory vote on the BRU: Trial Courts
issue of capital punishment Component: _____
 Sponsor: Sen. Taylor
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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 | 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 97) cost: None

Positions

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-Time | | | | | | |
| Part-Time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation will place an advisory vote on the issue of the death penalty before the voters at the next general election. See attached analysis.

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

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/09/97

Date: 04/09/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

**Alaska Court System
Fiscal Analysis**

On the assumption that the advisory vote is approved by the voters and that the Legislature passes legislation which authorizes use of the death penalty, the court system has estimated the cost of processing 10 death penalty cases annually.

Personal Services

| <u>Position</u> | <u>Salary</u> | <u>Benefits</u> | <u>Total</u> |
|--|---------------|-----------------|----------------|
| Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months | \$58,500 | \$36,802 | \$94,102 |
| Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months | 58,500 | 35,602 | 94,102 |
| Pro Tem Judge, Fairbanks Trial Courts, PPT, 6 months | 29,250 | 17,801 | 47,051 |
| Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months | 33,480 | 14,181 | 47,661 |
| Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months | 33,480 | 14,181 | 47,661 |
| Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months | 38,592 | 15,498 | 54,090 |
| Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months | 38,592 | 15,498 | 54,090 |
| Bailiff, Statewide, range 6A, NPP, 24 months | 40,176 | 3,985 | 44,161 |
| | | | <u>482,918</u> |

Offset cost of existing caseload -

Under present law, first degree murder cases experience a 50% trial rate and last approximately one month. Thus, the court expects five trials which last a total of 5 months. The proposed legislation will result in approximately 39 months of trial activity (see the time calculations under Jury Fees in the Contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

| | |
|-----------------------|-----------------|
| | <u>(61,900)</u> |
| Net personal services | <u>421,018</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 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 be hired at 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 personal services.

| | |
|------------|-----------------|
| | <u>(16,200)</u> |
| Net 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 | 190,000 |
| Freight for high security equipment kit | 1,000 |
| Total contractual services | <u>587,100</u> |

Offset cost of existing caseload -

See offset note in personal services.

| | |
|--------------------------|-----------------|
| | <u>(75,300)</u> |
| Net contractual services | <u>511,800</u> |

See additional note on contractual costs on the next page.

04/09/97 15:35

19072848292

ADMIN ACCOUNTING

001

Alaska Court System
Fiscal Analysis (continued)

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. 7,000

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

31,720

Total annual estimated costs \$1,113,738

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature

MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182



MEMORANDUM

January 29, 1998

To: House Finance Committee Members
From: Representative Terry Martin - *PH/M*
Subject: Death penalty information

In light of Sister Helen Prejean's comments to the committee yesterday and today's scheduled discussion of the death penalty, you may find the attached information pertinent and useful.

The attached consists of two packets--the first is a summarization of the major arguments showing why the death penalty is not good public policy for Alaska; the second details the anticipated costs to the state of implementing the death penalty, if it was ever instituted.

if you have questions regarding this information, please contact me. Thank you.



FISCAL IMPACT OF CAPITAL PUNISHMENT

FIRST FOUR YEARS

| | | |
|--|--|----------------|
| CORRECTIONS | | |
| Spring Creek Correctional Facility | | \$16,197,600 |
| ADMINISTRATION | | |
| Public Defender Agency | | \$11,505,400 |
| Office of Public Advocacy | | \$7,734,300 |
| LAW | | |
| Criminal Division | | \$10,289,400 |
| COURTS | | |
| Trial Courts | | \$4,359,792 |
| <hr/> | | |
| Total Estimated Costs First Four Years | | \$50,086,492 * |

* Not including extra costs to
Dept. Public Safety

FACTS At Your FINGERTIPS

For FAST, ACCURATE, QUOTABLE Information About the Consequences of Passing An Alaskan Death Penalty, SEE the following Summary Charts:

- (1) Executions COST MUCH MORE Than Prison.
- (2) Alaska CanNOT Afford the Death Penalty.
- (3) MISTAKES Are Made & INNOCENT People Are Executed.
- (4) An Innocent Life Was Lost in Alaska.
- (5) Death Penalty Saves NO Lives.
- (6) Voters Want Safety, NOT the Death Penalty.
- (7A) RACIAL BIAS Plagued Capital
&(7B) Punishment in Alaska.

(1)

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. ***

(2)

**ALASKA CANNOT AFFORD THE DEATH
PENALTY**

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

**1997 Fiscal Notes from Corrections, Defenders,
Prosecution, and Trial Courts conservatively predict
that just over 10 capital cases a year, would cost
taxpayers over \$50million for the first four years
alone.**

**Alaskans can expect to spend well in excess of
\$100,000,000.00 on the death penalty before even
one person is executed!**

P. Cook & D. Slawson, The Costs of Processing Murder Cases in North Carolina (Duke University Study, May, 1993); R. Dieter, Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty, D.P.I. Center (Rev. Ed. Fall, 1994); Letter from Atty. Gen. Botelho to AADP, August 27, 1995; Interview of OPA Head, Brant McGee; 1997 Fiscal Notes.

(3)

MISTAKES ARE MADE:
INNOCENT LIVES ARE LOST

Americans NOW on death row: 3,365

**Since 1973,
Death CASES OVERTURNED by courts: 1,642**

**Since 1973,
INNOCENT PEOPLE RELEASED from
death row, some due to new DNA technology: 70**

Death Row, U.S.A., NAACP Bulletin (Winter 1998)

Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions, Staff Report, Subcomm. on Civil and Constitutional Rights, Judiciary Comm., 103d Congress, First Session (1993)

(4)

MISTAKES ARE MADE:

INNOCENT LIVES ARE LOST... IN ALASKA

Eugene LaMoore, a 42 year old African-American fisherman from Juneau, was the last Alaskan executed. Although convicted of minimal participation in a robbery-murder, there is substantial evidence that Mr. LaMoore was, in fact, innocent.

LaMoore's death sentence rested on a "confession" obtained when authorities brought Austin Nelson -- already convicted of doing the stabbing -- into his cell, to beg for help in saving his life, just days before Nelson's scheduled execution.

A prominent attorney, who LaMoore naively thought had come to represent him, then advised LaMoore to put his "confession" in a statement. LaMoore fell for this stratagem, with fatal consequences!

Eugene LaMoore was hanged in Juneau on April 14, 1950.

A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

(5)

**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:**

78%=1-20 years

THE TRUTH: Law requires NO RELEASE for 20 years.

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 sentenced for murder-1 = 80-90 years

HALF of those sentence 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.****

***In the history of our state, NO ONE sentenced for Murder-1 has EVER committed another murder after being released.**

***In the history of our state, NO ONE sentenced for Murder-1 has EVER killed a prison guard or another inmate.**

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

(6)

WHAT DO VOTERS REALLY WANT?

There is NO Public Mandate for
Executions.

MOST PEOPLE FAVOR LIFE W/Out PAROLE
+ RESTITUTION (44%)
OVER D.P. (41%)

THE MISLEADING "APPROVAL MANDATE" CLAIMS
ARE BASED ON DENYING PEOPLE THE RIGHT TO
MAKE THEIR OWN CHOICES AMONG REASONABLE
ALTERNATIVES.

Favor D.P. If No Alternative Offered: 77%

Favor D.P. Over 25 yrs. w/out Parole: 56%

Favor D.P. Over 25 yrs. w/out Parole
+ Restitution to Victim's Family: 44%

FAVOR LIFE W/Out PAROLE
+ RESTITUTION 44%
OVER the D.P. (41%)

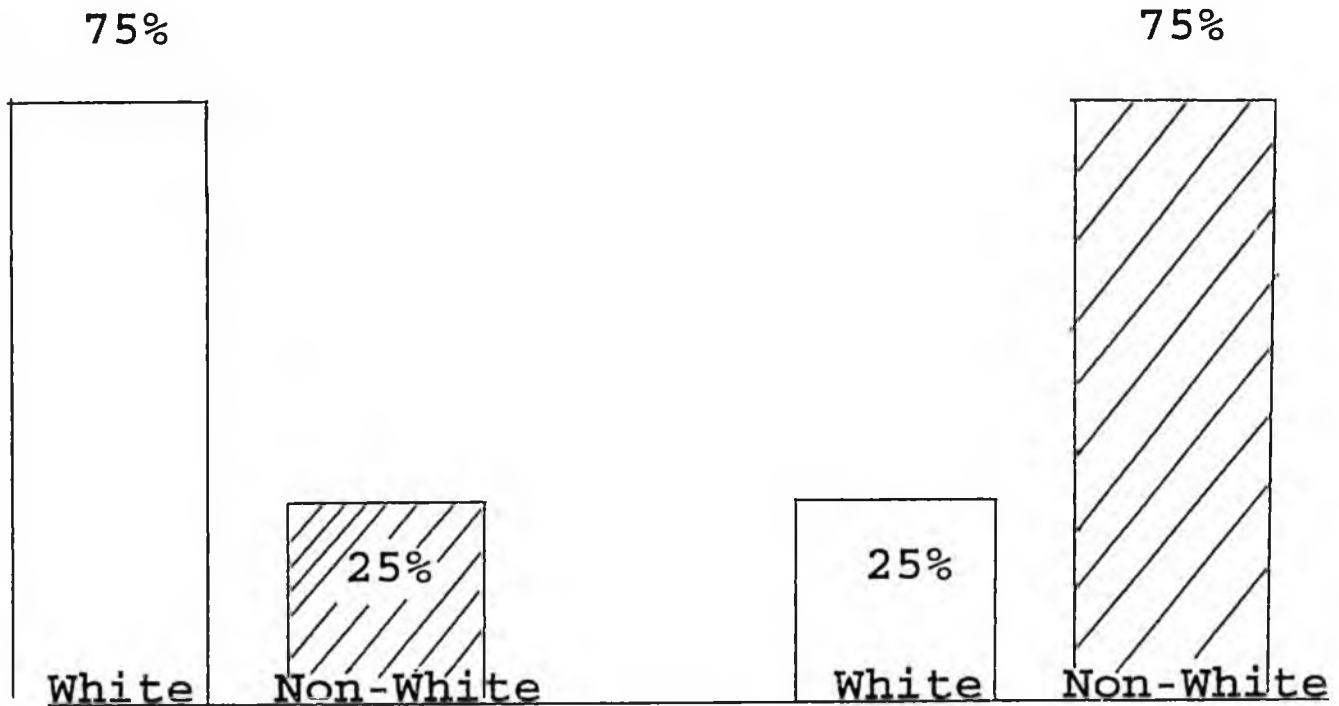
MOST PEOPLE FAVOR THE SENTENCE
ALASKA COURTS ARE ALREADY IMPOSING
IN AGGRAVATED FIRST-DEGREE MURDER
CASES!

(7A)
RACE & EXECUTIONS
IN TERRITORIAL ALASKA

1900-1957

WHO COMMITTED MURDERS?

WHO WAS EXECUTED?

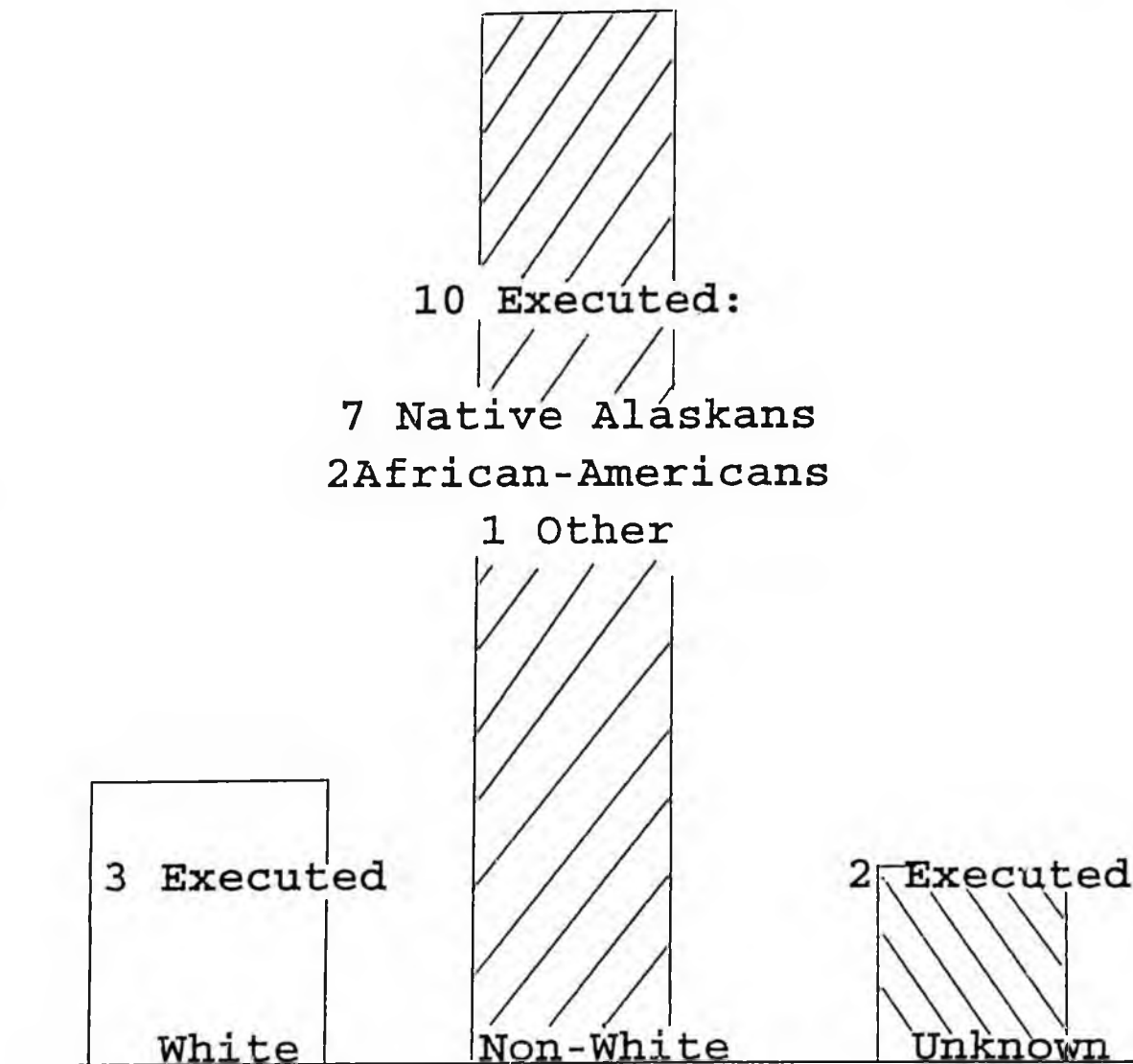


A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

Kynell, A Different Frontier (U. Press of America, Lanham, MD 1991)

(7B)
RACE & EXECUTIONS
IN TERRITORIAL ALASKA

1869-1957



**STATEMENT OF THE CATHOLIC DIOCESE OF JUNEAU IN OPPOSITION TO THE
INSTITUTION OF THE DEATH PENALTY IN THE STATE OF ALASKA**

*Presented to the Finance Committee of the Alaska House of Representatives by Rev. Peter F. Gorges and
Rev. Patrick J. Travers on behalf of Most Reverend Michael W. Warfel, Bishop of Juneau, 28 January 1998*

The Catholic Bishops of Alaska have, over the past two years, expressed strong opposition to the revival of the death penalty in our State for a number of reasons. The first and most important of these is the need, now more than ever, to reaffirm the value of every human life in a society and a world in which this is so often denied. We condemn and abhor the destruction of life that takes place at the hands of violent criminals, as well as the emotional and spiritual violence that is done to the loved ones of their victims. We believe, however, not only that the death penalty is ineffective and unnecessary to reduce violent crime in our State and Nation, but also that the acceptance of further killing by our government as a response to such crime will actually foster the attitudes and emotions that give rise to it in the first place. The opposition of our Church to abortion and euthanasia is founded on our belief that they deny the sanctity and value of every human life, contributing to what we sometimes refer to as a "culture of death" in which killing becomes more and more acceptable as a solution for our problems. We oppose the death penalty for the same reason, recognizing fully the horrible crimes committed and the danger presented by the criminals for whom it is intended.

Our legitimate needs for the deterrence and punishment of the most vicious murderers, and for prevention of any danger that they might be released to murder again, can be met by measures other than the death penalty. We specifically endorse the imprisonment of such persons for the rest of their natural lives without any possibility of parole or other early release, under conditions as secure and rigorous as might be necessary to meet these needs. This is a measure that you yourselves have the authority to enact. It is a measure that would avoid certain other problems with the death penalty that our Bishops have previously observed. One is the inevitability and the finality of executing persons who did not commit the crimes of which they were convicted. Another is the consistently demonstrated unevenness of the death penalty's application to persons convicted of similarly brutal crimes, based upon their economic resources, their race, and their sex. Others, including Sister Helen Prejean, who is with us today, have or will provide you with detailed information on these problems, as well as on the exorbitant cost that implementation of the death penalty involves in contrast with true life imprisonment. Thank you for your consideration of our views on this important moral issue.

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor
Senate Majority Leader

Sponsor Statement

Death Penalty Vote - The Ultimate Poll

by Senator Robin L. Taylor

Senate Bill 60 is intended to seek the advice of the voters of Alaska on the controversial issue of capital punishment.

Passage of SB 60 will not impose the death penalty in Alaska. It simply places on the ballot the question: "Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?".

For years opinion poll after opinion poll have reflected the desire of the people of Alaska to have the death penalty available as an option in this state. SB 60 seeks to employ the ultimate poll, that of the ballot box, in a non-binding vote.

There are those who argue that the people of Alaska are somehow unqualified to render advice on this issue. They argue that the ballot question itself is too "simplistic". They argue that the ballot question should offer a choice between the death penalty and life without parole. What they fail to acknowledge is that the life in prison without parole option already exists in Alaska.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Given the option of a death penalty or life in prison without parole, 555 Alaskans polled statewide in March, 1996, favored the death penalty by a 62% margin, with 35% choosing life without parole. It is especially significant that only 5% of the respondents said they were undecided.

Support for the death penalty crossed all demographics, including location, gender, age, party affiliation, employment status and length of time in the community.

Alaska has one of the youngest, best educated and well read populations in the nation. Judging from the campaign already being mounted against SB 60, the organized groups opposed to capital punishment will most certainly conduct a vigorous campaign when this issue reaches the ballot. Alaskans will cast votes based in information, not emotion.

Issues such as the cost and effectiveness of capital punishment will be part of any campaign on the ballot question and will also need to be explored again at great length if the voters advise the 21st Alaska State Legislature to pursue this issue.

For now, we are talking about placing an advisory vote on the ballot, at a cost of about \$3,000.

<http://essential.org/dpic1>



There are currently 38 states with the death penalty: (in chart above, states in green do not have the death penalty; states in red have the death penalty, but have no one on death row; states in white have the death penalty and have people on death row)

- | | | |
|-------------|----------------|----------------|
| Alabama | Kentucky | Ohio |
| Arizona | Louisiana | Oklahoma |
| Arkansas | Maryland | Oregon |
| California | Mississippi | Pennsylvania |
| Colorado | Missouri | South Carolina |
| Connecticut | Montana | South Dakota |
| Delaware | Nebraska | Tennessee |
| Florida | Nevada | Texas |
| Georgia | New Hampshire* | Utah |
| Idaho | New Jersey | Virginia |
| Illinois | New Mexico | Washington |
| Indiana | New York* | Wyoming* |
| Kansas* | North Carolina | |

Plus: U.S. Government and U.S. Military

*Indicates jurisdictions with no one on death row.
 -New York's law became effective Sept. 1, 1995.

There are currently 12 states without the death penalty:

- Alaska
- Hawaii
- Iowa

Maine
Massachusetts
Michigan
Minnesota
North Dakota
Rhode Island
Vermont
West Virginia
Wisconsin

Plus: the District of Columbia

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

*ADN 4/16/97

STOP CODDLING CRIMINALS

I recently read a letter by a Rev. Kelley indicating that the death penalty did not serve as a deterrent to crime and that it was more expensive than incarceration. This is only true because our justice system does not function with the primary goal of deterring crime, rather it operates like a business oriented toward profit for a corrupt legal system. Many victims of crime feel like they are victimized twice, once by the perpetrator and once by the system. Yet we pay more for our justice system than any other country on earth.

Some countries, like Singapore, have made an effort to just say "no" to crime. Last year, they had five murders committed by the total population. I would say justice which is fair, swift and consistent does serve as a deterrent to crime. In the United States there is chaos in the form of rape, murder and gang warfare. Singapore had these same problems, but they instituted laws which held people responsible and were enforced to the letter.

The average murderer in the United States does nine years prior to release. Many of these killers murder again after their release. Others manage to kill while still incarcerated. We had a case several years ago in Anchorage where a criminal doing a life sentence managed to murder and injure innocent people with a package bomb.

Our justice system is a joke to most criminals. Rather than hold criminals responsible, we find excuses for their demeanor. They don't know right from wrong, they are hapless victims of oppressive social conditions or they suffered from temporary insanity. Let's demand a system that works.

-- Rocky Latta
Anchorage

STOP CRIMINALS PERMANENTLY

The Rev. Dale Kelley would like Alaska to remain a pacifist state in which murderers are eventually set free to murder again. Instead of the death penalty, he would like us to focus on "crime prevention tools that truly work." But he belies his own argument with this statement. The death penalty is not a "crime prevention tool," it is crime prevention, period. Those who receive the death penalty are forever prevented from committing another murder, or any other crime.

Mr. Kelley and his flock need only to read a few national headlines to see the fruits of the prevailing pacifist liberal theology which allows for society's murderers and wickedly vicious offenders to be "rehabilitated" and turned loose. Most, if not all, of the murders and other heinous atrocities committed against our citizens are the work of repeat offenders. Hence, the need for the death penalty.

"Reverend" seems a dubious title for one who quotes George Bernard Shaw (atheist, socialist) but ignores the words of his own Bible which requires murderers to be held accountable with the forfeiture of their own lives. (Reverends and sheep may consult their own Bibles for confirmation.) Mr. Kelley quotes Shaw as saying, "It is the deed that teaches." Precisely. The lesson here is this: murder will earn you the death penalty. Sure, this will be a deterrent to some, and not to others. But for those who are not deterred, there is the penalty. That's the point.

Let us finally dispel this notion that capital punishment is a "teaching tool." It is not. It surely is a deterrent for some. But ultimately, it is crime prevention, in its final, conclusive purpose. And we need it.

-- Michael Toundas

Wasilla

JUSTICE NOT ALWAYS FOOLPROOF

I agree with the conclusion of the Rev. Kelley's letter of March 21, but not with the argument. Prisoners indeed should not be executed, because of the chance of their actually being innocent -- but for no other reason. I confine my response to one aspect of his position on capital punishment: that in carrying it out the executioners sink to the level of the executed.

The belief itself sinks its own adherents; only by dropping all context, all issues of circumstance, goal, motivation -- only by rejecting one's conceptual grasp of reality and adopting a subhuman, perceptual mode of awareness, can one look at an action and come to the conclusion that its opposite is its equivalent. To an animal, from its limited vantage, two actions differing fundamentally in nature may very well appear identical -- but not to a man. A man knows the irrationality of assessing an action's morality by mere reference to the action in and of itself, regardless of context. In this case, both actions do result in death. But one is the initiation of force, the violation of the individual rights of another human being -- the other is justice, a response earned by the offender's own actions. A violator of rights has lost all claim to his own.

It is notable that Dale Kelley is a reverend; religion is the single largest source and cesspool of such thinking, and the results of its influence -- the substitution of dogmatic absolutes for principles -- can be seen all around us.

-- Michael Baum
Anchorage

DEATH PENALTY LONG OVERDUE

In response to Caleb Stewart's letter opposing the death penalty on the grounds that the possibility exists that an innocent person may be executed: Almost daily we read of innocent people being killed by someone who had been convicted of previous murders and was on parole or let out of prison after serving a short sentence. Would Mr. Stewart say Jeffrey Dahmer, Ted Bundy, John Wayne Gacy, etc., were innocent?

It shouldn't be only murder that warrants the death penalty. Just recently, Singleton, the guy who chopped the arms off a 17-year-old girl after raping her, killed a 33-year-old woman in Tampa, Fla. Wasn't the previous crime heinous enough that he should have been executed? Ask the poor girl who lived in fear since Singleton was released from prison.

It's hard to figure the mentality of a person who opposes the death penalty on the grounds that an innocent person may be executed and is unconcerned about the certainty that people are almost daily killed by killers turned loose on society. What about Floyd Roehl in Fairbanks, charged with killing a little 2-year-old? Because Alaska doesn't have a death penalty, are we going to read about him again in a few years after he's released from prison and commits another heinous act on some innocent child?

One argument used by people who oppose the death penalty is that it doesn't deter crime. Ridiculous. How does a person executed for one murder commit another?

Another argument is that it costs more to execute a person than to keep him in prison. Why does it take 10-15 years and countless appeals before the sentence is carried out? Lawyers love this, it puts millions of dollars in their pockets. The sentence should be carried out in 30 days or less, then compare the costs. The death penalty is long overdue in Alaska.

- Don Nowag
Wasilla

DEATH PENALTY MAKES US SAFER

I'm glad to see Reps. Beverly Masek and Jerry Sanders and Sen. Robin Taylor have decided to introduce bills to reinstate the death penalty in Alaska. I do not buy the fact that trying a death penalty case is too expensive - that is not the point. I believe it's time for the residents of this state to face the fact that the streets are not safe and it's not only children who are being murdered every day. How many more children will have to be buried? If I ever see another police procession driving to the Anchorage International Airport it will be too soon. How long will it be before we read about another Alaska state trooper killed by a recently released prisoner? The solution is simple; the alternative puts all Alaskans in danger of being the next dead citizen.

