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 Malchuâs ear, was most likely trying to kill the soldier (John 18:10), prompting Christâs statement that those who kill by the sword shall die by the sword (Matthew 26:51-52). This implicitly recognizes the governmentâs right to exercise the death penalty. Dr. Carl Henry, Christianity Today, 8/4/95. See Rev. 13:10 (ANS).

13) āWhen 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.ä Pope Pius XII.

14) Some speculate that Godâs 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 Îed, āwitnessä, from its broad biblical context, some interpreters have falsely concluded that two or more āeyeäwitnesses 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 ā...(they) had not taken the prudent measure of committing (their) crime where two people did not happen to be watching him.ä? The biblical record rejects any such absurd conclusion.

The word āwitnessä, Îed, has broad meaning, including, anyone with (1) ä...pertinent knowledge concerning the crime, even though he had not actually seen it.ä(Leviticus 5:1), such as character witnesses, witnesses who had overheard confessions, etc.; (2) physical evidence can also bear witness, alsoÎed (Exodus 22:13), such as bloody clothing, murder weapon, etc.; (3) written documents may serve as evidence and witness (Îed or Îedah, Joshua 25:25-27), such as a confession, documents showing motive or implication, etc.; (4) monuments and memorial stones, such as gal-âed in Genesis 31:46-49, can also bear witness. Indeed, āthere is no contravention of biblical principles in allowing such testimony, even though only one actual witness may be found, or none at all.ä There is no biblical requirement for two, or any, āeyeäwitnesses 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. āVery 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. āSince 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: ā(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 (āOpposing 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) āYou 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) āIt 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 Îproof textâ in either the Hebrew Testament or the New Testament which unequivocally refutes this. Even Jesusâ admonition ÎLet him without sin cast the first stone,â 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 Îentrapmentâ story, which sought to show Jesusâ wisdom in besting His adversaries. It is not an ethical pronouncement about capital punishment .äSister Helen Prejean, Dead Man Walking. From here, the sister states that ā... more and more I find myself steering away from such futile discussions (of Biblical text). Instead, I try to articulate what I personally believe...ä As the long term Chairperson of the National Coalition to Abolish the Death Penalty, the sister has never shied away from any arguement, 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 āLet the one who is without sin cast the first stoneä as proof of Jesusâ ãunequivocalä rejection of capital punishment as ārevenge and unholy retributionä! How easily she changes her interpretation of biblical text! (see Sister Prejeanâs 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.ä 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. äAbortion 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 Godâs 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 Godâs Law....ä (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) ãIf 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 Godâs commands by exercising His vengeance. Those, therefore, who consider it is wrong to shed the blood of the guilty are contending against God.ä John Calvin, ãThe Epistle of Paul the Apostle to the Romans and to the Thessaloniansä, in Calvinâs 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 peoplesâ sins are not forgivable. They argue that capital punishment conflicts with Jesusâ teachings - that, if we are not willing to forgive, then we place ourselves outside of Godâs 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 governmentâs 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 - ÎToday you will be with Me in Paradiseâ - that pardon did not extend to eliminating the consequences of his crime - ÎWe are being justly punished, for we are receiving what we deserve for our deeds.â (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 Jesusâ 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 Colsonâs "Capital Punishment: A Personal Statement". See D.6. Continuing this thread, Protestant scholar and journalist Rev. G. Aiken Taylor states, äMost

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.âWho ever sheddeth manâs blood, by man shall his blood be shedâ(Genesis 9-6). This command is fully agreeable to the Sixth Commandment, ÎThou shalt not kill,â(Exodus 20:13), because the two appear in the same context. Exactly 25 verses after saying ÎThou shalt not killâ, the Law says, ÎHe that smiteth a man so that he may die, shall be surely put to deathâ (Exodus 21:12).ä 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 Jesusâ position on capital punishment. In 20:14-16, Jesus states: āHe will come and kill those tenants and give the vineyard to othersä. Jesus was speaking to the proper punishment for murder. In 19:27, āChrist pronounced this judgement on those who rebelled against their king: ÎBut these enemies of mine, who did not want me to reign over them, bring them here, and slay them in my presenceâ (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.ä ibid, D.14., pg. 342. In the 19:27 parable ātheir kingä 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 Godâs 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 Godâs 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 āthe mind of Jesus Christä on the issue of murder and its punishments, that He goes beyond torah to the statement that even verbal abuse makes one deserving of āthe hell of fireä. Far from releasing believers from prior law, Jesus was a āhard linerä who made things even tougher, stating that He has come not āto abolish the law and the prophets... but to fulfill them.ä, 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? āHE WHO SPEAKS EVIL OF FATHER OR MOTHER, LET HIM BE PUT TO DEATHä.(Matthew 15:1-9).