- Mike McClary
Anchorage

DEATH PENALTY AND SENTENCING INFORMATION

In the United States

3/ 97

1. Imposition of the death penalty is extraordinarily rare. Since 1967, there has been one execution for every 1600 murders, or 0.06%. There have been approximately 560,000 murders and 350 executions from 1967-1996 (FBI's Uniform Crime Report (UCR) & Bureau of Justice Statistics (BJS)).
2. Approximately 5900 persons have been sentenced to death and 358 executed (from 1973-96). An average of 0.2% of those were executed every year during that time. 56 murderers were executed in 1995, a record number for the modern death penalty. This represented 1.8% of those on death row. The average time on death row for those 56 executed - 11 years, 2 months ("Capital Punishment 1995", BJS, 1996), an all time record of longevity, breaking the 1994 record of 10 years, 2 months.
3. Death penalty opponents ("opponents") state that "Those who support the death penalty see it as a solution to violent crime." Opponents, hereby, present one of many fabrications. In reality, executions are seen as the appropriate punishment for certain criminals committing specific crimes. So says the U.S. Supreme Court and so say most death penalty supporters ("advocates").

Many opponents say that execution is the same as murder because both end a human life. Opponents have reached the bizarre conclusion that if two acts have the same ending or result, i.e. execution and murder, then those two acts are morally equivalent. Is the legal taking of property to satisfy a debt the same as auto theft? Are kidnaping and legal incarceration the same because both involve imprisonment against one's will? Truly, "any culture that fails to distinguish between the criminal (act) and the punitive act is a culture that cannot survive." (D.6.) Is killing in self defense the same as capital murder because both end in taking human life? Are rape and making love the same because both may result in sexual intercourse? Opponents' logic often mirrors opponents' "factual" arguments - there is, often, an absence of reality.

Great effort has been made in pretrial, trial, appeals, writ and clemency procedures to minimize the chance of an innocent being convicted, sentenced to death or executed. Indeed, since 1973, the due process protections in capital cases have been so extraordinary that 37% of all death row cases, or 2046, have been overturned for due process reasons or commuted. ("Capital Punishment 1995", BJS, 1996). Many of those cases were overturned based on post conviction new laws, established by legislative or judicial decisions in other cases. Possibly as many as 15-30 of post Furman cases (0.25-0.51%) were overturned or commuted based on credible claims of innocence. This means that from 99.49%-99.75% of all capital convictions resulted in the guilty being convicted. Predictably, opponents falsely claim that 65 death row inmates have been released since 1973, after having been proven

innocent. There is no evidence to support that claim. Also, contrary to the false claims of opponents, clemency is used generously to grant mercy to death row murderers and to spare inmates whose guilt has come into question. In fact, 135 death row inmates have been spared by clemency or commutation from 1973-1975 (ibid). This represents 43% of the total of those executed during that time - a remarkable record of consideration and mercy.

The greatest fear, by advocates and opponents, is that an innocent person will be executed. The most significant study conducted to evaluate the evidence of that threat is the Bedau-Radelet Study ("Miscarriages of Justice in Potentially Capital Cases", 40, 1 Stanford Law Review, 11/87). The study concluded that 23 innocent persons had been executed since 1900. However, the study's methodology was so flawed that at least 12 of those cases had no evidence of innocence but substantial evidence of guilt. Bedau & Radelet, both opponents, "consistently presented incomplete and misleading accounts of the evidence." (Markman, Stephen J. & Cassell, Paul G., "Protecting the Innocent: A Response to the Bedau-Radelet Study" 41, 1 Stanford Law Review, 11/88). The remaining 11 cases represent 0.14% of the 7,800 executions which have taken place since 1900. And, there is, in fact, no proof that those 11 executed were innocent. In addition, the "innocents executed" group was extracted from a Bedau & Radelet imagined pool of 350 persons who were, supposedly, wrongly convicted of capital or "potentially" capital crimes. Not only were they at least 50% in error with their 23 "innocents executed" claim, but 211 of those 350 cases, or 60%, were not sentenced to death. Bedau & Radelet already knew that plea bargains, the juries, the prosecutors, judicial review or the legal statutes had already put these crimes in the "no capital punishment" category. Indeed, their claims of innocence, regarding the remaining 139 of those 350 cases, should be suspect, given this study's poor level of accuracy. Calling their work misleading hardly does this "academic" study justice. Had any high school student presented such an inaccurate and misleading report, a grade of F would be a likely result.

Indeed, Michigan Court of Appeals Judge Stephen Markman finds that "... the Bedau-Radelet study is remarkable not (as retired Supreme Court Judge Harry Blackman seems to believe) for demonstrating that mistakes involving the death penalty are common, but rather for demonstrating how uncommon they are... This study - the most thorough and painstaking analysis ever on the subject - fails to prove that a single such mistake has occurred in the United States during the twentieth century." Presumably, Bedau and Radelet would have selected the most compelling 23 cases of the innocent executed to prove their proposition. "Yet, in each of these cases, where there is a record to review, there are eyewitnesses, confessions, physical evidence and circumstantial evidence in support of the defendant's guilt. Bedau has written elsewhere that it is "false sentimentality to argue that the death penalty ought to be abolished because of the abstract possibility that an innocent person might be executed when the record fails to disclose that such cases exist." ... (T)he Bedau and Radelet study... speaks eloquently about the extraordinary rarity of error in capital punishment." ("Innocents on Death Row?", National Review, September 12, 1994).

Another significant oversight by that study was not differentiating between the risk of executing innocent persons before and after *Furman v Georgia* (1972). There is, in fact, no proof that an innocent has been executed since 1900, and the probability of such a tragedy occurring has been lowered significantly more since *Furman*. In the context that hundreds of thousands of innocents have been murdered or seriously injured, since 1900, by criminals improperly released by the U.S. criminal justice system, the relevant question is: Is the risk of executing the innocent, however slight, worth the justifications for the death penalty - those being retribution, rehabilitation, incapacitation, required punishment, deterrence, escalating punishments, religious mandates, cost savings, the moral imperative, just punishment and the saving of innocent lives?

Predictably, opponents still continue to claim, even today, that a study has proven that 23 innocent people have been executed, even though Bedau and Radelet, the authors of that study, conceded - in 1988 - that neither they nor any previous researchers have proved that any of those executed was innocent: "We agree with our critics that we have not proved these executed defendants to be innocent; we never claimed that we had." (41, 1 *Stanford Law Review*, 11/1988).

B. THE INCAPACITATION AND THE DETERRENT EFFECTS

1. The argument that murderers are the least likely of all criminals to repeat their crimes is not only irrelevant, but also increasingly false. 6% of young adults paroled in 1978 after having been convicted of murder were arrested for murder again within 6 years of release. ("Recidivism of Young Parolees", 4, 1987, BJS). Murderers have so violated the human rights of their victims and of society that it should be a moral imperative that they never again have that opportunity.
2. Obviously, those executed can't murder again. "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. Executing each of these inmates would have saved 821 lives." (41, 1 Stanford Law Review, 11/88, pg. 153) Using a 75% murder clearance rate, it is most probable that the actual number of lives saved would have been 1026, or fifty times the number legally executed that year. This would suggest that some 5000 persons have been murdered, since 1971, by those who had previously committed additional murders (JFA). See B.5.
3. FBI crime reports reveal that in 1993, 7,700 persons were murdered by criminals released on parole, probation or pretrial release. (The American Enterprise, May/June 1995.) Death penalty opponents spend millions of dollars and countless man hours fighting the legal execution of, at most, 56 murderers per year, when they do nothing to fight for the end of those inhumane release policies which, every year, result in 7,000-10,000 additional murders and 3 million additional violent crime victims. (The State of Violent Crime in America, 1/96, i, ii & Criminal Victimization 1993, BJS 1995 & JFA). Incredibly, this does not include those violent crimes committed by repeat offenders who are released and not on "supervision". Where is the compassion in honoring the previous victim's suffering

and in protecting the human rights of future victims? Opponents' actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder our loved ones.

4. 9-15% of those on death row committed, at least one additional murder, prior to that murder (or those murders) which has currently put them on death row; 67% had a prior felony conviction; 42% had an active criminal justice status when they committed their capital offense; 14% of those sentenced to death from 1988-94, had received two or more death sentences ("Capital Punishment 1994", BJS 1995 & JFA). Should we err on the side of caution and protect the innocent and honor the memories of those murdered or should we give murderers the opportunity to harm again? Should we put prison personnel and other prisoners at any additional risk from known murderers? Prisoners on death row are 250% more likely to murder, in prison, than are prisoners in the general population. Lester, D., "Suicide and Homicide on Death Row", *American Journal of Psychiatry*, 143, 559, 1986.
5. Murderers released in 1992 had served an average of 5.9 years in prison (*The State Of Violent Crime in America, 1/96*). Taking into account those murderers that were never caught, those that were not sentenced to prison and "good time" and other "credits" counted as "time served", the average time served for all murders is closer to 3 years (JFA). See B.2. Why have we chosen to be so generous to murderers and so contemptuous of the human rights and suffering of the victims? For a criminal justice system to have credibility and deterrent value, two factors are required: (1) a high rate of arrest and (2) punishment which reflects the severity of the crime, the criminal's record and the demand for justice. The U.S. system has neither. Of the 10.3 million violent crimes in 1993, only 100,000 of those victimizations, or 1%, resulted in an actual jail sentence. Only 6.2% of all violent crimes result in arrest. (Prof. John J. DiIulio, Jr., Princeton Univ. 1995, *The State of Violent Crime in America, 1/96* and *Criminal Victimization 1993*, BJS, 1995.) The human rights of victims and future victims are consistently ignored.
6. With no death penalty and only life without parole (LWOP), there is no deterrent for LWOP inmates killing others while in prison or after escape. Indeed, there is actually a positive incentive to murder if a criminal has committed a LWOP offense and had not yet been captured. Currently, there are a number of inmates who have killed numerous people in prison or after escape. Their punishment could not be increased because there is no death penalty in those states. Therefore, they will never be punished for those crimes. Never. Not surprisingly, death penalty opponents believe that LWOP is more severe than the death penalty. Hamilton, V., & Rakin, L.: "Interpreting the 8th Amendment", Bedau, H., & Pierce, C., ed., *Capital Punishment in the United States*, New York, AMS, 1976. This absurd belief, which has now become the newest mantra of opponents, is contradicted by all other surveyed groups, including prisoners (B.12 & 15).
7. Death Penalty opponents claim that there is a "brutalization effect" with executions, meaning, that executions show a low regard for human life and do, thereby, cause an increase in the murder rate. If the brutalization effect is real, it would be the only

known legal sanction to cause an increase in wrongful behavior. Why would criminals become more likely to engage in illegal activities because the punishments for those activities become more severe? How absurd. Have dramatic increases in the rates of incarceration resulted in dramatic increases in kidnappings? Just the opposite. Further deploring the brutalization effect is the fact that many respected studies show that executions do produce an individual and a general deterrent effect. (B.13 & 15)

8. Assume all murderers would instantly die upon murdering. Murderers would then kill only if they wished to die themselves. Murder/suicide is an extremely small component of all murders. Therefore, if a swift and sure death penalty was universally applied to our worst criminals, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved. In fact, swift and sure executions do result in deterrence: (A) The greater the publicity surrounding executions, the greater the deterrent effect. Phillips, D. "The Deterrent Effect of Capital Punishment". *American Journal of Sociology*, 86:139-158, 1980; Phillips, D. & Hensley, J., "When Violence is Rewarded or Punished". *J. Commun.*, 34(3); 101-116, 1984; and the various studies by Prof. Steven Stack, Wayne St. U. (1988-1995) and (B) The higher the rate of execution, the greater the deterrent effect. Lester, D. "Executions As A Deterrent To Homicide", 44:562, 1979a and "Deterring Effect of Executions on Murder as a Function of Number and Proportion of Executions", 45:598, 1979b, both from *Psychol. Rep.* and Wasserman, L.: "Non-deterrent Effect of Executions on Homicide Rates", *Psychol. Rep.*, 58:137-138, 1981. The State of Delaware has the highest execution rate per capita and the lowest homicide rates. See B. 13, 15 and 17.
9. There are two rational conclusions one can make regarding deterrence. One, if the death penalty is not a deterrent, then we are executing our worst human rights violators. Two, if the death penalty is a deterrent, then we are executing those criminals **and** saving innocent lives. Regarding deterrence, it is necessary to err on the side of saving innocent life.
10. There are two mistakes we can make with those convicted of violent crimes. First, we can misjudge their character and keep them incarcerated too long, when they could have become constructive free persons, repaying even more their debt to society and to their victim(s). Secondly, we can misjudge their character and release them too soon, so that they further destroy the lives of our children, our brothers and sisters, our spouses and our parents, creating additional economic, physical, emotional and spiritual loss. For far too long, the U.S. has chosen to err on the side of those who have violated our human rights and has, thereby, expanded the river of blood and tears for victims and their survivors (See B.3). No more. Not in our name. We demand that the memories and suffering of crime victims be honored by justice - that is by a just punishment which reflects the severity of the crime. And, we must always err on the side of caution and compassion for those not yet harmed.
11. Opponents proclaim that the death penalty is a cruel and medieval policy, reflecting horrors that conflict with human dignity - a barbaric act so dreadful in its implications that we can hardly bear to contemplate its terrible character. On the

other hand, they also assert that potential murderers, when confronted with the horrors of execution, will not be deterred by its infliction upon them. That proposition is, of course, absurd on the face of it. Revised from M. Stanton Evans, *Clear and Present Danger*. Indeed, prisoners rate the death penalty as the most feared punishment, much more so than life without parole. Sehba, L. & Nathan, G., "Further Explorations in the Scale of Penalties," *British Journal of Criminology*, 24:221-249, 1984. See B.15.30 years of studies suggest that the death penalty is a general, or systemic, deterrent. (See works by Profs. D. Cloninger, S. Cameron, I. Ehrlich, W. Bailey, D. Lester, S. Layson, K. I. Wolpin, L. Phillips, S. C. Ray, S. Stack, etc.) Examples: a) A 1967-68 study revealed 27 states showed a deterrent effect (Bailey, W., 1974); b) The 1960's showed a rapid rise in all crimes, including murder, while both prison terms and executions declined (Passell, P. & Tarr, T., 1977; Bowers, W. & Pierce, G., 1975); c) Murder increased 100% during the U.S.'s moratorium on executions (Carrington, F., *Neither Cruel Nor Unusual*); d) 14 nations that abolished the death penalty showed that murder rates increased 7% from the 5 year pre-abolition period to the 5 year post abolition period (Archer, et al, 1977); e) A 37 state study showed that 24 states showed a deterrent effect, 8 states showed a brutalization effect and 5 states showed no effect (Bailey, W., 1979-80); and f) econometric studies indicate that each execution may deter 8 or more murders (Cameron, S., 1994). Although these studies have been produced by respected social scientists, there are also studies which show no general deterrent effect. Indeed, with the complexity of these studies and the number of variables required to accurately measure the absolute general effect of executions on murder rates, it is arguable if there ever will be a consensus on a cause and effect connection. Furthermore, with so few executions and so many murders, the general deterrent effect will likely remain statistically elusive. However, since the general deterrent effect is inconclusive, we must choose to use executions because they may save innocent life. Whereas, if we choose not to use executions we may be sacrificing innocent lives.

12. Regarding the deterrent affect of the death penalty, poet Hyam Barshay made the following observation, "The death penalty is a warning, just like a lighthouse throwing beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down." Prof. Ernest van den Haag, "On Deterrence and The Death Penalty", *Journal of Criminal Law, Criminology and Police Science*, vol. 60, no.2 (1969).
13. The individual deterrent effect is proven by hundreds, if not many thousands, of individual, fully documented cases where criminals have admitted that the death penalty was the specific threat which deterred them and/or others from committing murder. Indeed, one study showed that criminals, by a 5:1 ratio, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims (People vs Love, 56 Cal 2d 720 (1961), McComb, J. dissenting. see also: (A) "Controversy Over Capital Punishment", *Congressional Digest*, Jan., 73, p. 13; (B) L.A.P.D. study within Aikens vs Ca., No. 68-5027, Oct.

Term, 1971, U.S. Supreme Court; (C) Carol Vance, "The Death Penalty' After Furman", The Prosecutor, vol. 9, no. 4 (1973), p. 703; (D) Carrington, F., Neither Cruel Nor Unusual, Pgs. 92-100(1978); (E) Don Hooloschultz, "Gunman Slain, Hostages O.K.", Washington Star News, 8/23/73, p.A-1; (F) Jim Landers, "4 Guilty in Holdup Sentence", Washington Post, 12/8/73,p.B-1; (G) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", Police Digest, Spring/Summer 1973, p.27, col.2. ; (H) "Langley says Texas death penalty affected his actions during escape", by Stephen Martin, The Daily Democrat (Ft. Madison, Iowa), 1/8/97, pg 1. Indeed, prisoners rate the death penalty as a much more severe penalty than they do life without parole (B.12). While it is difficult to prove a negative, i.e." How many murders does the death penalty cause not to occur?", there is absolute evidence that the individual deterrent effect of executions saves innocent lives. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant systemic deterrence. See B.9

14. Opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Delaware, which executes more murderers per capita than any other state in the U.S.A., also has the lowest homicide rates. Furthermore, general or systemic deterrence is not necessarily measured by low or reduced homicide rates, but by rates that are lower than they otherwise would be if the death penalty was not present. Additionally, some countries, such as Saudi Arabia, have swift and sure executions and very low violent crime rates. It is not surprising that the U.S., which executes only 0.06% of its murderers, does not overtly show a general deterrent effect. While most in the U.S. would not advocate criminal justice systems like that of Saudi Arabia, it is also very clear that our criminal justice system fosters the additional slaughter of its own innocent citizens.
15. The highest murder rate in Houston (Harris County), Texas occurred in 1981, with 701 murders. Texas reinstated the death penalty in 1982. Since that time, Houston (Harris County) has executed more murderers than any other city or state AND has seen the greatest reduction in murder, 701 in 1981 down to 261 in 1996 - a 63% reduction, representing a 270% differential! (FBI, UCR, 1982 & Houston Chronicle, 2/1/97, pg. 31A).

CONCLUSION

The test for deterrence is not whether executions produce lower murder rates, but that executions produce fewer murders than if the death penalty did not exist. For example, the fact that Delaware executes more people per capita (1/74,000) than any other state and has the lowest murder rate in the country (.5/100,000), a rate lower than virtually all European nations, is not proof, per se, of deterrence. Nor is the fact that Washington, D.C. has the highest murder rates (50/100,000) and highest violent crime rates (1,000/100,000) evidence, per se, that the lack of the death penalty increases all violence, including murder. Be careful how you explain and understand deterrence.

At worst, the general deterrent effect is inconclusive (B. 9, 13 & 16). There are 30 years

of respected academic studies which reveal a general deterrent effect. However, such general deterrence is inconclusive because there are also studies that find no general deterrent effect. Because this matter is inconclusive, we must choose the option that may save innocent lives. For, if there is a general deterrent effect and we don't execute murderers, we are sacrificing innocent lives. If there is not a general deterrent effect, and we continue to execute, then we are executing our worst human rights violators. If our judgment is in error regarding general deterrence, then such error must be made on the side of saving innocent lives and not on the side of sacrificing innocent lives. This is a moral imperative. Therefore, regarding general deterrence, we must execute. Additionally, there is no contradicting that the incapacitation effect saves lives - that is, that by executing murderers you prevent them from murdering again and, thereby, save innocent life. The evidence of this is conclusive and incontrovertible (B.1-4 & 7). Additionally, the individual deterrent effect absolutely saves innocent life (B. 9, 12 & 15). The individual effect represents those potential murderers, and/or their accomplices in crime, who state that they, and/or others, did not murder under specific circumstances because of their fear of execution. There are hundreds, if not thousands, of such documented cases, representing many innocent lives saved by the fear of execution. Circumstances dictate that the majority of these cases will never be documented and that the number of innocent lives saved by individual deterrence will be, and has been, much greater than we will ever be able to calculate.

C. RACE, SENTENCING AND THE DEATH PENALTY

One of opponents's most popular false claims is that it is the race of the victim which determines who is on death row. 82% of the murder victims in death penalty cases are white, 13% are black, or a 6:1 ratio (NAACP Legal Defense Fund (LDF), 1996). Opponents, such as Kica Matos, NAACP LDF, Steven Hawkins, Executive Director, National Coalition to Abolish the Death Penalty (NCADP) and Sr. Helen Prejean, longtime Chairperson of the NCADP and author (Dead Man Walking), present this fact as evidence that the "system" values white lives more than black lives. If true, then we must wonder why whites represent 56% of those executed, and blacks 38% (NAACP LDF, Summer 1996) when blacks have committed 47% of all murders, and whites 38% (Special run of 1930-1984 BJS data, 1/13/97, for non Hispanic whites and non Hispanic blacks. JFA calculations for known race/ethnicity.). From 1991-94, 34% of murderers have been white, 54% black (ibid).

Should we conclude that the "system" focuses its benevolence toward black murderers, but its racism against black victims? How absurd. Such false conclusions, by opponents, are expected and serve only to further undermine their quickly eroding credibility. Successful capital prosecutions have nothing to do with the race of the victim and everything to do with the nature of the crimes. The most thorough evaluation of this subject was presented in *McClesky vs Georgia* (Zant/Kemp), wherein Federal District Judge Owen Forester accurately found that "the best models which (McClesky expert) Baldus was able to devise... produce no statistically significant evidence that race (of the victim or of the

defendant) plays a part in either (the prosecution's or the jury's capital decisions).ä (580 Federal Supplement 338, p 368, 2/1/84).

Could it be that whites are, overwhelmingly, the victims in death row cases because whites are, overwhelmingly, the victims in capital crimes? The 8 most common capital crimes, by statute and by occurrence, are (1) murder of a police officer; (2) multiple victim murders; and murder combined with (3) rape; (4) sexual assault; (5) robbery; (6) burglary; (7) auto theft/car jacking; and (8) kidnaping. (BJS, 1996). What is the ratio of white to black victims under the relevant, but non-homicide circumstances, which, when combined with homicide, become capital crimes? (A) The most relevant economic violent crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.4.); (B) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-1984); (C) For all property crimes (theft, burglary, auto theft), there is a 7:1 ratio of white to black victims ("Sourcebook, 1994", BJS 1995, tables 3.21,3.25); (D) White victims make up 5 times the number of violent crime victims as black victims, or 5:1 (C.2); and, for homicides, which by themselves, qualify for the death penalty: (E) In death penalty states, police victim murders are capital crimes. From 1985-1994, 87% of murdered officers were white, 12% black, or 7:1 (Law Enforcement Officers Killed and Assaulted, FBI:UCR, 1994); (F) Whites make up a dominant percentage of multiple/serial murderers, whose victims are overwhelmingly white, thereby disproportionately and correctly raising the number of white victims in execution cases. In such death row cases, 87% of the victims are white, 13% black, or 7:1 (NAACP LDF data, 1996); (G) Many death row cases involve stranger murders. Whites make up 74% of all strangers, blacks 12%, or 6:1 (US Census); and (H) Research and appellate courts have confirmed that white victim murders are the most aggravated, thus, by statute, enhancing the likelihood of a death sentence in those cases (C.13, 15, & 17). These factors, and those below, within this paragraph 1, appear to be entirely consistent with the 6:1 ratio of white to black victims in capital cases.

But, wait, don't blacks and whites represent about an equal number of murder victims? Yes. However, capital crimes are very unique, combining murder with specific circumstance, such as subsets 1-8 and A-H., IF homicide rates are statistically consistent within subsets A-D, as McClesky vs Georgia and additional studies indicate (C. 10, 13, 14, 15, & 16; hereinafter McClesky et al), then it is subsets 1-8 and A-H, with additional required factors such as the murderer's criminal history and capital procedures (see F), which are confirmed to dictate the distribution of victims in these cases. Make no mistake, murder victims and capital murder victims are two very distinct groups. Capital statutes, crime statistics, aggravating factors and criminal history appear to accurately dictate the racial variation of murder victims in capital cases. See bold section of C.4.

Should we balance the scales of justice by changing the statutes so that we can execute equally the killers of blacks and whites? Only if you wish to dramatically increase the number of black murderers executed. 93% of all black murder victims are killed by blacks. On a case by case basis, black on black murders show significant enough mitigating factors,

that, by current statutes, this reduces the numbers of blacks who might otherwise be executed (BJS, 1976-94, McCleskey vs. Georgia (Zant/Kemp), Dr. Joseph Katz (Georgia State U.), etc.).

2) A comparison of only black or white perpetrators and victims reveals that whites are 5 times more likely to be the victims of a violent crime than are blacks, or 7.5 million vs 1.5 million ("Criminal Victimization, 1993", BJS, 1995.).

3) In 1994, death row inmates median level of education was the 12th grade. Of the 87 executed in 1994 and 1995, 50(57%) were white and 33(38%) were black. ("Cap. Pun. & 95", BJS. 195-96).

4) From 1976-1995, 5 white murderers have been put to death for the murder of black persons and 101 black murderers have been put to death for the murder of white persons (NAACP LDF, 1996). Of course, opponents contend that this is evidence of racism in the "system". Equally predictable, that contention appears to be entirely false. That 101:5 ratio, or 20:1, is consistent with statistics that show aggravated crimes (those crimes committed prior to a murder which may make a crime eligible for the death penalty) are committed by blacks against whites in far greater numbers than by whites against blacks. For all violent crimes, there are ten times as many black offenders (2,016,939) involved in white victim violent crimes as there are white offenders (210,869) involved in black victim violent crimes, or a 10:1 ratio. (The State of Violent Crime in America, pg. 12, 1/96, data derived from Criminal Victimization in the U.S., 1993, BJS forthcoming, tables 42 and 48. JFA has assumed multiple offenders to be two offenders for calculation purposes.) In addition, blacks are nearly three times as likely to murder whites (849), as whites are to murder blacks (304), or 3:1 (Sourcebook 1994, BJS 1995, table 3.123). If murder rates are statistically consistent within the violent crime category, as McCleskey et al indicate, then blacks are, statistically, by a 30:1 (10:1 X 3:1) ratio, more likely to murder whites, than whites are to murder blacks, in those circumstances where an additional aggravating factor is present (see C.1.). These are those crimes most eligible for the death penalty. That statistically projected ratio of 30:1 is hardly inconsistent with the 20:1 ratio for black offender(s)/white victim vs white offender(s)/black victim executions. The most relevant aggravated crime is robbery with injury. Black offenders are 21 times more likely to be involved in such crimes as white offenders. This 21:1 ratio represents 1.4 million black offender(s)/white victim vs. 68,000 white offender(s)/black victim for robbery with injury crimes (JFA, using BJS, 1977-84 data). If overall murder statistics are consistent, within this crime category, as McCleskey et al suggests, then there is a 30-60:1 ratio of black on white vs white on black murders within this robbery/murder category. (From 1977-1984). A thorough evaluation of the data, in death penalty states, from 1973-84, of the 8 most prevalent capital crimes and statutes, the aggravated nature of those murders, and the criminal background of those murderers (as per Katz's evaluation in McCleskey vs Georgia and as per C.1.) is needed to present the most relevant and the most accurate analysis. Crimes committed in 1973-1984 are the most relevant to those executed from 1977-1995. Non-Hispanic whites and non-Hispanic blacks are the requested categories of offender/victim. See C.1, 13, 15 and 17.