All interpretations, contrary to the biblical support of capital punishment, are false. Interpreters ought to listen to the Bibleâs own agenda, rather than to squeeze from it implications for their own agenda. As the ancient rabbis taught, āDo not seek to be more righteous than your Creator.ä (Ecclesiastes Rabbah 7.33.). Synopsis of Professor Lloyd R. Baileyâs 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		**Cost of 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**	**$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**
2. Same, except 3% (3)	**= $4.04 million**	**Same, except 3% (3)**	**= $1.89 million**
3. Same, except 4% (3)	**= $5.53 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 voire 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 USAâs 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 inmateâs 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 āGreat Writä, 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 āGreat Writä 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, ãcruel and unusual punishmentä, 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 worldâs 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.

U.S. Department of Justice
Office of Justice Programs

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."

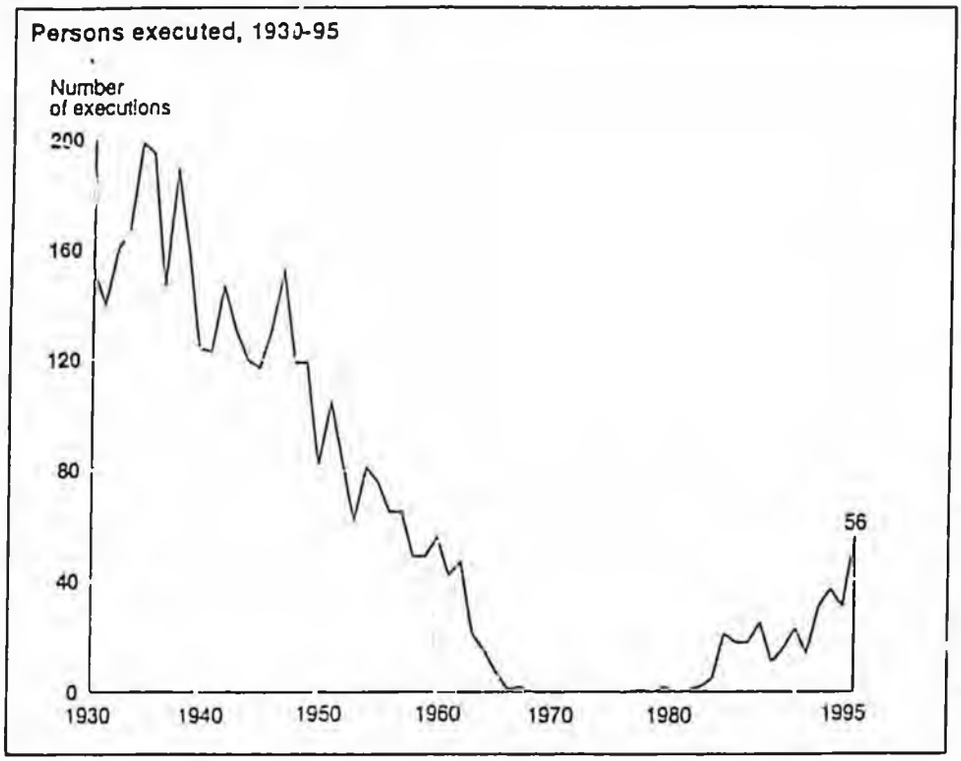
- Forty-eight women were under a sentence of death.

- 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.