5) 75% of blacks and 35% of whites believe that blacks are treated more harshly than whites by the criminal justice system. This is a deserved reputation, particularly in the South. Blacks have suffered some 400 years of slavery and blatantly racist criminal justice practices. From the practices of punishing blacks, who rape whites, with death and whites, who rape blacks, with a slap on the wrist, to the three trials needed to convict Byron de la Beckwith for the murder of civil rights leader Medgar Evers, generations of black Americans cannot and must not forget.

6) In 1994, in northeastern states, 36% of those on death row were white, 59% black. In southern states, 57% were white, 41% black (Capital Punishment 1994 ,BJS, 1995).

7) After examining 42,500 criminal files in the nations 75 largest counties, Patrick Langan (BJS) concluded that there was no evidence "...that, in the places where blacks in the U. S. have most of their contacts with the judicial system, that (the) system treats them more harshly than whites." (John DiIulio, Jr., "White Lies About Black Crime", The Public Interest, 1995. See also "Research on Sentencing", National Research Council, 1983.)

8) 93% of blacks are murdered by blacks; 83% of whites are murdered by whites
"Sbk. 94", BJS, 1995.

9) No evidence of system wide discrimination in the imposition of the death penalty exists beyond the 1950's. From 1929-66, white murderers were more likely to be executed than black murderers (10.4 vs 9.7/1000). This trend continues today.(C.I.) (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty", American Sociological Review, 12/81.)

10) A study of the death penalty, as imposed by Harris County (Houston, Texas, USA) juries, since 1982, found that the death penalty was imposed on white and black murderers in proportion to the capital offenses committed by those race classifications(The Houston Post, 10/16/94).

11) Although blacks make up 12% of the US population, they comprise 44% of the prison population. (BJS, Prisoners in 1994). Researchers find a close relationship between the racial distribution in arrest and prison statistics and the race of offenders as described by crime victims. In other words, according to the reports from victims, racial groups are represented in prison according to their involvement in criminal activity. Although sentencing studies show that the offenders prior criminal record and the aggravated nature of the crime are the key factors in making imprisonment decisions, the racial aspects of crime and punishment should be continuously scrutinized. For example, Langan finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively. (Patrick Langan, Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S. (1985). Also see Texas Crim. Jus. Policy Council, A Source Book of Arrest and Sentencing By Race, 1994; Al Blumstein, On The Racial Disproportionality of

U.S. Prison Populations, (1982); M. Hindelang, Crime Victimization (1976) and Race and Involvement (1978); U.S. General Accounting Office, Racial Differences in Arrests, 1/20/94.)

12) Whites are executed an average of 15 months quicker than blacks. ("Capital Punishment, 1995", BJS, 1996)

13) Legal variables, such as prior criminal history and the aggravated nature of the murder, are the proven basis for imposition of the death penalty. The black/white variation in sentencing has generally been reduced to zero when such legal variables are introduced as controls. ("Execution by Quota", The Public Interest, Sum. 1994; Also see Dr. Katz, "Statement to the Senate Subcommittee on the Judiciary Concerning the Relationship Between Race and the Death Penalty" 10/2/89).

14) In *McCleskey vs Georgia*, McCleskey's attorneys argued that the death penalty was racist in its application. The basis for that view was a study conducted by Profs. Baldus, Woodward and Pulaski. In August, 1983 Fed. District Court Judge J. Owen Forester found that the study's conclusions of racial bias were without merit. In 1985, the 11th Circuit Court of Appeals, by a 9-3 vote, stated "Viewed broadly, it would seem that the statistical evidence presented here, assuming its validity, confirms rather than condemns the (death penalty) system." In April 1987, the U.S. Supreme Court upheld that decision in a 5-4 vote, stating that the referenced study did not establish that capital punishment discriminates against black defendants or killers of white victims. The courts concluded that statistical evidence could not be used to determine prejudice. Each individual case must be judged on its own case facts. A thorough critique of the Baldus study was conclusive--the death penalty was not racist in application and that, for whatever reasons, white victim cases presented the most aggravating murders thus, by statute, increasing the likelihood of a death sentence (*McCleskey vs Georgia (Zant/Kemp)* & Dr. Joseph Katz, *Georgia State U.*).

15) The single, most vile strategy of death penalty opponents is their use of propaganda to nurture hatreds and mistrust between race and class. Bryan Stevenson, a well known opposition attorney with Equal Justice Initiative (Montgomery, Alabama) gives us an example of that strategy. He finds that the death penalty reflects the middle class's desire to strike out at the poor and racial minorities ("A Matter of Life and Death", *Christianity Today*, 8/14/95). Sister Helen Prejean joins this hideous chorus, proclaiming that "(m)iddle-class and upper middle-class white people...are so much for the death penalty (to) 'Keep those dangerous people (the poor and minorities) in their place.'" ("Opposing the Death Penalty", *AMERICA*, 11/9/96, pg. 12.) Clearly, these vile statements reveal only their prejudice. Prejean continues "It didn't take long to see that for poor people, especially poor black people, there was a greased track to prison and death row." (*The Progressive*, 1/96, p. 32(4) vol. 60, no. 1). These statements are grossly insulting to both the poor and to minorities. They are also completely false. Indeed, Sister Prejean is really saying that the

poor, especially poor black people, can't help themselves from committing capital murder! What a grotesque conclusion. Based on their active involvement in the death penalty debate, both Stevenson and Prejean should (must?) be aware that (1) the majority of those executed are white (C.1.); (2) Whites are executed in a disproportionately high number and blacks in a disproportionately low number, in relation to their perpetrating murder (C.1.); (3) since 1929, white murderers have been more likely to have been executed than black murderers (C.9.); (4) the majority of those on death row are white (NAACP LDF, 1996); (5) A study of the economic status of death row inmates showed that only 38% of those on Georgia's death row were poor (C.17).; (6) there is no evidence that capital murderers of different economic classes are over or under represented on death row (C.17); (7) whites are executed 15 months quicker than blacks. (C.12.); and (8) There appears to be no "race of the victim" effect. Capital murderers are executed primarily because of the aggravated nature of the crime(s). Period. (C.1. & C.4.) Both Stevenson and Prejean do hereby reflect either their unbelievable ignorance or their willful and foul deception. The reality is that over 99% of all persons, including poor minorities, do not commit capital crimes. And, there is, of course, no excuse for anyone that does.

16) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon the death penalty statutes, the aggravated nature of the crime, the criminal background of the murderer and the other specific factors mandated by the Furman and Gregg vs. Georgia cases, and by subsequent Supreme Court decisions. Since 1973, there is absolutely no credible evidence to support any other conclusion.

17) THE WEALTHY AND DEATH ROW - Contrary to opponents claims, there is no systemic evidence that wealthy capital murderers are less likely than their poorer ilk to receive the death penalty. Drawing only on personal knowledge, we found that since 1973, in Texas, alone, at least seven middle class to wealthy murderers have been put on death row. Four, Markum Duff Smith, George Lott, Robert Black, Jr., and Ronald O'Bryan have been executed. Three additional await execution. Don't forget John Wayne Gacy and Ted Bundy. Extensive, objective research would, undoubtedly, reveal many more. Furthermore, Dr. Joseph Katz found that, while 74% of all Georgia murder defendants were poor, only 38% of those on death row were poor (McCleskey vs. Georgia). Speculation: 10% of the U.S. population (23 million) can afford to pay the \$400,000* cost for their capital trial and appeals. Because financial need can be excluded, the category of wealthy capital murderer can be assumed to murder at a rate 10 times less than their poorer ilk. Fact: 0.20% of the U.S. population commits murder. 1.3% of those are sentenced to death. Only 5.9% of those have been executed. Therefore, the projected number of wealthy executed from 1976-1996 is 4, or $23 \text{ million} \times .1 \times .0020 \times .013 \times .059$. Using 1973-1996 data. Must see C. 1, 4, 13, 14 and 16.

*estimate based on opponents' cost claims (see E)

18) SEXISM AND THE DEATH PENALTY - Some claim that the death penalty is sexist. The ratio of men to women on death row (and executed) is 68:1, or 3400:50 (NAACP LDF, Spring 1996). Men committed 476,937 rapes, robberies and burglaries, women

47,357 or a 10:1 ratio. From 1976-94, men committed 7 times as many murders as women, or 7:1. (Sourcebook 194, BJS 195, tb.4.9 and 3.22). Therefore, it may be statistically predictable that men are, by a 70:1 ratio (10:1 X 7:1), more likely to be on death row than are women. Women appear to be on death row in numbers that would be expected. However, one would expect that 5 women would have been executed since 1976, when only 1 has been executed. Must see C. 1, 4, 13, 14 and 16.

D. CHRISTIANITY AND THE DEATH PENALTY

NOTE: Although not relevant to the legal application of the death penalty in the United States, religious issues are a significant thread within the moral debate. Biblical text is most relevant within a theocracy or a secular government which has laws that are consistent with biblical text. The United States does not, of course, fall within either category. This section is included only to counter the false claim that there is no New Testament support for capital punishment.

1) Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder. (Dr. Charles Ryrie, *Biblical Answers to Contemporary Issues & The Ryrie Study Bible*, Exodus 20:13).

2) As the Hebrew Bible was consistent in prescribing death as a proper punishment for certain crimes, so too is the New Testament consistent with these earlier pronouncements. As Jesus described in the Sermon on the Mount, obedience to the law will be rewarded with life, disobedience with destruction. A God who rewards with life and punishes with death is One whose laws provide for death as a judicial punishment. Prof. Baruch Levine, "Capital Punishment," p31, *What the Bible Really Says*, ed. Smith & Hoffman, 1993.

3) "If no crime deserves the death penalty, then it is hard to see why it was fitting that Christ be put to death for our sins and crucified among thieves. St. Thomas Aquinas quotes a gloss of St. Jerome on Matthew 27: "As Christ became accursed of the cross for us, for our salvation He was crucified as a guilty one among the guilty." That Christ be put to death as a guilty person, presupposes that death is a fitting punishment for those who are guilty." Prof. Michael Pakaluk, *The Death Penalty: An Opposing Viewpoints Series Book*, 1991.

4) "The same divine law which forbids the killing of a human being allows certain exceptions. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment "Thou shalt not kill," for the representative of the State's authority to put criminals to death, according to the Law or the rule of rational justice." St. Augustine, *The City of God*, Book 1, Chapter 21.

5) "Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative." Prof. Carl F. H. Henry, *Twilight Of A Great Civilization*, 1988.

6) "It is because humans are created in the image of God that capital punishment for premeditated murder was a perpetual obligation. The full range of biblical data weighs in its favor. This is the one crime in the Bible for which no restitution was possible (Numbers 35:31,33). The Noahic covenant recorded in Genesis 9 antedates Israel and the Mosaic code; it transcends Old Testament Law, per se, and mirrors ethical legislation that is binding for all cultures and eras. The sanctity of human life is rooted in the universal creation ethic and thus retains its force in society. The Christian community is called upon to articulate standards of biblical justice, even when this may be unpopular. Capital justice is part of that non-negotiable standard. Society should execute capital offenders to balance the scales of moral judgement." From "Capital Punishment: A Personal Statement", by Charles W. Colson., a former opponent, who is the Founder of Prison Fellowship, the largest Christian ministry serving incarcerated prisoners. Ph. 703-478-0100.

7) St. Thomas Aquinas finds all biblical interpretations against executions frivolous, citing Exodus 22:18, "Wrongdoers thou shalt not suffer to live." Unequivocally, he states, "The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the peace of the state." (*Summa Contra Gentiles*, III, 146.)

8) "God, Himself, instituted the death penalty (Genesis 9:6) and Christ regarded capital punishment as a just penalty for murder (Matthew 26:52). God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law which recognizes the dignity of human life as a product of God's creation. Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live." Protestant scholar Rev. Reuben Hahn (Mt. Prospect, Ill.), *Human Events*, 3/2/85.

9) "The fact that the evil, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement. They also have at that critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgement that they would never come away from evil to the right use of their powers." St. Thomas Aquinas, *Summa Contra Gentiles*, Book III, 146.

10) The movie *Dead Man Walking* reveals a perfect example of how just punishment and

redemption can work together. Had rapist/murderer Matthew Poncelet not been properly sentenced to death by the civil authority, he would not have met Sister Prejean, he would not have received spiritual instruction, he would not have taken responsibility for his crimes and he would not have reconciled with God. Had Poncelet never been caught or had he only been given a prison sentence, his character makes it VERY clear that those elements would not have come together. Indeed, for the entire film and up until those last moments, prior to his execution, Poncelet was not fully truthful with Sister Prejean. His lying and manipulative nature was fully exposed at that crucial time. It was not at all surprising, then, that it was just prior to his execution that all of the spiritual elements may have come together for his salvation. It was now, or never. Truly, just as St. Aquinas predicted (D.9.), it was his pending execution which finally led to his repentance. For Christians, the most crucial concerns of *Dead Man Walking* must be and are redemption and eternal salvation. And, for that reason, it may well be, for Christians, the most important pro-death penalty movie ever made.

We cannot know if the fictitious Poncelet, or the two real murderers from the book, really did repent and receive salvation. But, we do know that St. Thomas Aquinas advises us that such murderers should not be given the benefit of the doubt. We should err on the side of caution and not give murderers the opportunity to harm again. Indeed, as Dr. W.H. Baker confirms in the excellent *On Capital Punishment* (Moody Press, 1985), biblical text finds that it is a violation of God's mandate not to execute premeditated murderers - and nowhere does the text contradict this finding.

11) In his 1995 encyclical, *The Gospel of Life* (*Evangelium Vitae*), Pope John Paul II finds that the only time executions can be justified is when it is required "to defend society" and that such instances are "very rare, if not practically nonexistent". The Pope is in error. Such instances are neither non-existent nor rare. In this context, "to defend society" means that the execution of the murderer must save future lives. In other words, both the incapacitation (execution) of that specific murderer and the deterrent effect on potential future murderers must be shown "to defend society". It is already well known that murderers murder again, often time and time again - in prison, after escape, after release and, of course, after being caught, but not incarcerated. Unequivocally, incapacitation saves lives (see B. 1-4, 7, & 11). Individual deterrence (as opposed to general, or systemic, deterrence) is confirmed and cannot be contradicted (see B. 8-10 & 12-17). Therefore, executing murderers does "defend society". Furthermore, although the general, or systemic, deterrent effect is challenged, we must choose to execute because of the requirement to save innocent life. (B. 10). This encyclical is curious in additional areas, as well. Overwhelmingly, God mandates capital punishment for premeditated murder, not as a deterrent, but as the required expiation for the sin of murder. Two thousand years of tradition and instruction by the Catholic Church supports that interpretation. Additionally, Catholic biblical interpretation, tradition and natural law all seem to concur on this point, generally, and specifically through the writings of Saint Thomas Aquinas. Although Romans 13:4 and some respected Catholic writings reveal the deterrence consideration, such

references pale in comparison to the mandate that execution is the required punishment for murder, regardless of any consideration "to defend society".

12) Christians who speak out against capital punishment in deserving cases "tend to subordinate the justice of God to the love of God." It is established that Peter, by cutting off Malchus's ear, was most likely trying to kill the soldier (John 18:10), prompting Christ's statement that those who kill by the sword shall die by the sword (Matthew 26:51-52). This implicitly recognizes the government's right to exercise the death penalty. Dr. Carl Henry, Christianity Today, 8/4/95. See Rev. 13:10 (ANS).

13) "When it is a question of the execution of a man condemned to death it is then reserved to the public power to deprive the condemned of the benefit of life, in expiation of his fault, when already, by his fault, he has dispossessed himself of the right to live." Pope Pius XII.

14) Some speculate that God's mandate for capital punishment is weak, because the requirement for two witnesses in such cases (Numbers 35:30; Deuteronomy 17:6) drastically reduces the application of that sanction. Such speculation is unwarranted. By wrongly isolating the Hebrew *Ed*, "witness", from its broad biblical context, some interpreters have falsely concluded that two or more "eye-witnesses" are required in capital cases and in all criminal cases subject to court judgement (Deuteronomy 19:5). Did God want nearly all criminals, including murderers, to get off, scot-free, if "... (they) had not taken the prudent measure of committing (their) crime where two people did not happen to be watching him."? The biblical record rejects any such absurd conclusion.

The word *Ed*, "witness", has broad meaning, including, anyone with (1) "...pertinent knowledge concerning the crime, even though he had not actually seen it." (Leviticus 5:1), such as character witnesses, witnesses who had overheard confessions, etc.; (2) physical evidence can also bear witness, also *Ed* (Exodus 22:13), such as bloody clothing, murder weapon, etc.; (3) written documents may serve as evidence and witness (*Ed* or *Edah*, Joshua 25:25-27), such as a confession, documents showing motive or implication, etc.; (4) monuments and memorial stones, such as *gal-Ed* in Genesis 31:46-49, can also bear witness. Indeed, "there is no contravention of biblical principles in allowing such testimony, even though only one actual witness may be found, or none at all." There is no biblical requirement for two, or any, "eye-witnesses" in criminal cases. (Prof. Gleason L. Archer, Encyclopedia of Biblical Difficulties, Zondervan Publishing, 143-145, 1982, also see the exceptional writings on John 8:11, 371-373, therein.) Indeed, according to actual biblical usage, the witness and evidence requirements in capital cases in the U.S. meet or exceed all biblical standards.

15) Paul, in his hearing before Festus, states that "if then I am a wrongdoer, and have committed anything worthy of death, I do not refuse to die." Acts 25:11. "Very clearly this constitutes an acknowledgment on the part of the inspired apostle that the state continued to have the power of life and death in the administration of justice, just as it did from the days

of Noah (Genesis 9:6)ä. ibid, D.14., p. 342.

16) "If you do what is evil, be afraid; for [the civil government] does not bear the sword for nothing; for it is the minister of God, an avenger who brings wrath upon those who practice evil." Romans 13:4." God has given the state the power of life and death over its subjects in order to maintain order ä Dr. Charles Ryrie, The Ryrie Study Bible (NAS), 1978. äSince the word sword (machaira) has occurred earlier in the letter to indicate death (Romans 8:35) and since it was used of execution (Acts 12:2; Revelation 13:10), it seems clear that Paul means it here as a symbol of capital punishment.ä Stott, John, ROMANS, InterVarsity Press, 342, 1994.

17) It is not uncommon for persons of faith to create a god in their own image, to give to that god their values, instead of accepting those values which are inherent to the deity. For example, celebrated opponent Sister Helen Prejean (Dead Man Walking) states, in reference to the death penalty, that "*I* couldnât worship a god who is less compassionate than *I* am."(Progressive, 1/96; bold "*I*", JFA). She has, thereby, established her standard of compassion as the basis for Godâs being deserving of her devotion. If Godâs level of compassion does not rise to the level of her own, God couldnât receive her worship. Director Tim Robbins (Death Man Walking) follows that same path: ä(I) donât believe in that kind of (g)od (that would support capital punishment and, therefore, would be the kind of god who tortures people into their redemption).ä (äOpposing The Death Penaltyä, AMERICA, 11/9/96, p 12). Robbins, hereby, establishes his standard for his godâs deserving of his belief. Godâs standards do not seem to be relevant. His sophomoric comparison of capital punishment and torture is typical of the ignorance (dishonesty?) in this debate and such comments reflect no biblical relevancy. Perhaps they should review Matthew 5:17-22 and 15:1-9. Be cautious, for as the ancient rabbis warned, "Do not seek to be more righteous than your creator."(Ecclesiastes Rabbah 7.33)

18) "The just use of (executions), far from involving the crime of murder, is an act of paramount obedience to this (Fifth/Sixth) Commandment which prohibits murder." Pope (and Saint) Pius V, "The Roman Catechism of the Council of Trent" (1566).

19) äYou have heard the ancients were told, ÎYOU SHALL NOT COMMIT MURDERâ and ÎWhoever commits murder shall be liable to the courtâ. But I say to you that everyone who is angry with his brother shall be guilty before the court; and whoever shall say to his brother, ÎRacaâ, shall be guilty before the supreme court and whoever shall say, ÎYou foolâ, shall be guilty enough to go into fiery hell.ä Jesus, Matthew 5:17-22. Should any explanation be necessary, Jesus is saying that even as execution is the required punishment for murderers, as per the Old Testament, He tells us that those who speak ill of others and have hatred in their heart shall suffer in hell. Not only does Jesus never speak out against the civil authorities just use of execution for murder, He prescribes a much more serious, eternal punishment for those who hate and speak ill of others. And what price does God exact for any and all sin? Death. (Romans 5:12-14)

20) It is abundantly clear that the Bible depicts murder as a capital crime for which death is considered the appropriate punishment, and one is hard pressed to find a biblical proof text in either the Hebrew Testament or the New Testament which unequivocally refutes this. Even Jesus' admonition "Let him without sin cast the first stone," when He was asked the appropriate punishment for an adulteress (John 8:7) - the Mosaic Law prescribed death - should be read in its proper context. This passage is an "entrapment" story, which sought to show Jesus' wisdom in besting His adversaries. It is not an ethical pronouncement about capital punishment. Sister Helen Prejean, *Dead Man Walking*. From here, the sister states that "... more and more I find myself steering away from such futile discussions (of Biblical text). Instead, I try to articulate what I personally believe..." As the long term Chairperson of the National Coalition to Abolish the Death Penalty, the sister has never shied away from any argument, futile or otherwise, which opposed the death penalty. She has abandoned Biblical text for only one reason: the text conflicts with her personal beliefs. It is common for persons to take biblical text out of context and to, thereby, pervert its meaning. Indeed, Sister Prejean rightly cautions: "Many people sift through the Scriptures and select truth according to their own templates." (*Progressive*, 1/96). Sadly, Sister Prejean does even worse. The sister now uses that very same biblical text "Let the one who is without sin cast the first stone" as proof of Jesus' "unequivocal" rejection of capital punishment as "revenge and unholy retribution"! How easily she changes her interpretation of biblical text! (see Sister Prejean's 12/12/96 fundraising letter on behalf of the *Saga Of Shame* book project for Quixote Center/Equal Justice USA).

21) Pontius Pilate said to Jesus, "You do not speak to me? Do You not know that I have authority to release You, and I have authority to crucify You?" Jesus answered, "You would have no authority over Me, unless it had been given you from above." (John 19:10-11). "Jesus reminds Pilate that the implementation of the death penalty is a divinely entrusted responsibility that is to be justly implemented." Prof. Carl F.H. Henry, 45th Annual N.A.E. Convention, "Capital Punishment and The Bible". Jesus confirms that the civil authority has the lawful right to execute Jesus, and others, and this right has been given to that authority by God.

22) Some churches are now espousing a pro-life continuum, a philosophy whereby the taking of any life, under any circumstances, must be condemned. This belief equates the taking of lives through war, self defense, suicide, abortion and the death penalty. This is an interesting social philosophy which directly conflicts with the Word of the God. Catholic biblical scholar Father James Reilly, S.J. of Marquette University argues that it is not a contradiction for religious people to oppose abortion and...to support capital punishment. "Abortion is absolutely prohibited. It is always evil. No one can ever abort a "guilty" baby, so the act can never be right. This is not the case, however, with either capital punishment or a just and defensive war. It is only murder, along with its subdivisions suicide and abortion, which God's law absolutely prohibits. The upshot of all this is that trying to put abortion, capital punishment and war in one package makes chaos of Catholic morals and can lead one to misinterpret God's Law..." (Haven Bradford Gow, "Religious Views Support The Death Penalty", *The Death Penalty: Opposing Viewpoints*, Greenhaven Press,

1986).

23) "If a man is a danger to the community, threatening it with disintegration by some wrongdoing of his, then his execution for the healing and preservation of the common good is to be commended. Only the public authority, not private persons, may licitly execute malefactors by public judgement. Men shall be sentenced to death for crimes of irreparable harm or which are particularly perverted." St. Thomas Aquinas, *Summa Theologica*, 11; 65-2; 66-6.

24) "If by arming the magistrate, the Lord has also committed him the use of the sword, then, whenever he punishes the guilty by death, he is obeying God's commands by exercising His vengeance. Those, therefore, who consider it is wrong to shed the blood of the guilty are contending against God." John Calvin, "The Epistle of Paul the Apostle to the Romans and to the Thessalonians", in *Calvin's Commentaries*, trans. Ross McKenzie (Grand Rapids: Eerdmans, 1960) p.283.

25) The leadership councils of some Christian denominations in the U.S. have released statements in opposition to the death penalty. These statements reflect social positions that have questionable biblical foundation and, often, they reflect positions which selectively only discuss the mercy of God and improperly avoid the justice of God. For example, some believe that it would be hypocritical for Christians to support capital punishment, because that would suggest that some people's sins are not forgivable. They argue that capital punishment conflicts with Jesus's teachings - that, if we are not willing to forgive, then we place ourselves outside of God's forgiveness. Such pronouncements are hardly convincing and are biblically inaccurate. All death row inmates, no matter how vile and numerous their misdeeds, are subject to the forgiveness of men and of God and, more importantly, they are subject to redemption and eternal salvation. Indeed, God compels us, individually, to forgive those who have harmed us. This, in no way, conflicts with the civil government's imposition of the death penalty in deserving cases. Social positions cannot and do not replace biblical instruction.

26) "While the thief on the cross found pardon in the sight of God - 'Today you will be with Me in Paradise' - that pardon did not extend to eliminating the consequences of his crime - 'We are being justly punished, for we are receiving what we deserve for our deeds.' (Luke 23:39-43)". Neither God nor Jesus nor the Prophets nor the Apostles ever spoke out against the civil authorities use of executions in deserving cases - not even at the very time of Jesus's own execution when He pardoned the sins of the thief, who was being crucified along side Him. Indeed, quite the opposite. Their biblical support for capital punishment is consistent and overwhelming. Furthermore, Jesus never confuses the requirements of civil justice with those of either eternal justice or personal relations. Charles Colson accurately recognizes this fact in stating that "it leads to a perversion of legal justice to confuse the sphere of private relations with that of civil law." All quotations from Charles Colson's "Capital Punishment: A Personal Statement". See D.6. Continuing this thread, Protestant scholar and journalist Rev. G. Aiken Taylor states, "Most

Christians tend to confuse the Christian personal ethic with the requirements of social order. In other words, we tend to apply what the Bible teaches us about how we - personally - should behave toward our neighbors with what the Bible teaches about how to preserve order in society. Capital punishment is specifically enjoined in the Bible. "Who ever sheddeth man's blood, by man shall his blood be shed" (Genesis 9:6). This command is fully agreeable to the Sixth Commandment, "Thou shalt not kill," (Exodus 20:13), because the two appear in the same context. Exactly 25 verses after saying "Thou shalt not kill," the Law says, "He that smiteth a man so that he may die, shall be surely put to death" (Exodus 21:12). See also Leviticus 24:17 and Numbers 35:30-31. (Haven Bradford Gow, "Religious Views Support the Death Penalty", *The Death Penalty: Opposing Viewpoints*, Greenhaven Press, 1986). Biblical teachings regarding personal conduct, civil government and eternal judgement and relations are often taken out of context, thereby replacing one duty or instruction improperly with another.

27) God, through the power and justice of the Holy Spirit, executed both Ananias and his wife, Saphira. Their crime? Lying to the Holy Spirit - to God - through Peter. Acts 5:1-11. By executing two such devoted Christians for lying to Him, does the Holy Spirit show confirmation of His support for His divinely instituted civil punishment of execution for premeditated murder or does it show His rejection of capital punishment?

28) There are two passages in Luke which speak directly to Jesus' position on capital punishment. In 20:14-16, Jesus states: "He will come and kill those tenants and give the vineyard to others." Jesus was speaking to the proper punishment for murder. In 19:27, "Christ pronounced this judgement on those who rebelled against their king: "But these enemies of mine, who did not want me to reign over them, bring them here, and slay them in my presence" (NASB). Thus, it is very clear that neither Christ nor His apostles intended to abrogate the God-given responsibility of the government (under Old Testament law) to protect its citizens and enforce justice by capital punishment." *ibid*, D.14., pg. 342. In the 19:27 parable "their king" is Jesus.

29) The Bible clearly asserts, from beginning to end, without any reservation, that righteous judgement includes the execution of a murderer. In the case of murder, the biblical materials offer the clearest and most sustained justification for the death penalty. The purpose of capital punishment is justice - deterrence is irrelevant. A person who takes a human life, without proper sanction, forfeits any right to life - no alternative is allowed and the community must not be swayed by values to the contrary.

Listen carefully to the Bible as the Word of God rather than seek to improve upon it by means of human values. However meritorious mercy may be, however abundantly evident it may be in God's own dealings, murder was an offense for which mercy and pity were not allowed and for which monetary compensation was strictly forbidden. The sentence is set by God's torah and a judge cannot have discretion in this matter. Murder is something utterly on its own, nothing can be compared to it.

It should not be overlooked, in seeking to discover the mind of Jesus Christ on the issue of murder and its punishments, that He goes beyond torah to the statement that even verbal abuse makes one deserving of the hell of fire. Far from releasing believers from prior law, Jesus was a hard liner who made things even tougher, stating that He has come not to abolish the law and the prophets... but to fulfill them, offering even stronger interpretations than in the original (Matthew 5:17-22). Indeed, Jesus admonishes the Pharisees not to misuse torah for their own ends, but to honor God and torah. And of all the text in the Bible, which one does Jesus select to emphasize that crucial point? HE WHO SPEAKS EVIL OF FATHER OR MOTHER, LET HIM BE PUT TO DEATH. (Matthew 15:1-9).

All interpretations, contrary to the biblical support of capital punishment, are false. Interpreters ought to listen to the Bible's own agenda, rather than to squeeze from it implications for their own agenda. As the ancient rabbis taught, "Do not seek to be more righteous than your Creator." (Ecclesiastes Rabbah 7.33.). Synopsis of Professor Lloyd R. Bailey's book Capital Punishment: What the Bible Says, Abingdon Press, 1987. This is the definitive work on this subject. It is mandatory reading for those who wish to undertake a thorough and accurate look at this often misused and misunderstood area of concern and debate.

E. THE COST OF LIFE WITHOUT PAROLE VS THE DEATH PENALTY

Many opponents present, as fact, that the cost of the death penalty is so expensive (at least \$2 million per case?), that we must choose life without parole ("LWOP") at a cost of \$1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA estimates that LWOP cases will cost \$1.2 million - \$3.6 million more than equivalent death penalty cases.

Cost of Life Without Parole: Cases Equivalent To Death Penalty Cases

1. \$34,200/year (1) for 50 years (2), at a 2% (3) annual cost increase, plus \$75,000 (4) for trial & appeals = \$3.01 million
2. Same, except 3% (3) = \$4.04 million
3. Same, except 4% (3) = \$5.53 million

Cost of Death Penalty Cases

- \$60,000/year (1) for 6 years (5), at a 2% (3) annual cost increase, plus \$1.5 million (4) for trial & appeals = \$1.88 million
- Same, except 3% (3) = \$1.89 million
- Same, except 4% (3) = \$1.9 million

There is no question that the up front costs of the death penalty are significantly higher than the equivalent LWOP cases. There also appears to be no question that, over time, equivalent LWOP cases are much more expensive - from \$1.2 to \$3.6 million - than death penalty cases.

(1) We believe this number to be conservative, if TIME Magazine's (2/7/94) research is accurate. TIME found that, nationwide, the average cell cost is \$24,000/yr. and the cost for maximum security cells is \$75,000/yr. (as of 12/95). Opponents claim that LWOP should replace the DP. Therefore, any cost calculations should be based specifically on cell costs for criminals who have committed the exact same category of offense - in other words, cost comparisons are valid only if you compare the costs of DP equivalent LWOP cases to the cost of DP cases. The \$34,200/yr. cell cost assumes that only 20% of DP equivalent LWOP cases would be in maximum security cost cells and that 80% of DP equivalent LWOP cases would be in average cost cells. A very conservative estimate. The \$60,000/yr., for those on death row, assumes that such cells will average a cost equal to 80% of the \$75,000/yr. for the most expensive maximum security cells. Quite possibly a very high estimate. For equivalent crimes we are calculating a 75% greater cell cost for the DP than for LWOP. Even so, equivalent LWOP cases appear to be significantly more expensive than their DP counterparts. For years, opponents have improperly compared the cost of all LWOP cases to DP cases, when only equivalent cases are relevant.

(2) Justice Department research and the U.S. Vital Statistics Abstract, 1994.

(3) Annual cost increases are based upon: 1) historical increases in prison costs, including judicial decisions regarding prison conditions, and the national inflation rate; 2) medical costs, including the immense cost of geriatric care, associated with real LWOP sentences; 3) injury or death to the inmate by violence; 4) injury or death to others caused by the inmate (3 and 4 anticipate no DP and that prisoners, not fearing additional punishment, other than loss of privileges, may increase the likelihood of violence. One could make the same assumptions regarding those on death row. The difference is that death row inmates will average 6 years incarceration vs. 50 years projected for LWOP); 5) the risk and the perceived risk of escape; and 6) the justifiable lack of confidence by the populace in our legislators, governors, parole boards and judges, i.e. a violent inmate will be released upon society.

(4) \$75,000 for trial and appeals cost, for DP equivalent LWOP cases, assumes that the DP is not an option. We have anticipated that DP cases will cost twenty times more, on average, or \$1.5 million. Possibly a high estimate. Meaning, the DP will have twenty times the investigation cost, the defense and prosecution cost, including voir dire and court time and guilt/innocence stage and sentencing stage and appellate review time and cost than DP equivalent LWOP cases.

(5) 6 years on death row, prior to execution, reflects the new habeas corpus reform laws, at both the state and federal levels. Some anti-death penalty groups believe that 6 years may be generous, speculating that the time may be shortened to an average of 4 years, or even less. If so, then DP cases would cost even that much less than DP equivalent LWOP cases. However, the average time on death row, for those executed from 1973-1994, was 8 years (Capital Punishment 1994, BJS, 1995). Therefore, 6 years seems more likely. Even using the 8 year average, DP equivalent LWOP cases are still \$1 million more expensive than their DP counterparts (\$2 million @ 2% annual increase).

One of the USA's largest death rows is in Texas, with 442 inmates, of which 229, or 52%, have been on death row over 6 years - 44, or 10%, have been on for over 15 years, 8 for over 20 years. 60 inmates, nationwide, have been on death row over 18 years. (as of 12/96).

F. DEATH PENALTY PROCEDURES

There are at least 24 procedures necessary in reaching a death sentence. They are: (1) The crime must be one listed as a capital crime in the penal code; (2) a suspect must be identified and arrested; (3) Beginning with the Bill of Rights, the Miranda warnings and the exclusionary rules, U.S. criminal defendants and those convicted have, by far, the most extensive protections ever devised and implemented; (4) in Harris County (Houston), Texas a panel of district attorneys determines if the case merits the death penalty as prescribed by the Penal Code (See 12-19); (5) a grand jury must indict the suspect for capital murder; (6) the suspect is presumed innocent; (7) the prosecution must prove to the judge that the evidence, upon which the prosecution will rely, is admissible; (8) the defendant is assigned two attorneys. County funds are provided to defense counsel for investigation and trial; (9) it takes 3-12 weeks to select a jury; (10) trial is conducted; (11) burden of proof is on the state; (12) all 12 jury members must find for guilt, beyond a reasonable doubt. In most cases, the jury knows nothing of the defendant's past, at this stage. Then, the punishment phase begins; (13) the prosecution presents additional damning evidence against the murderer, i.e., other crimes, victims, victims testimony, police reports, etc; (14) In order to find for death, the issues to be resolved by the jury are {a}(14) did the defendant not only act willfully in causing the death, but act deliberately, as well, {b}(15) does the evidence show, beyond a reasonable doubt, that there is a likelihood that the defendant will be dangerous in the future, {c}(16) if there was provocation on the part of the victim, were the defendant's actions unreasonable in response to the provocations and {d}(17) is there something about the defendant that diminishes moral responsibility or in some way mitigates against the imposition of death for the defendant in this case, whereby, (18) the defense presents all mitigating circumstances for the murderers actions, i.e., family problems, substance abuse, age, mental disability, parental abuse, poverty, etc. Witnesses are presented to speak on behalf of the defendant; (19) the jury must take into consideration those mitigating circumstances (Penry decision) and, if only 1 juror believes that the perpetrator deserves leniency because of any mitigating circumstances, then the jury cannot impose the death penalty; and (20) when the death sentence is imposed, the perpetrator

receives an automatic appeal. (21) the death row inmate is provided an attorney, or attorneys, to handle the direct appeal, at county expense; (22) the state pays attorneys for the inmate's habeas corpus appeals; (23) death row inmates may be granted a hearing, in both state and federal court, to present post conviction claims of innocence. The burden of proof for these claims of innocence mirrors that used by the Federal courts; and (24) Convictions and sentences are subject to pardon or sentence reduction through the executive branch of government, at both the state level (Governor) and federal level (President).

To punish with death, each one of the 12 jurors must agree with the prosecution in each of five specific areas (12, 14, (a)14, (b)15, (c)16, and (d)17 (with 18 & 19). A death sentence requires that the prosecution must prevail in 60 out of those 60 considerations, or 100%. To avoid death, the defendant must prevail in 1 out of those 60 considerations, or 1.67%. If convicted and sentenced to death, the inmate may then begin an appeals process that could extend through 23 years, 60 appeals and over 200 individual judicial and executive reviews. For the 56 executed in 1995, the average time on death row was 11 years, 2 months - a new record of longevity, surpassing the old record of 10 years, 2 months, set in 1994.(Capital Punishment 1994 & 1995, BJS 1995 & 1996). Could a new record of over 12 years be set in 1996 and 1997? Easily.

HABEAS CORPUS - Opponents claim that with the new federal guidelines for appeals in capital cases, that nothing is left to protect the rights of the death row inmate. Predictably, such hysteria is unwarranted and untrue. The new federal appeals law, which affects the writ of habeas corpus, was upheld unanimously by the U.S. Supreme Court in 1996. This law established, nationally, higher minimum standards for defense counsel in capital cases and requires said counsel for all indigent capital defendants. Furthermore, with these new federal standards, there are still at least 16 levels of post conviction review available to the death row inmate; 5 state and 11 federal appeals, comprised of 5 direct appeals, one at the state level and four at the federal level; 9 habeas corpus appeals, three at the state level and six at the federal level; 2 of those habeas appeals are for compelling post conviction claims of innocence, which are subject to a formal hearing, one at the state level and one at the federal level; and the 15th and 16th levels of appeal provide that the inmate's claims are subject to review for executive clemency, at either the state or federal level, and sometimes both. Similar appellate issues are often heard at every appellate level. There is no limit to the number of appellate issues which the inmate may raise. Generally, prosecutors and victim survivors have no right to appeal. Although this section deals specifically with the Texas Death Penalty, the procedures are very similar in all of the death penalty states and at the federal and military levels.

Many seem to be unaware of the true meaning of the habeas corpus process. They may not know that the intent of the "Great Writ", established in pre-Magna Carta England, is to quickly facilitate the release of the innocent or those otherwise wrongfully held or convicted - a process that will finally be honored with these reforms. This is a very positive development, except for the guilty and for those who wish to abuse the habeas corpus process by delaying justice with frivolous, repetitive and prolonged appeals. It is a bitter irony that it was just such intentional delays of justice that the "Great Writ" was created to

abolish. It was just such abuses that caused many of the states and the federal government to enact new habeas corpus reforms. Indeed, it was opponents of the death penalty who finally guaranteed passage of these long delayed reforms. Opponents had begun to challenge the long stays on death row as unconstitutional, claiming that such delays were, by themselves, "cruel and unusual punishment," a violation of the eighth amendment. Although all such claims were rejected by U.S. courts - there was no evidence that death row inmates had made efforts to hasten their executions - such claims did provide the final push necessary to finally pass these reforms through the U.S. Congress, thus respecting the claims of opponents and inmates through legislation.

For those who find themselves hysterical over these habeas corpus reform efforts, who believe that speeding up the appeals process will threaten the lives of those convicted and innocent, please contemplate the following question: What innocent or otherwise improperly convicted inmate would wish to linger a bit longer on death row as their attorney, snail-like, labored to prolong their wrongful stay on death row with a series of delayed and frivolous appeals?

The American Death Penalty is, overwhelmingly, the least arbitrary and the least capricious of all the world's legal sanctions for violent crime.

JUSTICE FOR ALL is a criminal justice reform organization dedicated to protecting the civil and human rights of all citizens from violent crime. Through education and legislation we shall take all necessary measures to reduce the human suffering caused by violent criminals and a failed criminal justice system. Founded in Houston, Texas in 1993, JFA has membership throughout the U.S.A. Please inquire about membership and/or starting a chapter in your area.

copyright, JUSTICE FOR ALL ©



Bureau of Justice Statistics Bulletin

December 1996, NCJ-162043

Capital Punishment 1995

By Tracy L. Snell
BJS Statistician

Sixteen States executed 56 prisoners during 1995. The number of persons executed was 25 greater than in 1994 and was the largest annual number since the 56 executed during 1960 and the 65 in 1957. The prisoners executed during 1995 had been under sentence of death an average of 11 years and 2 months, about 12 months more than the average for inmates executed the previous year.

At yearend 1995, 3,054 prisoners were under sentence of death. California held the largest number of death row inmates (420), followed by Texas (404), Florida (362), and Pennsylvania (196). Eight prisoners were in Federal custody under a death sentence on December 31, 1995.

Between January 1 and December 31, 1995, 26 State prison systems and the Federal prison system received 310 prisoners under sentence of death. Texas (40 admissions), California (36), North Carolina (34), and Florida (31) accounted for 45% of the inmates entering prison under a death sentence in 1995.

During 1995, 56 persons in 16 States were executed — 19 in Texas; 6 in Missouri; 5 each in Illinois and Virginia; 3 each in Florida and Oklahoma; 2 each in Alabama, Arkansas, Georgia, North Carolina, and Pennsylvania; and 1 each in Arizona, Delaware, Louisiana, Montana, and

Highlights

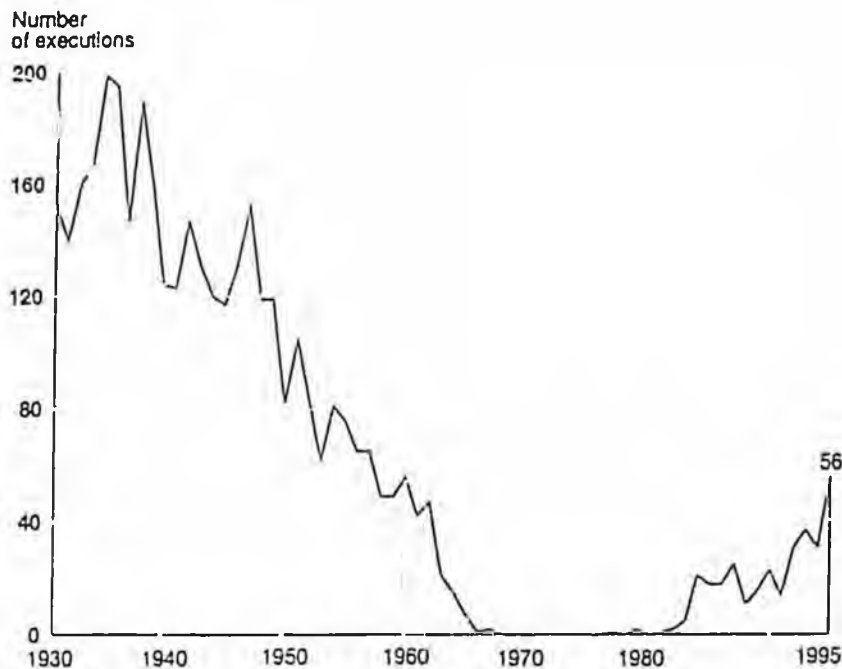
Status of the death penalty, December 31, 1995

| Executions during 1995 | Number of prisoners under sentence of death | Jurisdictions without a death penalty |
|------------------------|---|---------------------------------------|
| Texas 19 | California 420 | Alaska |
| Missouri 6 | Texas 404 | District of Columbia |
| Illinois 5 | Florida 362 | Hawaii |
| Virginia 5 | Pennsylvania 196 | Iowa |
| Florida 3 | Ohio 155 | Maine |
| Oklahoma 3 | Illinois 154 | Massachusetts |
| Alabama 2 | Alabama 143 | Michigan |
| Arkansas 2 | North Carolina 139 | Minnesota |
| Georgia 2 | Oklahoma 129 | North Dakota |
| North Carolina 2 | Arizona 117 | Rhode Island |
| Pennsylvania 2 | Georgia 98 | Vermont |
| Arizona 1 | Tennessee 96 | West Virginia |
| Delaware 1 | Missouri 92 | Wisconsin |
| Louisiana 1 | 22 other jurisdictions 549 | |
| Montana 1 | | |
| South Carolina 1 | | |
| Total 56 | Total 3,054 | |

- In 1995, 56 men were executed:
33 were white
22 were black
1 was Asian.
- The persons executed in 1995 were under sentence of death an average of 11 years and 2 months.
- At yearend 1995, 34 States and the Federal prison system held 3,054 prisoners under sentence of death, 5.1% more than at yearend 1994. All had committed murder.
- Of persons under sentence of death —
1,730 were white
1,275 were black
22 were Native American
19 were Asian
8 were classified as "other race."
- Forty-eight women were under a sentence of death.
- The 237 Hispanic inmates under sentence of death accounted for 8.5% of inmates with a known ethnicity.
- Among inmates under sentence of death and with available criminal histories, 2 in 3 had a prior felony conviction; 1 in 12 had a prior homicide conviction.
- Among persons for whom arrest information was available, the average age at time of arrest was 28; about 2% of inmates were age 17 or younger.
- At yearend, the youngest inmate was 18; the oldest was 80.

RECEIVED MAR 17 1997

Persons executed, 1933-95



South Carolina. All were men. Thirty of the executed prisoners were non-Hispanic whites; 22 were non-Hispanic blacks; 2, white Hispanics; 1, Asian; and 1, white with unknown Hispanic origin. Forty-nine of the executions were carried out by lethal injection and 7 by electrocution.

From January 1, 1977, to December 31, 1995, a total of 4,857 persons entered State and Federal prisons under sentences of death, among whom 51% were white, 41% were black, 7% were Hispanic, and 1% were of other races.

During this 19-year period, a total of 313 executions took place in 26 States. Of the inmates executed, 171 were white, 120 were black, 19 were Hispanic, 2 were Native American, and 1 was Asian.

Also during 1977-95, 1,870 prisoners were removed from a death sentence as a result of dispositions other than execution (resentencing, retrial, commutation, or death while awaiting execution). Of all persons removed from under a death sentence, 52% were white, 41% were black, 1% were Native American, 0.5% were Asian, and 5% were Hispanic.

Statutory changes

During 1995, 19 States revised statutory provisions relating to the death penalty (table 1). Most of the changes involved additional aggravating circumstances, procedural amendments addressing the rights of victims and their families, and changes in methods of execution.

By State, these statutory changes were as follows:

Arkansas — Added to its definition of capital murder purposely discharging a firearm from a vehicle resulting in the death of another person (Ark. Code Ann. § 51-10-101(a)(10)), effective 7/27/95.

Colorado — Amended its code of criminal procedure establishing appellate review at the sentencing phase of a capital case. Upon conviction of a defendant, a sentencing hearing will be conducted by a three-judge panel; previously, a jury considered evidence and recommended punishment. The amendment also outlines the process by which panel members will be selected (CRS 16-11-103(1)(a)). These revisions became effective 7/1/95.

Connecticut — Revised its penal code to change the method of execution from electrocution to lethal injection; to remove the requirement that the State supreme court review the proportionality of a death sentence compared to penalties imposed in similar cases; and to add to its list of capital felonies murder of a person under age 16 (See P.A. 95-16). These changes became effective 10/1/95.

Delaware — Revised a statute limiting the number of witnesses at the execution to 10 and allowing one adult, either an immediate family member of the victim or the "victim's designee", to be present as one of those witnesses (11 Del. c. § 4209(f)), effective 5/15/95.

Delaware lawmakers also added as an aggravating circumstance murder committed to interfere with the victim's First Amendment rights or as a response to the victim's exercise of those rights or to the victim's race, religion, color, disability, national origin or ancestry (11 Del. c. § 4209(e)(1)(v)), effective 7/6/95.

Idaho — Revised and added sections to its penal code relating to the death penalty. These changes became effective 7/1/95.

Idaho amended its code of criminal procedure to require that, upon conviction of a defendant, the court hold a hearing to weigh aggravating and mitigating factors in the case to determine the appropriateness of a death sentence (19-2515, Idaho Code).

Another procedural amendment set guidelines regarding requests for stays of execution based on petitions to hear new evidence that was not known prior to the deadline for filing of an appeal on such grounds. The statute narrowed the availability of successive post-conviction proceedings (19-2719, Idaho Code).

The Idaho legislature also added new sections to its code of criminal procedure in capital cases: one providing for an inquiry into a convicted defendant's

need for a new attorney upon showing of ineffectiveness of the trial lawyer (19-2719A, Idaho Code); another providing for review of a case by the Idaho supreme court, upon remand from a Federal court, to decide whether legal or factual errors can be addressed without remanding the case back to the State district court (19-2818, Idaho Code).

Illinois — Added to its penal code as an aggravating factor murder by discharging a firearm from a motor vehicle when the victim was outside of the motor vehicle (720-ILCS 5/9-1(b)(15)), effective 1/1/95.

Indiana — Amended the code of criminal procedure to specify time limits within which the execution must be carried out, time limits and procedures for addressing petitions for post-conviction relief, and issues for consideration by Indiana's supreme court in conducting automatic review of death sentences (Indiana Code § 35-50-2-9(h), (i), and (j)). Indiana also changed the method of execution from electrocution to lethal injection (Indiana Code § 35-38-6-1). These changes became effective 7/1/95.

Maryland — Amended its code of criminal procedure to modify when an execution can be stayed by a trial judge; to change the time limit for filing an initial post-conviction appeal from 240 days to 180 days; to impose time limits on holding a hearing upon filing of a post-conviction petition; and to allow a convicted inmate to waive the statutory stay of execution imposed during the 180-day period set aside for filing of any post-conviction petitions (1995 Md. Laws ch. 110). These changes became effective 10/1/95.

Montana — Revised the code of criminal procedure to allow evidence to be presented during the sentencing hearing in regard to the harm the offense caused to the victim and his family (46-18-302 MCA), applicable to crimes committed on or after 10/1/95.

Nevada — Added to its penal code as aggravating factors murder of a department of prisons employer who doesn't exercise control over but comes into regular contact with the offender; murder of a person under age 14; and murder of a person because of their race, religion, national

origin, physical or mental disability, or sexual orientation (NRS 200.033), effective 10/1/95.

New Jersey — Amended its penal code to allow evidence during the sentencing proceeding pertaining to the victim's character and impact of the

Table 1. Capital offenses, by State, 1995

Alabama. Intentional murder with 18 aggravating factors (13A-5-40).

Arizona. First-degree murder accompanied by at least 1 of 10 aggravating factors.