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 employee 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[e]	Alabama	Arizona[a,j]	Delaware[a,e]	Idaho[e]
Arkansas[a,d]	New Jersey	Arkansas[a,d]	California[a,k]	Montana[e]	Oklahoma[f]
California[a,k]	New Mexico	Florida	Maryland[g]	New Hampshire[e,h]	Utah[e]
Colorado	New York	Georgia	Mississippi[a,i]	Washington[e]	
Connecticut	North Carolina[e]	Kentucky	Missouri[e]		
Delaware[a,c]	Ohio[e]	Nebraska	North Carolina[e]		
Idaho[e]	Oklahoma	Ohio[e]	Wyoming[a,l]		
Illinois	Oregon	Oklahoma[f]			
Indiana	Pennsylvania	South Carolina[e]			
Kansas	South Carolina[e]	Tennessee			
Louisiana	South Dakota	Virginia			
Maryland[g]	Texas				
Mississippi[a,i]	Utah[e]				
Missouri[e]	Virginia[e]				
Montana	Washington[e]				
Nevada	Wyoming[e]				

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.
[a]Authorizes 2 methods of execution.
[b]Arizona authorizes lethal injection for persons sentenced after 11/15/92; those sentenced before that date may select lethal injection or lethal gas.
[c]Delaware 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.
[d]Arkansas 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.
[e]Use of lethal gas is currently prohibited in California pending a legal challenge in Federal court.
[f]Oklahoma authorizes electrocution if lethal injection is ever held to be unconstitutional and firing squad if both lethal injection and electrocution are held unconstitutional.
[g]Maryland 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.
[h]New Hampshire authorizes hanging only if lethal injection cannot be given.
[i]Mississippi authorizes lethal injection for those convicted after 7/1/84 and lethal gas for those convicted earlier.
[j]Wyoming authorizes lethal gas if lethal injection is ever held to be unconstitutional.

Table 3. Minimum age authorized for capital punishment, 1995

Age 16 or less	Age 17	Age 18	Age 19	None specified
Alabama (16)	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.
[a]See Arkansas Code Ann.9-27-318(b)(1)(Repl. 1991).
[b]The age required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; then the age may be 14.
[c]See Conn. Gen. Stat. 53a-46a(g)(1).
[d]The 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.
[e]Juveniles may be transferred to adult court. Age can be a mitigating factor.
[f]The 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)[a]			Executed			Prisoners under sentence of death, 12/31/95		
	Total[b]	White[c]	Black[d]	Total[b]	White	Black	Total[b]	White	Black	Total[b]	White	Black	Total[b]	White	Black
U.S. total	2,905	1,653	1,203	310	168	138	105	58	44	56	33	22	3,054	1,730	1,275
Federal[e]	6	3	3	2	0	2	0	0	0	0	0	0	8	3	5
State	2,899	1,650	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	75	109	20	5	15	3	1	2	2	2	0	196	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	50	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	56	28	28
West	641	436	188	58	36	19	14	10	2	2	2	0	683	460	205
Arizona	121	101	14	5	5	0	8	8	0	1	1	0	117	97	14
California[f]	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[g]	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.

[a]Includes 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).

[b]Totals include persons of other races.

[c]The 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.

[d]Excludes persons held under Armed Forces jurisdiction with a military death sentence for murder.

[e]One 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 races. 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				

[a]Percentages are based on those offenders for whom data were reported.
[b]Includes whites, blacks, Hispanics, and persons of other races.

[1]An 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	16
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; 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,

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

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[b]	Total under sentence of death, 1977-95[c]	Prisoners executed		Prisoners who received other dispositions[a]	
		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

[a]Includes 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.

[b]White, black, and other categories exclude Hispanics.

[c]Includes 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 for:					
	All[a]	White	Black	All[a]		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.

[a]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.