Arkansas. Capital murder with a finding of at least 1 of 9 aggravating circumstances (Ark. Code Ann. 5-10-101); treason.

California. First-degree murder with special circumstances; train-wrecking; treason; perjury causing execution.

Colorado. First-degree murder with at least 1 of 13 aggravating factors; treason. Capital sentencing excludes persons determined to be mentally retarded.

Connecticut. Capital felony with 9 categories of aggravated homicide (C.G.S. 53a-54b).

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder; felony murder; capital drug-trafficking.

Georgia. Murder; kidnaping with bodily injury or ransom where the victim dies; aircraft hijacking; treason.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. First-degree murder with 1 of 15 aggravating circumstances.

Indiana. Murder with 14 aggravating circumstances. Capital sentencing excludes persons determined to be mentally retarded.

Kansas. Capital murder with 7 aggravating circumstances. Capital sentencing excludes persons determined to be mentally retarded.

Kentucky. Murder with aggravating factors; kidnaping with aggravating factors.

Louisiana. First-degree murder; aggravated rape of victim under age 12; treason (La. R.S. 14:30, 14:42, and 14:113).

Maryland. First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied.

Mississippi. Capital murder; capital rape; aircraft piracy.

Missouri. First-degree murder (565.020 RSMO).

Montana. Capital murder with aggravating circumstances.

Nebraska. First-degree murder.

Nevada. First-degree murder with 10 aggravating circumstances.

New Hampshire. Capital murder.

New Jersey. Purposeful or knowing murder; contract murder; murder or solicitation thereof by a leader of a narcotics trafficking network.

New Mexico. First-degree murder (Section 30-2-1 A, NMSA).

New York. First-degree murder with 1 of 10 aggravating factors. Capital sentencing excludes persons determined to be mentally retarded.

North Carolina. First-degree murder (N.C.G.S. 14-17).

Ohio. Aggravated murder with 1 of 8 aggravating circumstances. (O.R.C. secs. 2929.01, 2903.01, and 2929.04).

Oklahoma. First-degree murder in conjunction with a finding of at least 1 of 8 statutorily defined aggravating circumstances.

Oregon. Aggravated murder (ORS 163.095).

Pennsylvania. First-degree murder with 16 aggravating circumstances.

South Carolina. Murder with 1 of 10 aggravating circumstances.

South Dakota. First-degree murder with 1 of 10 aggravating circumstances.

Tennessee. First-degree murder.

Texas. Criminal homicide with 1 of 8 aggravating circumstances.

Utah. Aggravated murder; aggravated assault by a prisoner serving a life sentence if serious bodily injury is intentionally caused (76-5-202, Utah Code annotated).

Virginia. First-degree murder with 1 of 9 aggravating circumstances.

Washington. Aggravated first-degree murder.

Wyoming. First-degree murder.

crime on the victim's family (NJSA 2C:11-3c(6)), effective 6/19/95.

New York — Enacted a law creating the crime of capital murder and providing for a sentence of death for persons over age 18 if any of 10 aggravating circumstances exists. The new law prohibits sentencing mentally retarded persons to death (Ch. 1, 1995 Session), effective 9/1/95.

Ohio — Amended its code of criminal procedure to establish responsibility of the Ohio supreme court for automatic review of all death sentences and guidelines to be followed in the course of such review. The review includes weighing of all facts and evidence submitted in the case, deciding if aggravating factors outweighed mitigating factors in the case, and consideration of the proportionality of the death sentence compared to similar cases (O.R.C. § 2929.05), effective 9/21/95.

Oregon — Amended its penal code to allow evidence regarding the victim's personal characteristics and the impact of the offense on the victim's family to be entered during the sentencing phase of capital proceedings (ORS 163.150), effective 7/7/95.

Pennsylvania — Added new sections to its capital statute relating to sentencing and execution procedures. One amendment permitted evidence concerning the victim and the effect of the crime on the victim's family to be heard and considered during the sentencing hearing (42 Pa.C.S. § 9711(a)(2), (b), and (c)(2)), effective 3/16/95.

Pennsylvania lawmakers also added provisions which specified time limits for transmission of court records to the governor and issuance of death warrants, terms of confinement upon receipt of the warrant, persons allowed to witness the execution, and certification and postmortem examination procedures following the execution (42 Pa.C.S. § 9711(i), (j), (k), (l), (m), (n), and (o)), effective 12/11/95.

South Carolina — Revised its penal code to allow persons sentenced to death to elect as their method of execution either electrocution or lethal injection. Election of method by the inmate must be made in writing 14 days before the date of execution; if this right is waived, persons will be executed by lethal injection (§ 24-3-540), effective 6/8/95.

South Dakota — Amended an aggravating circumstance allowing for prosecution as a capital offense, stipulating that a crime is considered to be "wantonly vile" if the victim is under age 13 (SDCL 23A-27A-1(6)), effective 7/1/95.

Tennessee — Revised an aggravating circumstance from simple involvement in the commission of certain felony offenses to participating "knowingly" (Tenn. Code Ann. § 39-13-204(i)(7)), effective 5/30/95; and added as an aggravating circumstance intentional mutilation of the victim's body after death (Tenn. Code Ann. § 39-13-204(i)(13)), effective 7/1/95.

Tennessee lawmakers also added to its definition of first degree murder killing during the commission of aggravated child abuse as defined by § 39-15-402 (Tenn. Code Ann. § 39-13-202), effective 7/1/95.

Virginia — Revised its penal code to allow persons sentenced to death to elect as their method of execution either electrocution or lethal injection. The inmate must choose a method at least 15 days before the scheduled date of execution; if this option is waived, persons will be executed by lethal injection (Va. Code § 53.1-233, 234), effective 1/1/95.

Virginia legislators also amended the definition of capital murder to include among enumerated sexual offenses "object sexual penetration" (Va. Code § 18.2-31(5)), effective 7/1/95.

Method of execution

As of December 31, 1995, lethal injection was the predominant method of

execution (32 States) (table 2). Eleven States authorized electrocution; 7 States, lethal gas; 4 States, hanging; and 3 States, a firing squad.

Sixteen States authorized more than one method — lethal injection and an alternative method — generally at the election of the condemned prisoner; however, 5 of these 16 stipulated which method must be used, depending on the date of sentencing; 1 authorized hanging only if lethal injection could not be given; and, if lethal injection is ever ruled unconstitutional, 1 authorized lethal gas and 1 authorized electrocution.

Automatic review

Of the 38 States with capital punishment statutes at yearend 1995, 37 provided for review of all death sentences regardless of the defendant's wishes.

Arkansas had no specific provisions for automatic review. The Federal death penalty procedures did not provide for automatic review after a sentence of death had been imposed. While most of the 37 States authorized an automatic review of both the conviction and sentence, Idaho, Indiana, Oklahoma, and Tennessee required review of the sentence only. In Idaho, review of the conviction had to be filed through appeal or forfeited. In Indiana, a defendant could waive review of the conviction.

The review is usually conducted by the State's highest appellate court regardless of the defendant's wishes. In South Carolina, the defendant's right to waive appeal was in litigation; in Mississippi the question of whether a defendant could waive the right to automatic review of the sentence had not been addressed; and in Wyoming neither statute nor case law clearly precluded a waiver of appeal. If either the conviction or the sentence was vacated, the case could be remanded to the trial court for additional proceedings or for retrial. As a result of retrial or resentencing, the death sentence could be reimposed.

Table 2. Method of execution, by State, 1995

| | Lethal injection | Electrocution | Lethal gas | Hanging | Firing squad |
|----------------------------|-----------------------------|-----------------------------|-----------------------------|------------------------------|-----------------------|
| Arizona ^{a,b} | New Hampshire ^a | Alabama | Arizona ^{a,c} | Delaware ^{a,c} | Idaho ^a |
| Arkansas ^{a,d} | New Jersey | Arkansas ^{a,d} | California ^{a,e} | Montana ^a | Oklahoma ^f |
| California ^{a,e} | New Mexico | Florida | Maryland ^g | New Hampshire ^{a,h} | Utah ^a |
| Colorado | New York | Georgia | Mississippi ^{i,j} | Washington ^a | |
| Connecticut | North Carolina ^a | Kentucky | Missouri ^a | | |
| Delaware ^{a,c} | Ohio ^a | Nebraska | North Carolina ^a | | |
| Idaho ^a | Oklahoma | Ohio ^a | Wyoming ^k | | |
| Illinois | Oregon | Oklahoma ^l | | | |
| Indiana | Pennsylvania | South Carolina ^a | | | |
| Kansas | South Carolina ^a | Tennessee | | | |
| Louisiana | South Dakota | Virginia | | | |
| Maryland ^g | Texas | | | | |
| Mississippi ^{i,j} | Utah ^a | | | | |
| Missouri ^a | Virginia ^a | | | | |
| Montana ^a | Washington ^a | | | | |
| Nevada | Wyoming ^a | | | | |

Note: The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the method is that of the State in which the conviction took place, pursuant to 18 USC 3596.

^aAuthorizes 2 methods of execution.

^bArizona authorizes lethal injection for persons sentenced after 11/15/92; those sentenced before that date may select lethal injection or lethal gas.

^cDelaware authorizes lethal injection for those whose capital offense occurred after 6/13/86; those who committed the offense before that date may select lethal injection or hanging.

^dArkansas authorizes lethal injection for persons committing a capital offense after 7/4/83; those who committed the offense before that date may select lethal injection or electrocution.

^eUse of lethal gas is currently prohibited in California pending a legal challenge in Federal court.

^fOklahoma authorizes electrocution if lethal injection is ever held to be unconstitutional and firing squad if both lethal injection and electrocution are held unconstitutional.

^gMaryland authorizes lethal injection for all inmates, as of 3/25/94. One inmate, convicted prior to that date, has selected lethal gas for method of execution.

^hNew Hampshire authorizes hanging only if lethal injection cannot be given.

ⁱMississippi authorizes lethal injection for those convicted after 7/1/84 and lethal gas for those convicted earlier.

^jWyoming authorizes lethal gas if lethal injection is ever held to be unconstitutional.

Table 3. Minimum age authorized for capital punishment, 1995

| Age 15 or less | Age 17 | Age 18 | Age 19 | None specified |
|-------------------------------|-----------------------------|--------------------------|----------|---------------------------|
| Alabama (15) | Georgia | California | New York | Arizona |
| Arkansas (14) ^a | New Hampshire | Colorado | | Idaho |
| Delaware (16) | North Carolina ^b | Connecticut ^c | | Montana |
| Indiana (16) | Texas | Federal system | | Louisiana |
| Kentucky (16) | | Illinois | | Pennsylvania |
| Mississippi (16) ^d | | Kansas | | South Carolina |
| Missouri (16) | | Maryland | | South Dakota ^e |
| Nevada (16) | | Nebraska | | Utah |
| Oklahoma (16) | | New Jersey | | |
| Virginia (14) ^f | | New Mexico | | |
| Wyoming (16) | | Ohio | | |
| Florida (16) | | Oregon | | |
| | | Tennessee | | |
| | | Washington | | |

Note: Reporting by States reflects interpretations by State attorney general offices and may differ from previously reported ages.

^aSee Arkansas Code Ann. 9-27-318(b)(1)(Repl. 1991).

^bThe age required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; then the age may be 14.

^cSee Conn. Gen. Stat. 53a-46a(g)(1).

^dThe minimum age defined by statute is 13, but the effective age is 16 based on interpretation of a U.S. Supreme Court decision by the State attorney general's office.

^eJuveniles may be transferred to adult court. Age can be a mitigating factor.

^fThe minimum age for transfer to adult court is 14 by statute, but the effective age for a capital sentence is 16 based on interpretation of a U.S. Supreme Court decision by the State attorney general's office.

Minimum age

In 1995 eight jurisdictions did not specify a minimum age for which the death penalty could be imposed (table 3). In some States the minimum age was set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Thirteen States and the Federal system required a minimum age of 18; one State age 19. Sixteen States indicated an age of eligibility between 14 and 17.

Characteristics of prisoners under sentence of death at yearend 1995

Thirty-four States and the Federal prison system held a total of 3,054 prisoners under sentence of death on December 31, 1995, a gain of 149 or 5.1% more than at the end of 1994 (table 4). The Federal prison system count rose from 6 at yearend 1994 to 8

Table 4. Prisoners under sentence of death, by region, State, and race, 1994 and 1995

| Region and State | Prisoners under sentence of death, 12/31/94 | | | Received under sentence of death | | | Removed from death row(excluding executions)* | | | Executed | | | Prisoners under sentence of death, 12/31/95 | | |
|-------------------------|---|--------------------|--------------------|----------------------------------|------------|------------|---|-----------|-----------|--------------------|-----------|-----------|---|--------------|--------------|
| | Total ^a | White ^b | Black ^c | Total ^a | White | Black | Total ^a | White | Black | Total ^a | White | Black | Total ^a | White | Black |
| U.S. total | 2,905 | 1,652 | 1,203 | 310 | 168 | 138 | 105 | 58 | 44 | 56 | 33 | 22 | 3,054 | 1,730 | 1,275 |
| Federal ^d | 6 | 3 | 3 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 3 | 5 |
| State | 2,899 | 650 | 1,200 | 308 | 168 | 136 | 105 | 58 | 44 | 56 | 33 | 22 | 3,046 | 1,727 | 1,270 |
| Northeast | 194 | 71 | 116 | 23 | 6 | 17 | 4 | 2 | 2 | 2 | 2 | 0 | 211 | 73 | 131 |
| Connecticut | 4 | 2 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 2 | 3 |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | 9 | 4 | 5 | 2 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 10 | 4 | 6 |
| Pennsylvania | 181 | 5 | 109 | 20 | 5 | 15 | 3 | 1 | 2 | 2 | 2 | 0 | 156 | 67 | 122 |
| Midwest | 443 | 217 | 224 | 43 | 21 | 22 | 16 | 9 | 7 | 11 | 6 | 5 | 459 | 223 | 234 |
| Illinois | 155 | 57 | 98 | 13 | 6 | 7 | 9 | 4 | 5 | 5 | 3 | 2 | 154 | 56 | 98 |
| Indiana | 47 | 31 | 16 | 3 | 3 | 0 | 4 | 3 | 1 | 0 | 0 | 0 | 46 | 31 | 15 |
| Kansas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | 88 | 51 | 37 | 10 | 3 | 7 | 0 | 0 | 0 | 6 | 3 | 3 | 92 | 51 | 41 |
| Nebraska | 10 | 7 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 7 | 2 |
| Ohio | 141 | 69 | 71 | 17 | 9 | 8 | 3 | 2 | 1 | 0 | 0 | 0 | 155 | 76 | 78 |
| South Dakota | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 |
| South | 1,621 | 926 | 672 | 184 | 105 | 78 | 71 | 37 | 33 | 41 | 23 | 17 | 1,693 | 971 | 700 |
| Alabama | 136 | 74 | 60 | 17 | 10 | 7 | 8 | 2 | 6 | 2 | 0 | 2 | 143 | 82 | 59 |
| Arkansas | 37 | 21 | 16 | 4 | 3 | 1 | 1 | 0 | 1 | 2 | 1 | 1 | 38 | 23 | 15 |
| Delaware | 14 | 7 | 7 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 14 | 7 | 7 |
| Florida | 353 | 223 | 130 | 31 | 19 | 12 | 19 | 12 | 7 | 3 | 2 | 1 | 362 | 228 | 134 |
| Georgia | 96 | 53 | 43 | 7 | 5 | 2 | 3 | 1 | 2 | 2 | 2 | 0 | 98 | 55 | 43 |
| Kentucky | 29 | 23 | 6 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 28 | 22 | 6 |
| Louisiana | 47 | 16 | 31 | 12 | 4 | 8 | 1 | 0 | 1 | 1 | 0 | 1 | 57 | 20 | 37 |
| Maryland | 13 | 2 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | 2 | 11 |
| Mississippi | 57 | 20 | 30 | 3 | 0 | 3 | 4 | 0 | 4 | 0 | 0 | 0 | 49 | 20 | 29 |
| North Carolina | 111 | 55 | 54 | 34 | 19 | 15 | 4 | 4 | 0 | 2 | 2 | 0 | 139 | 68 | 69 |
| Oklahoma | 130 | 79 | 40 | 15 | 10 | 4 | 13 | 8 | 4 | 3 | 3 | 0 | 129 | 78 | 40 |
| South Carolina | 59 | 31 | 28 | 10 | 2 | 8 | 1 | 0 | 1 | 1 | 0 | 1 | 67 | 33 | 34 |
| Tennessee | 100 | 66 | 32 | 4 | 1 | 3 | 8 | 3 | 5 | 0 | 0 | 0 | 96 | 64 | 30 |
| Texas | 391 | 230 | 155 | 40 | 27 | 13 | 8 | 6 | 2 | 19 | 10 | 8 | 404 | 241 | 158 |
| Virginia | 55 | 26 | 29 | 6 | 4 | 2 | 0 | 0 | 0 | 5 | 2 | 3 | 55 | 28 | 28 |
| West | 641 | 436 | 188 | 58 | 36 | 19 | 14 | 10 | 2 | 2 | 2 | 0 | 683 | 460 | 205 |
| Arizona | 121 | 191 | 14 | 5 | 5 | 0 | 8 | 8 | 0 | 1 | 1 | 0 | 117 | 97 | 14 |
| California ^e | 386 | 230 | 148 | 36 | 22 | 13 | 2 | 1 | 1 | 0 | 0 | 0 | 420 | 251 | 160 |
| Colorado | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 3 | 1 |
| Idaho | 20 | 20 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 19 | 19 | 0 |
| Montana | 8 | 6 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 6 | 5 | 0 |
| Nevada ^f | 65 | 44 | 21 | 11 | 4 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 75 | 48 | 26 |
| New Mexico | 1 | 1 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 0 |
| Oregon | 18 | 16 | 1 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 18 | 1 |
| Utah | 10 | 8 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 8 | 2 |
| Washington | 9 | 7 | 2 | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 9 | 8 | 1 |
| Wyoming | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Note: States not listed and the District of Columbia did not authorize the death penalty as of 12/31/94. New York enacted a death penalty statute during 1995 and reported no one under sentence of death as of 12/31/95. Some figures shown for yearend 1994 are revised from those reported in *Capital Punishment 1994*, NCJ-158023. The revised figures include 26 inmates who were either reported late to the National Prisoner Statistics Program or were not in custody of State correctional authorities on 12/31/94 (12 in California; 4 in Florida; 2 in Texas; and 1 each in Alabama, Arizona, Arkansas,

Ohio, Oklahoma, Oregon, and Tennessee), and exclude 18 inmates who were relieved of the death sentence on or before 12/31/94 (8 in California; 5 in Texas; and 1 each in Arizona, New Mexico, Pennsylvania, Tennessee, and Washington). The data for 12/31/94 also include 7 inmates in Florida who were listed erroneously as being removed from death row.
^eIncludes 9 deaths from natural causes (3 in Alabama, and 1 each in Arizona, Illinois, Kentucky, North Carolina, Oklahoma, and Texas) 2 suicides (in California and Nevada), and 2 inmates

murdered by other inmates (in Florida and Texas).

^fTotals include persons of other races.

^gThe accounting of race and Hispanic origin differs from that presented in tables 8, 9, and 11. In this table white and black inmates include Hispanics.

^hExcludes persons held under Armed Forces jurisdiction with a military death sentence for murder.

ⁱOne inmate who was previously in the custody of Nevada has been transferred to California, where he is being held under a separate sentence of death.

at yearend 1995. Three States reported 39% of the Nation's death row population: California (420), Texas (404), and Florida (362). Of the 38 jurisdictions with statutes authorizing the death penalty during 1995, New Hampshire, Kansas, and Wyoming had no one under a capital sentence, and South Dakota, New Mexico, and Colorado had 4 or fewer. New York enacted a new death penalty statute, effective September 1, 1995, and reported no one under sentence of death as of December 1, 1995.

Among the 35 jurisdictions with prisoners under sentence of death at yearend 1995, 20 had more inmates than a year earlier, 9 had fewer inmates, and 6 had the same number. California had an increase of 34, followed by North Carolina (28), Pennsylvania (15), Ohio (14), Texas (13), and Louisiana and Nevada (10 each). Arizona and Tennessee had the largest decrease (4 each).

During 1995 the number of black inmates under sentence of death increased by 72; the number of whites increased by 77; and the number of persons of other races (American Indians, Alaska Natives, Asians, or Pacific Islanders) remained constant at 49.

The number of Hispanics sentenced to death rose from 224 to 237 during 1995 (table 5). Twenty-six Hispanics were received under sentence of death, 11 were removed from death row, and 2 were executed. Three-fourths of the Hispanics were incarcerated in 4 States: Texas (68), California (61), Florida (35), and Arizona (18).

During 1995 the number of women sentenced to be executed increased from 43 to 48. Six women were received under sentence of death, one was removed from death row, and none were executed. Women were under sentence of death in 14 States. Almost two-thirds of all women on death row at yearend were in California, Florida, Texas, Oklahoma, and Illinois.

Table 5. Hispanics and women under sentence of death, by State, 1994 and 1995

| Region and State | Under sentence of death, 12/31/94 | | Received under sentence of death | | Death sentence removed* | Under sentence of death, 12/31/95 | |
|------------------|-----------------------------------|-------|----------------------------------|-------|-------------------------|-----------------------------------|-------|
| | Hispanics | Women | Hispanics | Women | Hispanics | Hispanics | Women |
| U.S. total | 224 | 43 | 26 | 6 | 11 | 237 | 48 |
| Alabama | 0 | 5 | 0 | 0 | 0 | 0 | 4 |
| Arizona | 20 | 1 | 1 | 0 | 3 | 18 | 1 |
| Arkansas | 1 | 0 | 1 | 0 | 0 | 2 | 0 |
| California | 57 | 6 | 4 | 2 | 0 | 61 | 8 |
| Colorado | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Florida | 33 | 6 | 4 | 0 | 2 | 35 | 6 |
| Georgia | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Idaho | 2 | 1 | 0 | 0 | 1 | 1 | 1 |
| Illinois | 8 | 5 | 0 | 0 | 1 | 7 | 5 |
| Indiana | 2 | 0 | 0 | 0 | 0 | 2 | 0 |
| Louisiana | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Mississippi | 1 | 1 | 0 | 1 | 0 | 1 | 2 |
| Missouri | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| Nevada | 8 | 1 | 2 | 0 | 0 | 10 | 1 |
| New Jersey | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| New Mexico | 1 | 0 | 1 | 0 | 0 | 2 | 0 |
| North Carolina | 0 | 2 | 1 | 0 | 0 | 1 | 2 |
| Ohio | 5 | 0 | 0 | 0 | 0 | 5 | 0 |
| Oklahoma | 6 | 4 | 0 | 1 | 2 | 4 | 5 |
| Oregon | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Pennsylvania | 11 | 4 | 0 | 0 | 0 | 11 | 4 |
| Tennessee | 1 | 1 | 0 | 0 | 0 | 1 | 1 |
| Texas | 60 | 4 | 11 | 2 | 1 | 68 | 6 |
| Utah | 2 | 0 | 0 | 0 | 0 | 2 | 0 |
| Virginia | 2 | 0 | 0 | 0 | 0 | 2 | 0 |

*One woman was removed from under sentence of death in Alabama, and no women were executed during 1995. Two Hispanic men were executed in Texas in 1995.

| State | Women under sentence of death, 12/31/95 | | |
|----------------|---|-------|-------|
| | Total | White | Black |
| Total | 48 | 32 | 16 |
| California | 8 | 6 | 2 |
| Florida | 6 | 4 | 2 |
| Texas | 6 | 4 | 2 |
| Oklahoma | 5 | 4 | 1 |
| Illinois | 5 | 2 | 3 |
| Alabama | 4 | 3 | 1 |
| Pennsylvania | 4 | 1 | 3 |
| Missouri | 2 | 2 | 0 |
| North Carolina | 2 | 2 | 0 |
| Mississippi | 2 | 1 | 1 |
| Arizona | 1 | 1 | 0 |
| Idaho | 1 | 1 | 0 |
| Tennessee | 1 | 1 | 0 |
| Nevada | 1 | 0 | 1 |

Men were 98% (3,006) of all prisoners under sentence of death (table 6). Whites predominated (57%); blacks comprised 42%; and other races (1.6%) included 22 Native Americans, 19 Asians, and 8 persons of unknown race. Among those for whom ethnicity was known, 8% were Hispanic.

The sex, race, and Hispanic origin of those under sentence of death at yearend 1995 were as follows:

| State | Persons under sentence of death, by sex, race, and Hispanic origin, 12/31/95 | | |
|----------|--|-------|-------|
| | White | Black | Other |
| Male | 1,698 | 1,259 | 49 |
| Hispanic | 215 | 12 | 7 |
| Female | 32 | 16 | 0 |
| Hispanic | 2 | 1 | 0 |

Among inmates under sentence of death on December 31, 1995, for whom information on education was available, three-fourths had either completed high school (38%) or finished 9th, 10th, or 11th grade (37%). The percentage who had not gone beyond eighth grade (15%) was over 40% larger than that of inmates who had attended some college (10%). The median level of education was the 11th grade.

Of inmates under a capital sentence and with reported marital status, half had never married; a fourth were married at the time of sentencing; and nearly a fourth were divorced, separated, or widowed.

Among all inmates under sentence of death for whom date of arrest information was available, more than half were age 20 to 29 at the time of arrest for their capital offense; 12% were age 19 or younger; and less than 1% were age 55 or older (table 7). The average age at time of arrest was 28 years. On December 31, 1995, 43% of these inmates were age 30 to 39 and 71% were age 25 to 44. The youngest offender under sentence of death was age 18; the oldest was 80.

Entries and removals of persons under sentence of death

Between January 1 and December 31, 1995, 27 State prison systems reported receiving 308 prisoners under sentence of death; the Federal Bureau of Prisons received 2 inmates. Forty-five percent of the inmates were received in 4 States: Texas (40), California (36), North Carolina (34), and Florida (31).

All 310 prisoners who had been received under sentence of death had been convicted of murder. By sex and race, 164 were white men, 136 were black men, 4 were Asian men, 4 were white women, and 2 were black women. Of the 310 new admissions, 26 were Hispanic men. No Hispanic women were admitted under sentence of death in 1995.

Table 6. Demographic characteristics of prisoners under sentence of death, 1995

| Characteristic | Prisoners under sentence of death, 1995 | | |
|---|---|------------|------------|
| | Yearend | Admissions | Removals |
| Number of prisoners | 3,054 | 310 | 161 |
| Sex | | | |
| Male | 98.4% | 98.1% | 99.4% |
| Female | 1.6 | 1.9 | .6 |
| Race | | | |
| White | 56.6% | 54.2% | 56.5% |
| Black | 41.7 | 44.5 | 41.0 |
| Other* | 1.6 | 1.3 | 2.5 |
| Hispanic origin | | | |
| Hispanic | 8.5% | 9.3% | 8.6% |
| Non-Hispanic | 91.5 | 90.7 | 91.4 |
| Education | | | |
| 8th grade or less | 14.7% | 12.1% | 21.8% |
| 9th-11th | 37.2 | 41.5 | 42.3 |
| High school graduate/GED | 37.8 | 35.5 | 26.8 |
| Any college | 10.3 | 10.9 | 9.2 |
| Median | 11th grade | 11th grade | 11th grade |
| Marital status | | | |
| Married | 25.6% | 20.4% | 31.5% |
| Divorced/separated | 21.6 | 22.6 | 19.2 |
| Widowed | 2.5 | 2.6 | 2.1 |
| Never married | 50.3 | 54.4 | 47.3 |
| Note: Calculations are based on those cases for which data were reported. Missing data by category were as follows: | | | |
| | Yearend | Admissions | Removals |
| Hispanic origin | 257 | 29 | 10 |
| Education | 422 | 62 | 19 |
| Marital status | 247 | 36 | 15 |
| *At yearend 1994 "other" consisted of 24 Native Americans, 17 Asians, and 8 self-identified Hispanics. During 1995, 4 Asians were admitted; 2 Native Americans and 2 Asians were removed. | | | |

Table 7. Age at time of arrest for capital offense and age of prisoners under sentence of death at yearend 1995

| Age | Prisoners under sentence of death | | | |
|---|-----------------------------------|---------|----------------------|---------|
| | At time of arrest | | On December 31, 1995 | |
| | Number* | Percent | Number* | Percent |
| Number of prisoners | 2,661 | 100.0% | 2,661 | 100.0% |
| 17 or younger | 51 | 1.9 | 0 | |
| 18-19 | 262 | 9.8 | 20 | .8 |
| 20-24 | 741 | 27.8 | 257 | 9.7 |
| 25-29 | 626 | 23.5 | 428 | 16.1 |
| 30-34 | 441 | 16.6 | 556 | 20.9 |
| 35-39 | 272 | 10.2 | 575 | 21.6 |
| 40-44 | 137 | 5.1 | 343 | 12.9 |
| 45-49 | 77 | 2.9 | 261 | 9.8 |
| 50-54 | 34 | 1.3 | 125 | 4.7 |
| 55-59 | 13 | .5 | 56 | 2.1 |
| 60 or older | 7 | .3 | 40 | 1.5 |
| Mean age | 28 yrs | | 36 yrs | |
| Median age | 27 yrs | | 35 yrs | |
| Note: The youngest person under sentence of death was a white male in Nevada, born in January 1977 and sentenced to death in November 1994. The oldest person under sentence of death was a white male in Arizona, born in September 1915 and sentenced to death in June 1983. *Excludes 393 inmates for whom the date of arrest for the capital offense was not available. | | | | |

Twenty-one States reported a total of 92 persons whose sentence of death was overturned or removed. Appeals courts vacated 55 sentences while upholding the convictions and vacated 30 sentences while overturning the convictions. Florida (18 exits) had the largest number of vacated capital sentences. Arizona reported three commutations of a death sentence; Idaho, Oklahoma, and Pennsylvania each reported one. Mississippi removed 1 inmate when an appellate court struck the capital sentence due to a violation of the inmate's constitutional right to a speedy trial.

As of December 31, 1995, 56 of the 92 persons who were formerly under sentence of death were serving a reduced sentence, 14 were awaiting a new trial, 17 were awaiting resentencing, 2 had all capital charges dropped, and 1 had no action taken after being removed from under sentence of death. No information was available on the current status of 2 inmates.

In addition, 13 persons died while under sentence of death in 1995. Nine of these deaths were from natural causes — three in Alabama, and one each in Arizona, Illinois, Kentucky, North Carolina, Oklahoma, and Texas. Two suicides occurred — one each in California and Nevada. Two inmates were killed by other inmates — one in Florida and one in Texas.

From 1977, the year after the Supreme Court upheld the constitutionality of revised State capital punishment laws, to 1995, a total of 4,857 persons entered prison under sentence of death. During these 19 years, 313 persons were executed, and 1,870 were removed from under a death sentence by appellate court decisions and reviews, commutations, or death.¹

Among individuals who received a death sentence between 1977 and 1995, 2,468 (51%) were white, 1,975 (41%) were black, 342 (7%) were Hispanic, and 72 (1%) were of other

racess. The distribution by race and Hispanic origin of the 1,870 inmates who were removed from death row between 1977 and 1995 was as follows: 969 whites (52%), 773 blacks (41%), 101 Hispanics (5%), and 27 persons of other races (2%). Of the 313 who were executed, 171 (55%) were white, 120 (38%) were black, 19 (6%) were Hispanic, and 3 (1%) were other races.

Criminal history of inmates under sentence of death in 1995

Among inmates under a death sentence on December 31, 1995, for whom criminal history information was available, 66% had past felony convictions, including 8% with at least one previous homicide conviction (table 8).

Among those for whom legal status at the time of the capital offense was reported, 42% had an active criminal

justice status. Nearly half of these were on parole and about a fourth were on probation. The others had charges pending, were in prison, had escaped from incarceration, or had some other criminal justice status.

Criminal history patterns differed by race and Hispanic origin. More blacks (70%) than whites (65%) or Hispanics (59%) had a prior felony conviction. About the same percentage of blacks (9%), whites (8%), or Hispanics (7%) had a prior homicide conviction. A slightly higher percentage of Hispanics (25%) or blacks (24%) than whites (17%) were on parole when arrested for their capital offense.

Since 1988 data have been collected on the number of death sentences imposed on entering inmates. Among the 2,299 individuals received under

Table 8. Criminal history profile of prisoners under sentence of death, by race and Hispanic origin, 1995

| | Prisoners under sentence of death | | | | | | | |
|--|-----------------------------------|-------|-------|----------|----------------------|--------|--------|----------|
| | Number | | | | Percent ^a | | | |
| | All ^b | White | Black | Hispanic | All ^b | White | Black | Hispanic |
| U.S. total | 3,054 | 1,513 | 1,262 | 237 | 100.0% | 100.0% | 100.0% | 100.0% |
| Prior felony convictions | | | | | | | | |
| Yes | 1,887 | 914 | 825 | 130 | 66.3% | 64.9% | 70.1% | 58.6% |
| No | 959 | 494 | 352 | 92 | 33.7 | 35.1 | 29.9 | 41.4 |
| Not reported | 208 | 105 | 84 | 15 | | | | |
| Prior homicide convictions | | | | | | | | |
| Yes | 254 | 125 | 110 | 17 | 8.5% | 8.4% | 8.9% | 7.4% |
| No | 2,728 | 1,357 | 1,120 | 212 | 91.5 | 91.6 | 91.1 | 92.6 |
| Not reported | 72 | 31 | 32 | 8 | | | | |
| Legal status at time of capital offense | | | | | | | | |
| Charges pending | 189 | 106 | 68 | 13 | 6.9% | 7.8% | 6.0% | 6.1% |
| Probation | 275 | 134 | 117 | 21 | 10.0 | 9.8 | 10.4 | 9.9 |
| Parole | 558 | 235 | 266 | 53 | 20.4 | 17.2 | 23.6 | 24.9 |
| Prison escapee | 44 | 26 | 14 | 3 | 1.6 | 1.9 | 1.2 | 1.4 |
| Prison inmate | 66 | 32 | 31 | 3 | 2.4 | 2.3 | 2.8 | 1.4 |
| Other status | 33 | 17 | 14 | 1 | 1.2 | 1.2 | 1.2 | .5 |
| None | 1,575 | 813 | 616 | 119 | 57.5 | 59.6 | 54.7 | 55.9 |
| Not reported | 314 | 150 | 136 | 24 | | | | |

^aPercentages are based on those offenders for whom data were reported.

^bIncludes whites, blacks, Hispanics, and persons of other races.

¹An individual may have received and been removed from under a sentence of death more than once. Data are based on the most recent sentence.

sentence of death during that time, about 1 in every 7 entered with two or more death sentences.

| Number of death sentences received | Inmates |
|--|---------|
| Total | 100 % |
| 1 | 85.3 |
| 2 | 10.3 |
| 3 or more | 4.4 |
| Number admitted under sentence of death, 1986-95 | 2,299 |

The proportions of whites, blacks, and Hispanics with two or more death sentences were nearly identical.

Executions

According to data collected by the Federal Government, from 1930 to 1995, 4,172 persons were executed under civil authority (table 9).²

After the Supreme Court reinstated the death penalty in 1976, 26 States executed 313 prisoners:

| | |
|------|----|
| 1977 | 1 |
| 1979 | 2 |
| 1981 | 1 |
| 1982 | 2 |
| 1983 | 5 |
| 1984 | 21 |
| 1985 | 18 |
| 1986 | 18 |
| 1987 | 25 |
| 1988 | 11 |
| 1989 | 15 |
| 1990 | 23 |
| 1991 | 14 |
| 1992 | 31 |
| 1993 | 38 |
| 1994 | 31 |
| 1995 | 56 |

During this 19-year period, 5 States executed 211 prisoners: Texas (104), Florida (36), Virginia (29), Louisiana (22), and Georgia (20). These States accounted for two-thirds of all executions. Between 1977 and 1995, 170 white non-Hispanic men, 120 black non-Hispanic men, 19 Hispanic men, 2 Native American men, 1 Asian man, and 1 white non-Hispanic woman were executed.

During 1995 Texas carried out 19 executions; Missouri executed 6 persons; Illinois and Virginia, 5 each;

²Military authorities carried out an additional 160 executions, 1930-95.

Florida and Oklahoma, 3 each; Pennsylvania, Alabama, Arkansas, Georgia, and North Carolina, 2 each; and Delaware, Louisiana, South Carolina, Arizona, and Montana, 1 each. All persons executed in 1995 were male. Thirty-one were non-Hispanic whites; 22 were non-Hispanic blacks; 1 was Asian; and 2 were Hispanic.

Table 9. Number of persons executed, by jurisdiction, 1930-95

| State | Number executed | |
|----------------------|-----------------|------------|
| | Since 1930 | Since 1977 |
| U.S. total | 4,172 | 313 |
| Texas | 401 | 104 |
| Georgia | 366 | 20 |
| New York | 329 | |
| California | 294 | 2 |
| North Carolina | 271 | 8 |
| Florida | 206 | 36 |
| Ohio | 172 | |
| South Carolina | 167 | 5 |
| Mississippi | 158 | 4 |
| Louisiana | 155 | 22 |
| Pennsylvania | 154 | 2 |
| Alabama | 147 | 12 |
| Arkansas | 129 | 11 |
| Virginia | 121 | 29 |
| Kentucky | 103 | |
| Illinois | 97 | 7 |
| Tennessee | 93 | |
| Missouri | 79 | 17 |
| New Jersey | 74 | |
| Maryland | 69 | 1 |
| Oklahoma | 66 | 6 |
| Washington | 49 | 2 |
| Colorado | 47 | |
| Indiana | 44 | 3 |
| Arizona | 42 | 4 |
| District of Columbia | 40 | |
| West Virginia | 40 | |
| Nevada | 34 | 5 |
| Federal system | 33 | |
| Massachusetts | 27 | |
| Connecticut | 21 | |
| Oregon | 19 | |
| Iowa | 18 | |
| Utah | 17 | 4 |
| Delaware | 17 | 5 |
| Kansas | 15 | |
| New Mexico | 8 | |
| Wyoming | 8 | 1 |
| Montana | 7 | 1 |
| Nebraska | 5 | 1 |
| Idaho | 4 | 1 |
| Vermont | 4 | |
| New Hampshire | 1 | |
| South Dakota | 1 | |
| Minnesota | 0 | |
| Rhode Island | 0 | |
| North Dakota | 0 | |
| Hawaii | 0 | |
| Michigan | 0 | |
| Maine | 0 | |
| Alaska | 0 | |
| Wisconsin | 0 | |

From 1977 to 1995, 5,237 prisoners were under death sentences for varying lengths of time (table 10). The 313 executions accounted for 6% of those at risk. A total of 1,870 prisoners (36% of those at risk) received other dispositions. About the same percentage of whites (6%), blacks (6%), and Hispanics (5%) were executed. Somewhat larger percentages of whites (36%) and blacks (36%) than Hispanics (26%) were removed from under a death sentence by means other than execution.

Among prisoners executed between 1977 and 1995, the average time spent between the imposition of the most recent sentence received and execution was more than 8 years (table 11). White prisoners had spent an average of 8 years and 2 months, and black prisoners, 9 years and 5 months. The 56 prisoners executed in 1995 were under sentence of death an average of 11 years and 2 months.

For the 313 prisoners executed between 1977 and 1995, the most common method of execution was lethal injection (180). Other methods were electrocution (121), lethal gas (9), hanging (2), and firing squad (1).

| Method of execution | Executions, 1977-95 | | | | |
|---------------------|---------------------|-------|----------|-----------------|-------|
| | White | Black | Hispanic | American Indian | Asian |
| Total | 171 | 120 | 19 | 2 | 1 |
| Lethal injection | 100 | 59 | 18 | 2 | 1 |
| Electrocution | 62 | 58 | 1 | 0 | 0 |
| Lethal gas | 6 | 3 | 0 | 0 | 0 |
| Hanging | 2 | 0 | 0 | 0 | 0 |
| Firing squad | 1 | 0 | 0 | 0 | 0 |

Among prisoners under sentence of death at yearend 1995, the average time spent in prison was 6 years and 6 months.

The median time between the imposition of a death sentence and yearend 1995 was 69 months. Overall, the average time for women was 4.8 years — about three-fourths as long as for men (6.5 years). On average,

whites, blacks, and Hispanics had spent from 75 to 80 months under a sentence of death.

| | Elapsed time since sentencing | |
|----------|-------------------------------|--------|
| | Mean | Median |
| Total | 78 mos | 69 mos |
| Male | 78 | 70 |
| Female | 58 | 46 |
| White | 80 | 73 |
| Black | 75 | 64 |
| Hispanic | 76 | 69 |

Appendix. Federal laws providing for the death penalty

8 U.S.C. 1342 - Murder related to the smuggling of aliens.

18 U.S.C. 32-34 - Destruction of aircraft, motor vehicles, or related facilities resulting in death.

18 U.S.C. 36 - Murder committed during a drug-related drive-by shooting.

18 U.S.C. 37 - Murder committed at an airport serving international civil aviation.

18 U.S.C. 115(b)(3)[by cross-reference to 18 U.S.C. 1111] - Retaliatory murder of a member of the immediate family of law enforcement officials.

18 U.S.C. 241, 242, 245, 247 - Civil rights offenses resulting in death.

18 U.S.C. 351 [by cross-reference to 18 U.S.C. 1111] - Murder of a member of Congress, an important executive official, or a Supreme Court Justice.

18 U.S.C. 794 - Espionage

18 U.S.C. 844(d), (f), (i) - Death resulting from offenses involving transportation of explosives, destruction of government property, or destruction of property related to foreign or interstate commerce.

18 U.S.C. 924(i) - Murder committed by the use of a firearm during a crime of violence or a drug trafficking crime.

18 U.S.C. 930 - Murder committed in a Federal Government facility.

18 U.S.C. 1091 - Genocide.

18 U.S.C. 1111 - First-degree murder.

18 U.S.C. 1114 - Murder of a Federal judge or law enforcement official.

18 U.S.C. 1116 - Murder of a foreign official.

18 U.S.C. 1118 - Murder by a Federal prisoner.

18 U.S.C. 1119 - Murder of a U.S. national in a foreign country.

18 U.S.C. 1120 - Murder by an escaped Federal prisoner already sentenced to life imprisonment.

18 U.S.C. 1121 - Murder of a State or local law enforcement official or other person aiding in a Federal investigation; murder of a State correctional officer.

18 U.S.C. 1201 - Murder during a kidnaping.

18 U.S.C. 1203 - Murder during a hostage-taking.

18 U.S.C. 1503 - Murder of a court officer or juror.

Table 10. Prisoners under sentence of death who were executed or received other dispositions, by race and Hispanic origin, 1977-95

| Race/Hispanic origin ² | Total under sentence of death, 1977-95 ¹ | Prisoners executed | | Prisoners who received other dispositions ³ | |
|-----------------------------------|---|--------------------|------------------|--|------------------|
| | | Number | Percent of total | Number | Percent of total |
| Total | 5,237 | 313 | 6.0% | 1,870 | 35.7% |
| White | 2,653 | 171 | 6.4% | 969 | 36.5% |
| Black | 2,155 | 120 | 5.6% | 773 | 35.9% |
| Hispanic | 357 | 19 | 5.3% | 101 | 28.3% |
| Other | 72 | 3 | 4.2% | 27 | 37.5% |

¹Includes persons removed from a sentence of death because of statutes struck down on appeal, sentences or convictions vacated, commutations, or death other than by execution.

²White, black, and other categories exclude Hispanics.

³Includes persons sentenced to death prior to 1977 who were still under sentence of death 12/31/95 (14), persons sentenced to death prior to 1977 whose death sentence was removed between 1977 and 12/31/95 (366), and persons sentenced to death between 1977 and 12/31/95 (4,857).

Table 11. Time under sentence of death sentence and execution, by race, 1977-95

| Year of execution | Number executed | | | Average elapsed time from sentence to execution (in mos) | | |
|-------------------|------------------|-------|-------|--|--------|---------|
| | All [*] | White | Black | All [*] | White | Black |
| Total | 313 | 189 | 121 | 104 mos | 98 mos | 113 mos |
| 1977-83 | 11 | 9 | 2 | 51 mos | 49 mos | 58 mos |
| 1984 | 21 | 13 | 8 | 74 | 76 | 71 |
| 1985 | 18 | 11 | 7 | 71 | 65 | 80 |
| 1986 | 18 | 11 | 7 | 87 | 78 | 102 |
| 1987 | 25 | 13 | 12 | 86 | 78 | 96 |
| 1888 | 11 | 6 | 5 | 80 | 72 | 89 |
| 1989 | 16 | 8 | 8 | 95 | 78 | 112 |
| 1990 | 23 | 16 | 7 | 95 | 97 | 91 |
| 1991 | 14 | 7 | 7 | 116 | 124 | 107 |
| 1992 | 31 | 19 | 11 | 114 | 104 | 135 |
| 1993 | 38 | 23 | 14 | 113 | 112 | 121 |
| 1994 | 31 | 20 | 11 | 122 | 117 | 132 |
| 1995 | 56 | 33 | 22 | 134 | 128 | 144 |

Note: Average time was calculated from the most recent sentencing date. Some

numbers have been revised from those previously reported.

^{*}Includes Native Americans and Asians.

18 U.S.C. 1512 - Murder with the intent of preventing testimony by a witness, victim, or informant.

18 U.S.C. 1513 - Retaliatory murder of a witness, victim or informant.

18 U.S.C. 1716 - Mailing of injurious articles with intent to kill or resulting in death.

18 U.S.C. 1751 [by cross-reference to 18 U.S.C. 1111] - Assassination or kidnaping resulting in the death of the President or Vice President.

18 U.S.C. 1958 - Murder for hire.

18 U.S.C. 1959 - Murder involved in a racketeering offense.

18 U.S.C. 1992 - Willful wrecking of a train resulting in death.

18 U.S.C. 2113 - Bank-robbery-related murder or kidnaping.

18 U.S.C. 2119 - Murder related to a carjacking.

18 U.S.C. 2245 - Murder related to rape or child molestation.

18 U.S.C. 2251 - Murder related to sexual exploitation of children.

18 U.S.C. 2280 - Murder committed during an offense against maritime navigation.

18 U.S.C. 2281 - Murder committed during an offense against a maritime fixed platform.

18 U.S.C. 2332 - Terrorist murder of a U.S. national in another country.

18 U.S.C. 2332a - Murder by the use of a weapon of mass destruction.

18 U.S.C. 2340 - Murder involving torture.

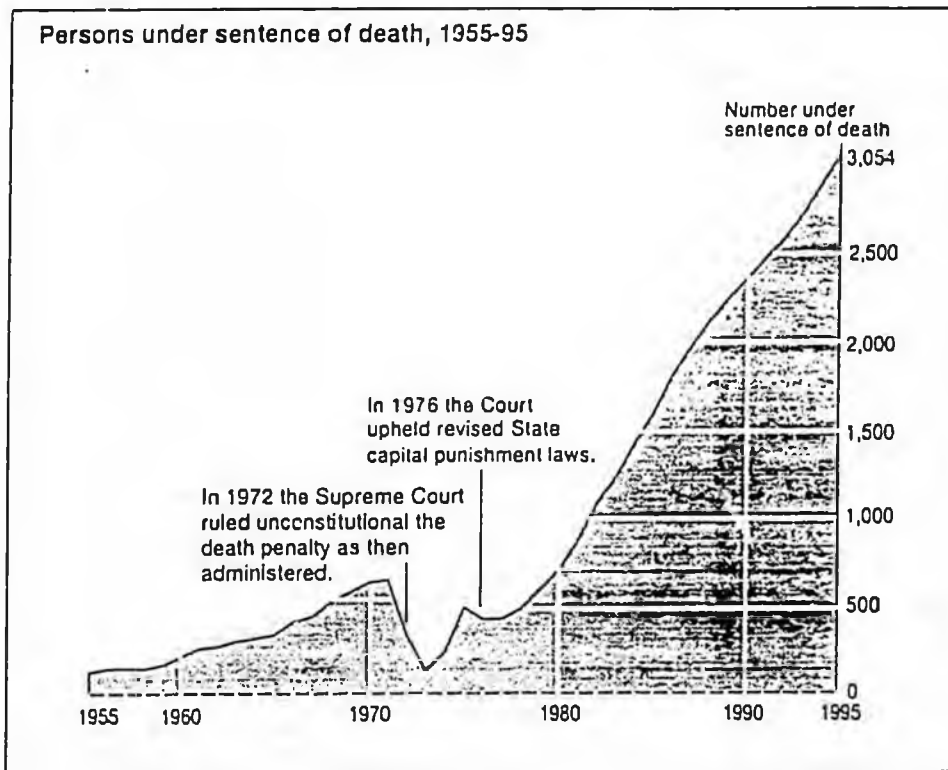
18 U.S.C. 2381 - Treason.

21 U.S.C. 848(e) - Murder related to a continuing criminal enterprise or related murder of a Federal, State, or local law enforcement officer.

49 U.S.C. 1472-1473 - Death resulting from aircraft hijacking.

Methodological note

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) National Prisoner Statistics (NPS) adds inmates to the number under sentence of death not at sentencing but at the time they are admitted to a State or Federal correctional facility. (2) If in one year inmates entered prison under a death sentence or were reported as being relieved of a death sentence but the court had acted in the previous year, the counts are adjusted to reflect the dates of court decisions. (See the note on table 4 for the affected jurisdictions.) (3) NPS counts for capital punishment are always for the last day of the calendar year and will differ from counts for more recent periods.



Appendix table 1. Prisoners sentenced to death, and the outcome of their sentence, by year of sentencing, 1973-95

| Year of sentence | Number sentenced to death | Number of prisoners removed from under sentence of death | | | | | | Other or unknown reasons | Under sentence of death, 12/31/95 |
|------------------|---------------------------|--|-------------|------------------------------------|------------|----------|-------------------|--------------------------|-----------------------------------|
| | | Execution | Other death | Appeal or higher courts overturned | | | Sentence commuted | | |
| | | | | Death penalty statute | Conviction | Sentence | | | |
| 1973 | 42 | 2 | 0 | 14 | 9 | 8 | 9 | 0 | 0 |
| 1974 | 149 | 9 | 4 | 65 | 15 | 30 | 22 | 1 | 3 |
| 1975 | 298 | 6 | 4 | 171 | 24 | 66 | 21 | 2 | 4 |
| 1976 | 234 | 11 | 5 | 137 | 16 | 43 | 15 | 0 | 7 |
| 1977 | 138 | 16 | 2 | 40 | 26 | 33 | 7 | 0 | 14 |
| 1978 | 186 | 31 | 4 | 21 | 34 | 60 | 8 | 0 | 28 |
| 1979 | 154 | 19 | 9 | 2 | 28 | 58 | 6 | 1 | 31 |
| 1980 | 175 | 27 | 11 | 3 | 27 | 46 | 7 | 0 | 54 |
| 1981 | 229 | 37 | 12 | 0 | 39 | 71 | 4 | 1 | 65 |
| 1982 | 269 | 39 | 13 | 0 | 29 | 63 | 6 | 0 | 119 |
| 1983 | 254 | 31 | 12 | 1 | 22 | 54 | 4 | 2 | 128 |
| 1984 | 287 | 25 | 10 | 2 | 33 | 57 | 6 | 8 | 146 |
| 1985 | 271 | 10 | 3 | 1 | 37 | 63 | 3 | 3 | 151 |
| 1986 | 305 | 12 | 13 | 0 | 39 | 49 | | 5 | 183 |
| 1987 | 290 | 8 | 8 | 3 | 33 | 54 | | 6 | 177 |
| 1988 | 295 | 10 | 6 | 0 | 28 | 44 | 2 | 0 | 205 |
| 1989 | 264 | 3 | 6 | 0 | 25 | 47 | 3 | 0 | 180 |
| 1990 | 252 | 4 | 4 | 0 | 28 | 27 | 0 | 0 | 189 |
| 1991 | 271 | 2 | 5 | 0 | 22 | 16 | 3 | 0 | 223 |
| 1992 | 293 | 5 | 1 | 0 | 14 | 19 | 2 | 0 | 252 |
| 1993 | 295 | 4 | 4 | 0 | 4 | 8 | 1 | 0 | 274 |
| 1994 | 319 | 2 | 1 | 0 | 0 | 3 | 1 | 0 | 312 |
| 1995 | 310 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 309 |
| Total, 1973-95 | 5,580 | 313 | 138 | 460 | 532 | 919 | 135 | 29 | 3,054 |

Note: Table based upon most recent death sentence received.

Appendix table 2. Prisoners under sentence of death on December 31, 1995, by State and year of sentencing

| State | Year of sentence for prisoners sentenced to and remaining on death row, 12/31/95 | | | | | | | | | | | | | Under sentence of death 12/31/95 | Average number of years under sentence of death as of 12/31/95 |
|----------------|--|---------|---------|---------|---------|------|------|------|------|------|------|------|------|----------------------------------|--|
| | 1974-79 | 1980-81 | 1982-83 | 1984-85 | 1986-87 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | | |
| Florida | 26 | 14 | 24 | 34 | 34 | 25 | 17 | 19 | 36 | 31 | 30 | 41 | 31 | 362 | 6.9 |
| Texas | 16 | 16 | 20 | 34 | 58 | 28 | 28 | 24 | 27 | 37 | 31 | 45 | 40 | 404 | 6.5 |
| California | 10 | 18 | 50 | 38 | 48 | 34 | 33 | 32 | 24 | 41 | 33 | 23 | 36 | 420 | 7.0 |
| Georgia | 9 | 3 | 6 | 6 | 18 | 4 | 8 | 9 | 6 | 7 | 7 | 8 | 7 | 98 | 7.6 |
| Arizona | 6 | 8 | 12 | 11 | 7 | 10 | 4 | 10 | 10 | 9 | 14 | 11 | 5 | 117 | 7.2 |
| Tennessee | 6 | 7 | 9 | 14 | 17 | 6 | 3 | 7 | 9 | 7 | 2 | 5 | 4 | 96 | 8.5 |
| Nebraska | 3 | 2 | | 2 | 1 | 1 | | | | | | 1 | | 10 | 12.2 |
| Arkansas | 2 | 1 | 1 | | 4 | 1 | 4 | 3 | | 4 | 7 | 7 | 4 | 38 | 5.1 |
| Nevada | 2 | 4 | 10 | 9 | 5 | 5 | 8 | 7 | 4 | 1 | 2 | 8 | 10 | 75 | 7.1 |
| South Carolina | 2 | 3 | 7 | 7 | 7 | 2 | 4 | 2 | 7 | 2 | 7 | 7 | 10 | 67 | 6.6 |
| Alabama | 1 | 4 | 18 | 14 | 16 | 7 | 13 | 7 | 4 | 9 | 8 | 25 | 17 | 143 | 6.3 |
| Illinois | 1 | 14 | 16 | 14 | 18 | 11 | 8 | 16 | 7 | 14 | 12 | 10 | 13 | 154 | 7.1 |
| Kentucky | 1 | 2 | 8 | 2 | 4 | 1 | | | 2 | 3 | 2 | 3 | | 28 | 8.8 |
| North Carolina | 1 | 3 | 5 | 5 | 1 | 1 | | 6 | 10 | 16 | 31 | 26 | 34 | 139 | 3.3 |
| Oklahoma | 1 | 1 | 8 | 17 | 24 | 10 | 11 | 7 | 11 | 4 | 8 | 12 | 15 | 129 | 6.4 |
| Indiana | | 5 | 6 | 10 | 6 | 4 | | 3 | 2 | 3 | 2 | 2 | 3 | 46 | 8.4 |
| Mississippi | | 4 | 4 | 1 | 3 | 3 | | 7 | 5 | 2 | 12 | 5 | 3 | 49 | 5.7 |
| Pennsylvania | | 4 | 16 | 20 | 26 | 20 | 15 | 6 | 17 | 16 | 15 | 21 | 20 | 196 | 6.1 |
| Delaware | | 2 | 1 | | | 1 | | | | 4 | 5 | | 1 | 14 | 5.6 |
| Missouri | | 2 | 4 | 12 | 14 | 12 | 2 | 4 | 11 | 6 | 6 | 9 | 10 | 92 | 6.1 |
| Idaho | | 1 | 3 | 4 | 1 | 3 | 2 | 1 | 1 | 1 | 1 | 1 | | 19 | 8.5 |
| Maryland | | 1 | 1 | 2 | 1 | 1 | 3 | 1 | 1 | 1 | 1 | | | 13 | 8.0 |
| Ohio | | | 11 | 30 | 21 | 9 | 9 | 9 | 12 | 14 | 10 | 13 | 17 | 155 | 6.3 |
| Louisiana | | | 4 | 8 | 8 | 1 | | 1 | 4 | 6 | 7 | 6 | 12 | 57 | 5.0 |
| Montana | | | 1 | | 1 | 1 | 1 | | | 2 | | | | 6 | * |
| Utah | | | 1 | 2 | 1 | 2 | 2 | | 1 | | 1 | | | 10 | 7.6 |
| Washington | | | 1 | | 1 | | | 1 | 1 | 1 | 1 | 2 | 1 | 9 | * |
| Virginia | | | | 1 | 12 | 2 | 3 | 5 | 5 | 6 | 6 | 10 | 6 | 56 | 4.5 |
| Colorado | | | | | 2 | | | | 1 | | | | 1 | 4 | * |
| New Jersey | | | | | 1 | | | 2 | | | 2 | 3 | 2 | 10 | 3.0 |
| Connecticut | | | | | | | 1 | | 2 | | 1 | | 1 | 5 | * |
| Oregon | | | | | | | 1 | | 2 | 4 | 4 | 7 | 2 | 20 | 2.5 |
| Federal | | | | | | | | | 1 | | 5 | | 2 | 8 | * |
| South Dakota | | | | | | | | | | 1 | 1 | | | 2 | * |
| New Mexico | | | | | | | | | | | | 1 | 2 | 3 | * |
| Total | 87 | 119 | 247 | 297 | 360 | 205 | 180 | 189 | 223 | 252 | 274 | 312 | 309 | 3,054 | 6.5 |

Note: For those persons sentenced to death more than once, the numbers are based on the most recent sentence to death.
 *Averages not calculated for fewer than 10 inmates.

Appendix table 3. Number sentenced to death and number of removals, by jurisdiction and reason for removal, 1973-95

| State | Total sentenced to death, 1973-95 | Number of removals, 1973-95 | | | | | Under sentence of death, 12/31/95 |
|----------------|-----------------------------------|-----------------------------|------|-----------------------------------|-------------------|----------------|-----------------------------------|
| | | Executed | Died | Sentence or conviction overturned | Sentence commuted | Other removals | |
| U.S. total | 5,580 | 313 | 138 | 1,911 | 135 | 30 | 3,054 |
| Federal | 9 | 0 | 0 | 1 | 0 | 0 | 8 |
| Alabama | 245 | 12 | 7 | 82 | 1 | 0 | 143 |
| Arizona | 196 | 4 | 6 | 63 | 5 | 1 | 117 |
| Arkansas | 77 | 11 | 1 | 27 | 0 | 0 | 38 |
| California | 573 | 2 | 22 | 113 | 15 | 1 | 420 |
| Colorado | 15 | 0 | 1 | 9 | 1 | 0 | 4 |
| Connecticut | 6 | 0 | 0 | 1 | 0 | 0 | 5 |
| Delaware | 32 | 5 | 0 | 13 | 0 | 0 | 14 |
| Florida | 734 | 36 | 19 | 297 | 18 | 2 | 362 |
| Georgia | 252 | 20 | 7 | 121 | 5 | 1 | 98 |
| Idaho | 33 | 1 | 1 | 11 | 1 | 0 | 19 |
| Illinois | 234 | 7 | 7 | 59 | 0 | 7 | 154 |
| Indiana | 83 | 3 | 1 | 31 | 0 | 2 | 46 |
| Kentucky | 58 | 0 | 2 | 27 | 1 | 0 | 28 |
| Louisiana | 153 | 22 | 3 | 64 | 6 | 1 | 57 |
| Maryland | 37 | 1 | 1 | 20 | 2 | 0 | 13 |
| Massachusetts | 4 | 0 | 0 | 2 | 2 | 0 | 0 |
| Mississippi | 135 | 4 | 1 | 78 | 0 | 3 | 49 |
| Missouri | 126 | 17 | 4 | 12 | 1 | 0 | 92 |
| Montana | 13 | 1 | 0 | 5 | 1 | 0 | 8 |
| Nebraska | 21 | 1 | 2 | 6 | 2 | 0 | 10 |
| Nevada | 105 | 5 | 4 | 18 | 3 | 0 | 75 |
| New Jersey | 40 | 0 | 1 | 21 | 0 | 8 | 10 |
| New Mexico | 25 | 0 | 0 | 17 | 5 | 0 | 3 |
| New York | 3 | 0 | 0 | 3 | 0 | 0 | 0 |
| North Carolina | 389 | 8 | 5 | 233 | 4 | 0 | 139 |
| Ohio | 298 | 0 | 5 | 129 | 9 | 0 | 155 |
| Oklahoma | 251 | 6 | 5 | 110 | 1 | 0 | 129 |
| Oregon | 37 | 0 | 0 | 17 | 0 | 0 | 20 |
| Pennsylvania | 262 | 2 | 7 | 55 | 2 | 0 | 196 |
| Rhode Island | 2 | 0 | 0 | 2 | 0 | 0 | 0 |
| South Carolina | 138 | 5 | 3 | 63 | 0 | 0 | 67 |
| South Dakota | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Tennessee | 167 | 0 | 4 | 65 | 0 | 2 | 96 |
| Texas | 665 | 104 | 14 | 100 | 43 | 0 | 404 |
| Utah | 23 | 4 | 0 | 8 | 1 | 0 | 10 |
| Virginia | 102 | 29 | 3 | 7 | 6 | 1 | 56 |
| Washington | 26 | 2 | 1 | 14 | 0 | 0 | 9 |
| Wyoming | 9 | 1 | 1 | 7 | 0 | 0 | 0 |
| Percent | 100% | 5.6 | 2.5 | 34.2 | 2.4 | 0.5 | 54.7 |

Note: For those persons sentenced to death more than once, the numbers are based on the most recent sentence to death.

Appendix table 4. Executions, by State and method, 1977-95

| State | Number executed | Lethal injection | Electro-cution | Lethal gas | Firing squad | Hanging |
|----------------|-----------------|------------------|----------------|------------|--------------|---------|
| Total | 313 | 180 | 121 | 9 | 1 | 2 |
| Texas | 104 | 104 | 0 | 0 | 0 | 0 |
| Florida | 36 | 0 | 36 | 0 | 0 | 0 |
| Virginia | 29 | 5 | 24 | 0 | 0 | 0 |
| Louisiana | 22 | 2 | 20 | 0 | 0 | 0 |
| Georgia | 20 | 0 | 20 | 0 | 0 | 0 |
| Missouri | 17 | 17 | 0 | 0 | 0 | 0 |
| Alabama | 12 | 0 | 12 | 0 | 0 | 0 |
| Arkansas | 11 | 10 | 1 | 0 | 0 | 0 |
| North Carolina | 8 | 7 | 0 | 1 | 0 | 0 |
| Illinois | 7 | 7 | 0 | 0 | 0 | 0 |
| Oklahoma | 6 | 6 | 0 | 0 | 0 | 0 |
| Delaware | 5 | 5 | 0 | 0 | 0 | 0 |
| Nevada | 5 | 4 | 0 | 1 | 0 | 0 |
| South Carolina | 5 | 1 | 4 | 0 | 0 | 0 |
| Arizona | 4 | 3 | 0 | 1 | 0 | 0 |
| Mississippi | 4 | 0 | 0 | 4 | 0 | 0 |
| Utah | 4 | 3 | 0 | 0 | 1 | 0 |
| Indiana | 3 | 0 | 3 | 0 | 0 | 0 |
| California | 2 | 0 | 0 | 2 | 0 | 0 |
| Pennsylvania | 2 | 2 | 0 | 0 | 0 | 0 |
| Washington | 2 | 0 | 0 | 0 | 0 | 2 |
| Idaho | 1 | 1 | 0 | 0 | 0 | 0 |
| Maryland | 1 | 1 | 0 | 0 | 0 | 0 |
| Montana | 1 | 1 | 0 | 0 | 0 | 0 |
| Nebraska | 1 | 0 | 1 | 0 | 0 | 0 |
| Wyoming | 1 | 1 | 0 | 0 | 0 | 0 |

Note: Data are based on execution methods used since 1977. Lethal injection was used in 58% of the executions carried out.

Eight States — Arizona, Arkansas, Louisiana, Nevada, North Carolina, South Carolina, Virginia, and Utah — have employed two methods.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Bulletins present the first release of findings from permanent data collection programs.

This Bulletin was written by Tracy L. Snell under the supervision of Allen J. Beck. James J. Stephan and Jodi M. Brown provided statistical review. Tom Hester and Tina Dorsey edited the report. Marilyn Marbrook administered production.

At the Bureau of the Census, Patricia A. Clark collected the data under the supervision of Gertrude Odom.

December 1996, NCJ-162043

Data may be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. The data sets are archived as Capital Punishment, 1973-95.

The data and the report, as well as others from the Bureau of Justice Statistics, are also available through the Internet:

<http://www.ojp.usdoj.gov/bjs/>

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Official Business
Penalty for Private Use \$300

**BULK RATE
POSTAGE & FEES PAID
DOJ/BJS
Permit No. G-91**

Washington, D.C. 20531



Bulletin

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*

copy on file

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.³ 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.

³ The principal sources for this information are news articles, M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* (1992), H. Bedau & M. Radelet, *Miscarriages 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.

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 retrial 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."⁷

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.⁸ 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. Radelet, H. Bedau, & 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. Carmody, *The Brady Rule: Is it Working*, The National Law Journal, May 17, 1993, at 1.

¹⁸ See, e.g., S. Skowron, *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 Electrocutted*, 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 absurdly 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 Sly 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.

Reprinted by the Death Penalty Information Center. The Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment.

**Death Penalty Information Center
1606 20th St., NW
Washington, DC 20009
(202) 347-2531**

BARBARA J. HOOD
2413 Lord Baranof Dr.
Anchorage, Alaska 99517
(907)248-7374; FAX (907)248-8387

Louann Cruston
Attn: Hearing Record,
SB60

PostNet Fax Note
Date 1/30/98 # of pages 3
To House Finance Comm.
Fax 907-465-4813
From Barbara Hood
Phone 907-248-7374

January 30, 1998

House Finance Committee
Alaska State Legislature
Juneau, Alaska
FAX: 907-465-4813

Dear Members of the House Finance Committee:

Thank you for the opportunity to testify yesterday at the hearing on the Death Penalty Advisory Ballot Bill. As I indicated during my testimony, I have been working with the organization Murder Victims Families for Reconciliation to compile the photos and stories of murder victim's families who oppose the death penalty. I have been very moved by their stories, which have fully convinced me that the death penalty not only fails to serve their needs but adds to their pain and anguish.

Attached are four of their statements, which I was unable to share with you yesterday because of time constraints. There are nearly forty families and individuals featured in the collection, and I hope to send each of you a complete set in the near future. I hope you will take from their stories the same inspiration I have felt and the same plea that I have heard: that the death penalty isn't needed to heal the wounds of violence, because it is violence itself.

Thank you very much for your time and consideration.

Sincerely,

Barbara J. Hood
Barbara J. Hood



Raised as Lutheran, I was taught and wholly believe that I cannot justify my sins by the sins of another, and we cannot justify executions by the acts of those who kill. Such actions only take us deeper into imitating and becoming that which we despise.

The death penalty is a false God promising to bring justice and closure to victims' families. There is no justice for murder. You cannot give enough time in prison, and you cannot kill enough people to make up for the precious, unique human life that murder takes.

Instead, we must put the vast resources we spend on killing a small percentage of murderers into preventing homicides.

-MARIE DEANS
RICHMOND, VIRGINIA

Marie Deans founded Murder Victims Families for Reconciliation over twenty years ago after her mother-in-law, Penny, was murdered. Marie has come to the conclusion that at least one-half of the first-degree murders committed in the United States could be prevented if we put our resources up front. "If we truly cared about victims, we would put all our knowledge and resources into saving them. Crime prevention, not retaliation, should be our number one goal."

Marie has served as Executive Director of the Virginia Coalition on Jails and Prisons for over ten years and also works as a mitigation specialist in death penalty cases.

For a long time I hadn't made up my mind about the death penalty. Then my son Michael was found 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, ALASKA

Shirley Dickens lost her son to murder over ten years ago, when he was a young man. His body was found in a local wooded park, and no one was ever arrested for the crime. Shirley explains that after her son's death she "felt a very strong presence that told me not to worry about retribution or justice... to instead put my emotional energy into prevention and let God take care of the rest."

As a nurse in a large hospital, Shirley believes in preventive medicine. "I think as a society we have put all our resources and emphasis on the wrong side of crime. We should be doing all we can to have children grow up knowing they're protected, loved, cherished, and wanted. If we did this, we'd have far less crime and far more valuing of each other's lives."

When my mother was murdered, my family was devastated. We looked to the prosecutors and the system to do something for us. Everyone assumed that executing the murderer would make us feel better.

But during the trial I began to think of the murderer as another human being, even though the prosecution constantly ridiculed him as a low-life good-for-nothing monster who deserved to die. I learned what a terrible childhood he had suffered and how his father had abused him severely for years. After the verdict, I saw the man's mother standing outside the courtroom, sobbing.

I couldn't get these images out of my mind, and I didn't like the way they made me feel. Now I believe that the greatest disservice you can do to victim's family members is to expect them to want the murderer to die. This is a tremendous burden to carry because it forces us to keep our anger alive and put our compassion aside, when for our own sakes we should do the opposite.

-CELESTE DIXON INDEPENDENCE, MISSOURI

Celeste Dixon's mother Marguerite was murdered in her home in Hockley, Texas, in 1986. Hockley is located in Harris County, Texas, which sends more people to death row than any other jurisdiction in the U.S. The man convicted of the murder, Michael Richards, remains on Death Row in Huntsville, Texas.

Currently, Celeste works as a seasonal ranger for the National Park Service at locations such as the Truman Home in Missouri and the Civil War Battlefield in Georgia. She is preparing for graduate school, where she plans to obtain a Master's Degree in American History.

Some politicians are personally opposed to the death penalty but are afraid to vote against it because of fears it would be 'political suicide.' It's true that a lot of constituents say they are for the death penalty, but I don't think a responsible politician should shy away from the issue because of that. Support for the death penalty may be a mile wide, but it's only an inch deep. If more politicians had the courage to confront the issue and educate people about what the death penalty truly entails, instead of spreading myths and using it as a rallying cry, you'd see a lot more people realizing that the death penalty is simply revenge. Most of us accept that pursuing revenge doesn't solve anything.

-REP. RUBY GILBERT WICHITA, KANSAS

Rep. Ruby Gilbert's cousin was executed in the 1930's in Texas for allegedly raping and robbing a woman. Two weeks after the execution a woman who had been a witness came forward and said he didn't do it. There was nothing the family could do but clear his name.

In 1989, Rep. Gilbert's father was murdered at his Dallas service station. His murder was never investigated by the police, and no one was ever brought to justice for the crime. "They weren't even worried about it," she says.

Even if her father's killer had been apprehended, Rep. Gilbert would not have advocated the death penalty. "I try to live by the words my father always told me," she says. "He always said: 'Whatever people do to you, you don't hold resentment against them, you just ask God to forgive them. If you hold grudges it's like a cancer eating you. What you need to do is feel sorry for them—they're the ones who have to pay for what they've done. No point in all of us having to pay.'"

In 1992, Rep. Gilbert became the first black woman to serve in the Kansas State Legislature, where she fought against reinstatement of the death penalty in 1994.

Law Offices
Ashton & Dewey
1101 West Seventh Avenue
Anchorage, Alaska 99501

Mary Ellen Ashton
William Frederick Dewey

(907) 276-3299
FAX (907) 258-6419

January 29, 1998

Honorable Members of the House Finance Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Honorable Members of the Committee,

I have previously testified before the House Judiciary Committee in past years against putting the death penalty on the ballot. Unfortunately, I was not able because of time constraints to testify at length on what I consider a complicated moral and legal issue. As a criminal defense attorney, I have thought long and hard about this issue and I feel I do have some valuable insights into the system after 17 years of experience and I submit this written testimony with the hope that you will read it and seriously ponder the issues raised here. As someone who has a position of responsibility you have the duty to educate yourself on the issue before leaving this complicated issue at the whim of sound bites and 30 second TV spots.

Before I address my thoughts on the death penalty I think you should know that unlike tort reform debate involving trial lawyers, opposition to the death penalty is not in my best interests financially as a defendant's counsel. That is, death penalty litigation is long, expensive and would fall primarily on defense attorneys with experience on death cases such as myself. (Read "guaranteed employment" at a higher appointed hourly scale). So it

should be understood first I am not speaking from personal financial self-interest. I do base my views on what a death scheme in this state will mean to innocent people (defendants, lawyers, judges), on what harm it will do to the justice system, and on what harm it has done to the justice system already in other states, based on my experience and knowledge of the criminal justice system. I will try to stick to the reasons that reinstatement of the death penalty is wrong based on the way our system has reacted and will react to it. I have attempted to understand and express in this letter the "why" behind racial disparity, the "why" behind innocent people being executed in the past, and document the "barbarization" of our system caused by the death penalty. I am writing you because I hope you will reflect, share, and debate these views with your committee members this week when you take up the Senate bill.

**WHY THE DEATH PENALTY SHOULD NOT BE PUT ON THE BALLOT. (A
summary)**

The reinstatement of the death penalty is a complicated issue. Notwithstanding the moral debate, it involves a tremendous shift in law enforcement (both police and prosecutors) resources needed for the every day operation of our already strained courts. If the death penalty is instituted in Alaska, the budgets of prosecutors, defense agencies and the courts will require necessary increases - straining already scarce resources at the expense of other more

vital law enforcement priorities. The costs of capital punishment -- with its added and necessary layers -- much longer pretrial and trial proceedings, and sentencing hearings (which may last as long as the trials themselves) - are enormous. I hope you will do your best to require your committee members to include in any debate the amendment accepted by the judiciary committee which includes the added costs to the system in the ballot question. It would be irresponsible to allow the death question to go on the ballot without a cost being included. Allowing the Senate bill to pass committee without debating language as to the \$50 million cost would betray the clear comments of Rep. James and Porter.

As both a practitioner and a student of the law for the last 20 years I can say with authority the death penalty will put an added and inappropriate strain on the system and the people who participate in the "trenches" - because it demands perfection. Our system was not designed for perfection.

Also, the language of the proposed ballot question references the voter to a death penalty under the "Constitution of the United States as interpreted by the United States Supreme Court". This language is very expansive language which the average voter will not understand (without long study) and will not come to understand with a campaign of "30 second soundbites". In reality, the criminal justice system, incorporating complicated rules of procedure and evidence which have been developed over the centuries of jurisprudence, is a delicately balanced system which is not perfect, and indeed, was not meant to be perfect. The system

which by its nature has the need to flexible to balance the different and sometimes competing interests. The nuances of the needs and the reality of the criminal justice system will not be understood by the average voter (and is not presently understood by many attorneys). To insert "death" into such a system is bad policy and will result in the execution of innocent people. (i.e., innocent victims). Below I have stated in detail examples of the systematic reasons why I think the system cannot be strained by a death penalty and still be labeled a "justice" system. I hope you will consider these reasons seriously and share these with your fellow committee members.

".AS INTERPRETED BY THE UNITED STATES SUPREME COURT" (language on the ballot issue) NECESSARILY INCLUDES MANY THINGS WHICH ARE REPUGNANT TO THE AVERAGE ALASKAN

The Supreme Court of the United States has held that procedural default can forever bar the post-trial litigation of a valid claim of actual innocence even in a death penalty case, and two Justices have stated in the context of an impending execution that no violation of the Eighth Amendment would occur from the execution of an innocent man. Herrera v. Collins, 506 U.S. ___, 113 S.Ct. 853, 122 L.Ed.2d 203,234 (1993), Justice Scalia concurring, joined by Justice Thomas.

In Herrera, Justice Scalia stated (with J.. Thomas joining), regarding whether it violates due process or constitutes cruel and unusual punishment for a State to execute a person who, after a full and fair trial, later alleges that newly discovered evidence show him to be actually innocent:

"There is no basis in the text, tradition, or even in contemporary practice (if that were enough), for finding in the Constitution a right to demand judicial consideration of newly discovered evidence of innocence brought forward after conviction." 122 L.Ed.2d at 214.

Justice Blackmun, Stevens and Souter cite in the dissent to the case of James Adams (refused executive clemency and executed on May 10, 1984) and 23 other innocent people put to death as evidence of the what the dissent calls the majority opinion's failure to allow the courts to address the executive branch's failures in the clemency procedures - resulting in the execution of innocent people. 122 L.Ed.2d 236, n. 1. Justice Blackmun and Stevens, both Nixon appointments and J. Souter, an appointment by President Bush, call the majority opinion "perverse" (122 L.Ed.2d at 240) and an opinion which changes the balance of our system to one of "grace" negating a "government of laws"(122 L.Ed.2d at 242).

In Herrera, Mr. Leonel Torres Herrera was subsequently executed - even though, two witnesses testified that they witnessed Raul Herrera, Sr. kill the police officer (and that Leonel was not present), and after producing a sworn statement from Raul Herrera, Sr.'s attorney that he witnessed Raul confess to the murder. (122

L.Ed.2d at 214). This claim was dismissed by the district court and the Supreme Court of the United States because as a successive habeas corpus petition - it was an "abuse of the writ". *Id.* What these "standards" for denying successive habeas corpus petitions mean in a moral sense are graphically described by Justices Blackmun, Stevens and Souter:

"Of one thing I am certain. Just as an execution is unacceptable, so too is an execution when the condemned prisoner can prove he is innocent. The execution of a person who can show that he is innocent comes perilously close to simple murder."

122 L.Ed.2d 246.

This is perfect example of what the death penalty does - bringing the syst . of justice into disrepute. The strain of setting procedural rules results in the highest judges in the land, respected conservative jurists, with good cause, calling each other "perverse" and labeling their fellow judges as participants in murder.

This opinion, like many "death penalty reforms" promotes the need for procedural "finality" -i.e., substitute "bureaucratic convenience" by sacrificing the judicial goal of protecting innocent people. This case exemplifies the moral cost the death penalty - turning respected jurists into characters out of Orwell's 1984. Will the average voter understand that this is the law of the land? Will the average voter know that a colorable claim of actual innocence will be precluded from judicial review because

evidence was found too late under a state's procedural rule? or That the original jury may have convicted not being allowed to hear of a 3rd party confession? (Will the average voter know that Alaska has now passed a such a procedural rule banning claim of new evidence after a short period of time (i.e., Modification of Criminal Rule 35)? Will the average voter know that Justice Stevens stated in an address to the ABA, in 1993:

The recent development of reliable scientific evidentiary methods have made it possible to establish conclusively that a disturbing number of persons who had been sentenced to death were actually innocent.

Opening Assembly Address, ABA Annual Meeting, August 13, 1993, at 14.

In recent years, more than 50 men and women have been freed from death rows in this country after they were proven innocent. Most of these people were discovered as a matter of luck - finding evidence hidden for years. (On average a wait of over 9 years). Some of these lucky innocent citizens were freed as the result of habeas corpus proceedings (a protection guaranteed by the Constitution), a protection which in the rush to make executions more efficient has now been eliminated for successive petitions. The right to habeas corpus petition, now restricted to one petition, is required to be filed within 180 days of decision on appeal, and our U.S. Supreme Court recently upheld such a law. [See, Herrera v. Collins, (cited above); McCleskey v. Zant, 499 U.S. ___, ___, 113 L.Ed.2d 517, 111 S.Ct. 1454 (1991); The Anti-

terrorism and Effective Death Penalty Act of 1996, amending 28 USC 153].

Will the average voter know that 180 days is too short for an attorney to adequately review a record, find new evidence, and prevent a potentially unjust execution? Will the average voter know that new evidence of innocence will have to be ignored by the courts under the new law if it is discovered too late? Will the average person know the U.S. Supreme Court allows the execution of minors? the mentally retarded? and as cited above, the potentially innocent? Will the average voter know that such a cavalier attitude on the part of the Supreme Court towards human life necessitates the "all out" effort of any attorney assigned to a death penalty case which will strain the resources of the justice system and sacrifice monies better spent on domestic violence prosecution and prevention, treatment and crime prevention programs, or the prosecution and incarceration of criminals before they kill? Will the average voter read the studies showing racial disparities in executions, or the case studies of innocent people killed unjustly before making the decision to support or not support this ballot measure? Does even this committee know these things are all included in the language of the ballot provision? If not, read Herrera v. Collins, 506 U.S. ___, 113 S.Ct. 853, 122 L.Ed.2d 203,234 (1993), Justice Scalia concurring, joined by Justice Thomas, and recent restrictions on habeas corpus procedures, and it will open your eyes to the judicial climate the death penalty actually is now operating.

The fact is: very few members of the general public will familiarize themselves with the full implications of the language in the ballot measure as what "the Constitution as interpreted by the United States Supreme Court" means. The vote will be a poll of the "gut" feelings of the voters - not reasoned judgment which should be the basis of public or legal policy.

**CAPITAL PUNISHMENT IS AN EXPENSIVE GOVERNMENT PROGRAM
THAT DOESN'T WORK AND PUTS A STRAIN ON A SYSTEM WHICH IS
DESIGNED TO NOT BE PERFECT**

As a criminal defense attorney for the last 16 years and as member of the profession which day to day works in the business of justice, I do have special knowledge of the limitations of our justice system. ¹ It is my duty to speak out, as a voice of experience as to the dangers of the public assuming that this

¹ What do Randall Dale Adams, James Adams, Clarence Brandley, and Walter McMillian have in common with your voters? They are all human beings, innocent of murder (just like you), but with two major differences - they have all spent time on death row awaiting their executions for crimes they did not commit and James Adams is dead by execution. See, Bedau & Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stan L. Rev. 21, 36, 173-179 (1987) detailing 23 cases of innocent people executed in the United States in this century - one in 1984 - James Adams executed in Florida on May 10, 1984. [Cited in J. Blackmun's dissent in Herrera v. Collins, 122 L.Ed.203,236 n.1 (1993)]. Also see, M. Radelet, H. Belau, and C. Putnam, In Spite of Innocence, at 5-10, Northeastern University Press 1992.

system can act with the perfection necessary for decisions of life and death. The system is not perfect - nor is it designed to be perfect. The system is meant to be as fair as we can make it, but rules are applied generally and hopefully equally - but general rules necessary for equal treatment and usually accurate results in most cases, in individual cases sometimes mandate mistakes. If these mistakes are made in the context of a death case it results in legal murder of the innocent - something we know "going in" in will happen.

1. Immunity, deals, and plea bargaining under
the death penalty

The justice system allows the state to give payments of protection and money for favorable testimony, trade immunity for testimony, and make "deals" with the most nefarious and untrustworthy people to prove guilt. Deals are given to the wrong persons, prosecutors and police make mistakes in the early stages of cases - the time in which these "deals" are cut and when the full facts are not known. Further, in a "death eligible" case (read "high profile") the pressures are great to make the case quickly - leading to mistakes and the wrong person being convicted. More importantly in regard to the accuracy of the system, the same system prevents the defendant from having such powers in trying to prove innocence. (See, Note 1, above discussing Ak. Evid. Rule 804).

While these kinds of tools of the State are sometimes necessary to prosecute the guilty - they sometimes result in the wrong person being prosecuted, bargains being given to the wrong perpetrator, and a distortion of the truth finding function of our court.

A good example of this comes from my practice where I was personally involved as the attorney for a young man in a precharge negotiation in a Federal death penalty case. The government in negotiations threatened my client with the possibility of the death penalty if he did not cooperate. However, as in many negotiations, the government would only consider an agreement to forego the death penalty (and the murder charge) if the defendant would testify to specific things. In this context, the defendant was given a list of things he would have to say or testify to save his life. The carrot dangling before him was a plea to a charge which carried a maximum 5 year prison sentence instead of potentially death or life without parole. However, the defendant could not truthfully testify to what the government wanted. I watched as a young man faced a choice - only he knew the actual truth and he could meet the government's offer only by saying what they wanted to hear. I watched as he cried. He didn't want to die and said he wanted the deal to save his life, but he couldn't lie. He came close to agreeing to deal, to intentionally committing perjury to convict another of a crime of which he could not provide truthful evidence that the other person committed the crime. His decision to tell the truth could potentially give him the death penalty - the pressure was enormous - the choice: save your life and your freedom

or risk everything and potentially die. I must say I was extremely proud to say he chose the truth, went to trial, and was acquitted. His codefendant was convicted - but not on perjured testimony, bought by the government's ultimate threat combined with their stated needs.

The pressure on a prosecutor to convict in a high profile case is great. The example above is an example of how death can contaminate the most well meaning people. Honorable prosecutors in the same situations use the threat of death and do get defendants to provide false evidence sometimes unknowingly, sometimes corruptly (as in the recent Illinois cases where a prosecutor and police lied and got death sentences on three defendants). In a death case, it does not take the illegal and immoral to convict innocent people - just the use of everyday tools applied knowingly or unknowingly to the wrong individual situation. Every honorable prosecutor desires justice and would be forever scarred by a death sentence based on perjury - but in reality, it happens, and in the death context will scar even the honorable. Not every defendant will exhibit the wisdom of Socrates and risk "drinking the hemlock" rather than lose their soul with a lie. If the death penalty passes, some prosecutor will be negotiating using this law, and this law will put at risk his or her soul.

Another example often cited by the proponents is that the ability to plea bargain is enhanced when death is used as the ultimate threat. This is simply not the case. The fact is, in practice, it leads to murderers "racing" to the courthouse, not to

give accurate testimony, but to give testimony to save their lives - to say what the prosecution wants to hear, and to point their fingers at less deserving codefendants as the "bad guy" to save their lives. It also gives juries the strongest motive to disbelieve even a truthful witness - "they are lying to save their lives". In reality, the death penalty distorts the truthfinding function, distorts the bargaining process useful to law enforcement, as well as leading to the acquittal of murderers.

Another problem with this argument of proponents that the death penalty will "streamline" the bargaining process is a real life example. Early in the 80s, I was a Teamster Legal Services attorney working for the firm of Birch, Horton, Bittner, et al. I was assigned the case of State v. Robert Hansen. (confessed murderer of 17 women). The absence of the death penalty resulted in his plea to 4 murders, his cooperation and confession to 17, the location of the bodies of his victims for their loved ones, and his incarceration forever. (461 years plus two life sentences without parole). However, as his attorney, and as one who knows, I can guarantee that if the death penalty had been law, we would now be no more secure, there would have been no deal, and we would be potentially finishing the last of 17 death penalty trials this next year. Instead, without a trial, in the space of 3 days, he was charged and sentenced to prison forever - at a tremendous saving to the state, and allowing the families of his victims knowledge and peace of mind.

The fact is: plea bargaining is not enhanced, money is not

saved, murderers go free, and innocent people die as the result of the effect of the death penalty on the plea bargaining process.

2. Alaska Evidence Rules result in needed flexibility for the system, but guarantee inaccurate results in some individual cases.

Our system of evidence rules (Alaska Rules of Evidence, 404, 405) allow a person's dishonest acts to be used in cross-examination. There is nothing wrong with such a rule, and in fact, in most cases such a rule allows both sides to legitimately attack the credibility of a witness. However, studies have shown that when it comes to believing a defendant's testimony the mere fact the defendant has been convicted in the past of any crime (even misdemeanor shoplifting) increases the defendant's chances of not being believed to the point that most juries will simply dismiss his or her testimony. In the specific case, can an innocent defendant with a truthful story to tell a jury afford under such a rule testify if he has a conviction for a crime of dishonesty? The reality is that such innocent defendants are convicted every day in courts because they were not believed by the jury because of something as simple as a shoplifting conviction, or because they are advised to not take the stand knowing that even if they testify to their actual innocence of murder their chances of conviction

will be increased by the jury's knowledge of the dishonesty in their background. The fact is that legal rules of evidence attempt to facilitate the fact finding process and these rules are the rules for all cases - but in the specific case they do and will in the future result in mistakes.

Evidence Rule 804 also has a reasonable policy basis which generally promotes accuracy of the system - but in select, individual cases results in juries convicting without knowledge that another person has confessed to the crime which the defendant was charged. For example, Alaska Evidence Rule 804(b)(3) would most likely result in the statement (confession) of Raul Herrera, Sr. being inadmissible as hearsay even if known by the defendant in the original trial - let alone as in Herrera to support a motion for new trial, and would result in the same egregious result in Alaska. Rule 804 states, in part:

A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

In other words, if a 3rd party has confessed to the crime on which the defendant is on trial, a jury will not hear of that confession during the trial. In Herrera, it was a death bed confession to his attorney, something our Alaska courts have ruled has no inherent reliability and is inadmissible - because it was not against the declarant's interest.

A defendant in Alaska, unlike the State in a criminal prosecution, also has no ability to produce a 3rd party witness to admit he or she confessed even if the defense can prove the witness has confessed to the crime because that 3rd party is unavailable because of his 5th Amendment right and the defendant has no power to grant immunity. Lewis v. State, 731 P.2d 68 (Ak.App. 1987); and Bright v. State, 826 P.2d 765 (Ak. App. 1992). The committee should know that no such restriction exists for the state. The state, not constrained by the language of Ak. Evidence Rule 804, can introduce hearsay statements by 3rd party, unavailable, accomplices inculcating the defendant. The state also has the power to grant immunity to make an unavailable witness available. The State can also introduce a defendant's hearsay statement's (as "admissions of a party opponent") even if that witness is a jailhouse companion being given benefits by the state and is inherently unreliable. See, Linton v. State, 880 P.2d 123 (Ak. App. 1994)

Hopefully, through our system of appeals most mistakes are found out, but not all. - a jury's verdict on a factual issue cannot be overturned by an appellate court except in rare circumstances. In the case of Rule 904, the credibility of a defendant's testimony, or the use of immunity powers by the state combined with the lack of such powers under the present system for the defendant to produce the same kind of evidence as the state; juries will not hear certain relevant facts and the appellate court will not overturn factual findings - even if the findings are wrong.

The question here is should we insert death into this imperfect process - putting added pressure on the system to be perfect?² More importantly, in regard to this bill, will a lay person understand the nuances of the necessity for such flexibility and potential inaccuracies in the system when voting on this measure? Will the average voter know the "system" is designed to be imperfect? That mistakes are inherent? That someone's innocent son, daughter, husband, wife, or friend will be put to death at sometime in the future - unjustly - if the executions become law?

3. Racial disparity - Why? The inaccuracy of verdicts are the results of an imperfect system.

Another issue commonly raised is racial disparity in the handing out of the ultimate penalty. The important idea here is "why?". Is it because the juries, or the judges, or the

² Will judges faced with the additional pressure of a potential death penalty and with the data from jury studies allow defendants in death cases testify and keep out prior dishonest conduct so as to minimize potential prejudice? Will this added pressure inhibit ethical prosecutors seeking fairness and result in juries freeing people they should not?

Further, how will jurors feel after they have made irreverssible credibility decisions and then find out that the court kept from them a confession of a third party or the fact a defendant passed a polygraph? The death context will make this guilt overwhelming to a death juror. Should they be informed of these limitations on the defendant's power to produce evidence? Will that result in fewer convictions? If courts rule that such instructions must be given in death cases, will that also apply the general rule in all criminal cases? Will that result in fewer convictions generally? The whole death scheme distorts the system.

prosecutors are racist? The simple answer is "sometimes", but the real answer is that juries are like the media judging a political debate - we like and believe the familiar, believe the articulate and the person appearing comfortable in their element. Imagine, for instance, the innocent minority defendant taking the stand to defend themselves at trial. (Notwithstanding the problem with prior conduct discussed above; assume for this example he or she has no prior convictions for dishonest acts). Every mistake by an accused on the stand, every misspoken word, nervousness, being inarticulate, or just "being different" acts to the disadvantage of the testifying innocent defendant. Those people from cultures where the spoken word is less important, who speak slower, who have less education than the average juror, or come from a different race are inherently less believable to the average jury in Alaska. Whether it is a result of racism or just the demographics, the fact is that most juries here are all white - and are less understanding to the less talkative native defendant, or to the less articulate, uneducated poor defendant. This is the "why" which causes racial disparity.

It is no accident that most (and some say all) present residents of death rows (numbering over 3000) are poor. How do we cure it? In reality, we don't until the native defendants are culturally like their juries, and all races have the same economic and educational distribution in the population - not very likely or even desirable realities in the short term. However, even if and when that day comes, the system will still convict the innocent

based on other "flaws" in the system - which in my opinion can't be or should be cured. That is, as long as we have juries, (which I hope is forever) the less articulate, the slower speaker, the nervous person unfamiliar with the courtroom will always be at a disadvantage in the credibility race. That same person will always be at a disadvantage competing with a prosecutor with 19 years of education, and who is comfortable in the courtroom.³

Without any racism in the system, innocent people would be disbelieved everyday, resulting in inaccurate results (read: "innocent victims of the judicial system"). Should we scrap the system of using educated prosecutors? Should we go to "affirmative action" in choosing juries? Probably not. But we should recognize that the system is designed to be flexible and therefore inaccurate and fallible. We need to allow for mistakes and not insert infallibility into a system we know can create inaccurate results.

**THIS BODY SHOULD NOT SPEAK FROM BOTH SIDES OF
ITS MOUTH REGARDING "THE ACCURACY" THE
CRIMINAL JUSTICE SYSTEM.**

³ We even instruct juries in the standard "witness credibility" instruction that when deciding credibility they should take into account the "stake a witness has in the outcome". In a criminal case who would have a greater stake (and be less believable) than the accused? Again, while this works to the disadvantage of the particular testifying defendant, it works to the advantage of truthfinding when juries are to judge prosecution or defense witnesses who may be lying for their stake in the outcome of the case. In other words, the time honored general rule for all cases can work an injustice in a particular case, but in the law of averages makes the system better in its truthfinding function.

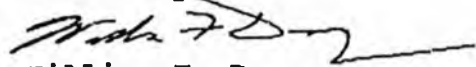
Recently, this same body has overwhelmingly voted that the civil justice system should be changed - that juries should not be trusted to set money damages because they might be inflamed by the passionate pleas of plaintiff tort lawyers. How can this same body now say that juries should be trusted to not be inflamed by circumstances of a high profile murder: to not make a mistake regarding guilt of a defendant, and to make decisions of life and death? Why are we comfortable in allowing decisions of life and death be handled by juries - but not decisions about money - especially when our court rules require flexibility which sometimes and inherently results in unjust and just plain wrong results? Why do we trust a now abbreviated criminal appeal process (recent limitations on habeas corpus and Alaska Criminal Rule 35) to correct mistakes at the trial level in the criminal area, when in the civil area we do not trust a more expansive appellate procedure to correct mistakes in awarding money damages? These concepts should either be reconciled rationally, or this body should not act in what would be a seemly hypocritical way.

Lastly, each and every member of the committee should be required to ponder this issue before voting on this measure: Sometime in the future, if the death penalty becomes law, an innocent person will die in an execution (assuming history will repeat and the system acts just the way we have designed). Rep. Sanders' and Sen. Taylor say we should be indifferent to this

potentially. However, their own language in a previously introduced death penalty bill requires this body to not be indifferent to this inevitable and foreseeable result. In the original Sanders' and Taylor Death Penalty bills previously introduced in this body, a person would become death eligible if they acted from within a group of more than 3 people "with indifference to human life" causing a consciously foreseeable death. You, members of the legislature, in the language of those bills, cannot be indifferent to the human life which will be innocently and foreseeably taken if the death penalty passes with your vote. Ponder this question: If and when such a death occurs - should law enforcement go back, find and charge the members of this body and seek the death penalty against you - because you acted in a group of 3 or more persons with indifference to the loss of a innocent human life? Will the very language of the previously introduced death penalty bills, introduced by Sen. Taylor and Rep. Sanders, label the legislative branch capital murderers in the future? Isn't this the same ironic result which has resulted in Supreme Court judges calling each other murderers and perverts in Herrera? [In reality, the answer would be "no" - because you could hide behind the technicality of "legislative immunity" and the courts may hide legal responsibility through judicial immunity]. Neither the legislature, nor the court, nor the people of Alaska would be able to hide from moral responsibility of knowingly entering into this death scheme. This is not a time for weak hearts, minds, or knees -- I urge you to do the right thing and vote against this

bill and urge your fellow legislators to also oppose this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "W. F. Dewey", with a long horizontal flourish extending to the right.

William F. Dewey

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P. O. Box 201844 Anchorage, AK 99520-1844

Phone: 907-258-0044 Fax: 907-258-0288 E-mail: akclu@alaska.net

Testimony:

To: House Finance Committee
From: Jennifer Rudinger, Executive Director
Re: SB 60 (Death Penalty Advisory Measure)
Date: Thursday, January 29, 1998

Co-Chairs Hanley and Therriault, Members of the House Finance Committee:

Thank you for the opportunity to testify this afternoon on Senate Bill 60. My name is Jennifer Rudinger, and I am the Executive Director of the Alaska Civil Liberties Union. The AkCLU is a non-profit non-partisan organization with approximately 800 members in the state of Alaska, from Barrow to Ketchikan, from Nome to Tok. Our mission is to preserve and defend the guarantees of individual liberty found in the Bill of Rights and in the Alaska Constitution.

I am here today on behalf of our membership to implore you not to pass SB 60 out of this Committee. The death penalty is an extremely complicated issue, and how the people of Alaska resolve this question shapes our moral fabric as a society. It defines who we *are*, it gets right to the essence of our humanity. A decision on an issue as important as this one should not be made on a guttural level as a knee-jerk reaction to soundbites picked up by the media. When "we the people" ask ourselves whether state-sanctioned killing is in our best interest, we need to have all the facts before us. While the House Judiciary Committee's addition of fiscal notes to the ballot language represents a small step in the right direction, there is still much information that the voters should consider which most would never receive.

In addition to economic factors (which weigh overwhelmingly against reinstatement of the death penalty), what kind of information do voters need to have in order to make an informed decision on this issue? Two critical areas immediately spring to mind: the racially discriminatory fashion in which the death penalty is allocated, and the fact that people have been sent to death row only to later be proven innocent. The system is fallible. Most people, when asked, say they think the government is inefficient and that the government has too much power already. This Committee should think long and hard before opening up this door. If the State adopts the death penalty, it will be arrogating unto itself the ultimate power -- the power to decide who lives and who dies.

First, the voters need to know about the proven racial disparities in the charging, sentencing, and imposition of the death penalty. In 1990, the U.S. General Accounting Office reported to the Congress its review of empirical studies on racism and the death penalty and concluded that in the trial courts of this nation, the killing of a white person is treated much more severely than the killing

Jennifer Rudinger, AKLU

of a person of color. Of the 313 persons executed between January 1977 and the end of 1995, in 80% of these cases, the victim was white.

In addition, before people vote on something as brutal and irreversible as the death penalty, they should know that erroneous convictions in which death sentences have been imposed have occurred in virtually every jurisdiction from one end of the nation to the other. There are many examples in which advances in scientific technology (like DNA testing) have exonerated people on death row or where crucial testimony by state's witnesses was later proven to be false. To give you one disturbing example, in 1990, Jesse Tafero was executed in Florida. He had been convicted of murder in 1976 along with his wife, Sonia Jacobs. Jacobs succeeded on appeal in getting her death sentence reduced to life imprisonment in 1981, and in 1992, two years after Tafero was executed, her conviction was vacated when it was proven that the crucial evidence in the case against her and Tafero consisted mainly of the perjured testimony of an ex-con who turned state's witness in order to avoid a death sentence.

All governments make mistakes. Please don't give our state government the power to make a mistake by executing an innocent person. Please vote against SB 60. Thank you for your time.

Good afternoon. My name is Ron Reed, and I live in Juneau. I am here today to testify against Senate Bill 60 (and the House Committee Substitute), which would mandate an advisory vote on capital punishment for the next general election. (1)

I am opposed to this bill not only because of the costs to the State should capital punishment return to Alaska - costs which have already been estimated by various departments and agencies within the state at roughly half the current budget of the Department of Law to carry out the first execution - but because of the inherent bias in the justice system, a bias that persists today despite several decades of attempts to reduce and eliminate it. Alaska Natives presently make up twice the percentage of the prison population compared to their proportion of the general population.

When the territory had capital punishment, all three of the executions that took place in Juneau were of minorities, despite the carrying out of 74 first degree murders, the majority by Caucasians. In Alaska as a whole between 1903 and 1957, three quarters of all hangings, including some where the defendant spoke no English and clearly was denied a fair trial, were of Natives and Blacks, while three quarters of all murders were committed by members of the white majority.

Many studies around the country have shown capital punishment to have little or no deterrent effect compared to the alternative, life in prison without parole. Alaska already uses the latter; since presumptive sentencing was introduced in 1980, our state has incarcerated a far higher percentage of its population than the national average, and even before the "get tough" rules of the last five years was averaging above 87 years as the sentence for first degree murder. There has been no explosion of crime in Alaska in recent decades. There is, in short, no particular reason to bring back the cruel and barbarous custom of state-sanctioned torture and murder to this state.

Alaska continues to have Third-World levels of infrastructure and poverty in the Bush, and leads the nation in smoking, fetal alcohol syndrome, is second to Nevada in rapes, and among the top five in many other indicators of societal dysfunction. Throwing money at the problems may not solve them, but starving the programs that do exist so as to be able to afford the fantastically expensive and utterly depraved indulgence in vengeance provided by capital punishment is certain not only to make all these problems worse, but to divide Alaskans by race and class as no other contemplated action will. I hope you will listen to your inner voices and turn down this misguided bill. Thank you.

Ron Reed
586-1338

copy on file
1/29/98

ALASKA CHRISTIAN CONFERENCE
1997 BIENNIAL ASSEMBLY

RESOLUTION 97-2

TITLE: OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS: Jesus spoke clearly his opposition to the death penalty (John 8:1-11) and cautioned all with his words "Let anyone among you who is without sin be the first to throw a stone at her", and

WHEREAS: Jesus firmly rejected the concept of "an eye for an eye and a tooth for a tooth", (Matthew 5:38-42), and

WHEREAS: Jesus consistently took up the cause of the poor and disadvantaged, and

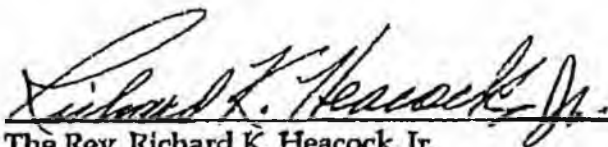
WHEREAS: In the history of the death penalty in the United States and specifically in the State of Alaska people of color have been put to death in numbers grossly disproportionate to their numbers in the general population, and

WHEREAS: The Alaska Federation of Natives, the Alaska Intertribal Bar Association, the Alaska Black Caucus, and the Alaska NAACP have all adopted resolutions in opposition to the reinstatement of the death penalty in Alaska,

NOW, THEREFORE, BE IT RESOLVED that the delegates of the 1997 Biennial Assembly of the Alaska Christian Conference oppose adamantly the reinstatement of the death penalty in Alaska and urge all elected officials, all Christian believers, and citizens of Alaska to join us in this opposition.

THIS RESOLUTION IS A REAFFIRMATION OF RESOLUTION 95-1, ADOPTED BY THE ALASKA CHRISTIAN CONFERENCE ON FEBRUARY 22, 1995, AT SITKA, ALASKA.

ADOPTED: February 26, 1997, at Big Lake, Alaska.



The Rev. Richard K. Heacock, Jr.
President



The Rev. Leo A. Walsh, S.T.L.
Secretary

copy on file
1/28/98