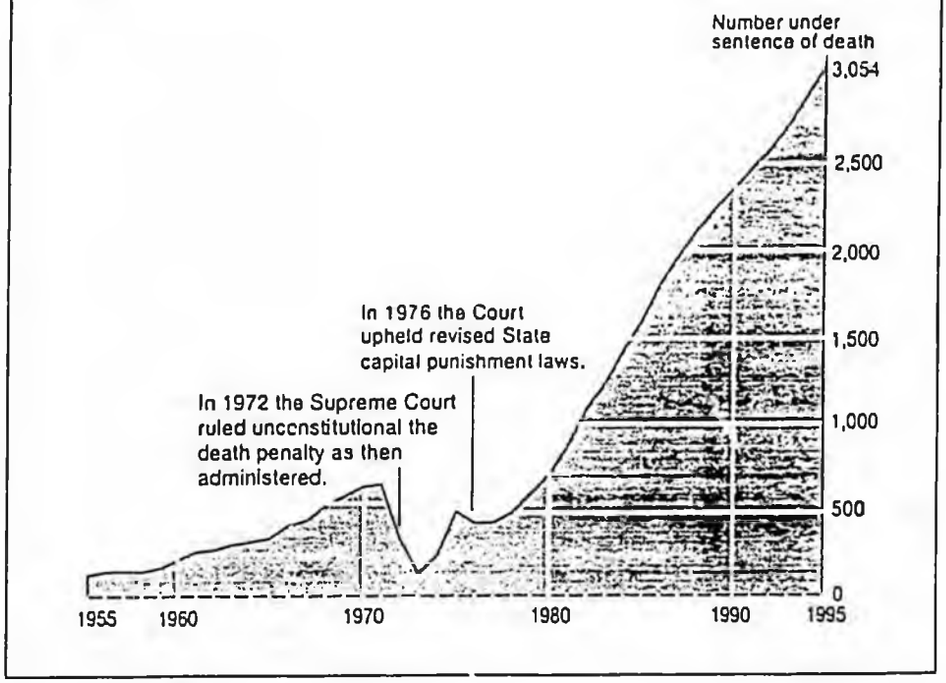
21 U.S.C. 848(e) - Murder related to a continuing criminal enterprise or related murder of a Federal, State, or local law enforcement officer.

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.

Persons under sentence of death, 1955-95



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							Under sentence of death, 12/31/95
				Appeal or higher courts overturned					
		Execution	Other death	Death penalty statute	Conviction	Sentence	Sentence commuted	Other or unknown reasons	
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	6
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.

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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:

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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

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

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[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.

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[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.

13. Larry Hicks Indiana Conviction: 1978
Convicted on two counts of murder and sentenced to death, Hicks was acquitted at the retrial when witnesses confirmed his alibi and when the eyewitness testimony at the first trial was proved to have been perjured. The Playboy Foundation supplied funds for the reinvestigation.

1981

14. Charles Ray Giddens Oklahoma Conviction: 1978
Conviction and death sentence reversed by the Oklahoma Court of Criminal Appeals on the grounds of insufficient evidence. Thereafter, the charges were dropped.

15. Michael Linder South Carolina Conviction: 1979
Linder was acquitted at retrial on the grounds of self-defense.

16. Johnny Ross Louisiana Conviction: 1975
Sentenced to death for rape, Ross was released when his blood type was found to be inconsistent with that of the rapist's.

1982

17. Anibal Jarramillo Florida Conviction: 1981
Sentenced to death for two counts of first degree murder; released when the Florida Supreme Court ruled the evidence did not sustain the conviction.

18. Lawyer Johnson Massachusetts Conviction: 1971
Sentenced to death for first degree murder. The charges were dropped when a previously silent eyewitness came forward and implicated the state's chief witness as the actual killer.

1986

19. Anthony Brown Florida Conviction: 1983
Convicted of first degree murder and sentenced to death. At the retrial, the state's chief witness admitted that his testimony at the first trial had been perjured and Brown was acquitted.

20. Neil Ferber Pennsylvania Conviction: 1982
Convicted of first degree murder and sentenced to death. He was released at the request of the state's attorney when new evidence showed that the conviction was based on the perjured testimony of a jail-house informant.

1987

21. Joseph Green Brown (Shabaka Waglini) Florida Conviction: 1974
Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. At one point, Brown came within 13 hours of execution.

22. Perry Cobb Illinois Conviction: 1979
23. Darby Williams Illinois Conviction: 1979
Cobb and Williams were convicted and sentenced to death for a double murder. They were acquitted at retrial when an assistant state attorney came forward and destroyed the credibility of the state's chief witness.

24. Henry Drake* Georgia Conviction: 1977
Drake was resentenced to a life sentence at his second retrial. Six months later, the parole board freed him, convinced he was exonerated by his alleged accomplice and by testimony from the medical examiner.

25. John Henry Knapp* Arizona Conviction: 1974
Knapp was originally sentenced to death for the arson murder of his two children. He was released in 1987 after new evidence about the cause of the fire prompted a judge to order a new trial. In 1991, his third trial resulted in a hung jury. Knapp was again released in 1992 after an agreement with the prosecutors in which he pleaded no contest to second degree murder. He has steadfastly maintained his innocence.

26. Vernon McManus Texas Conviction: 1977
After a new trial was ordered, the prosecution dropped the charges when a key prosecution witness refused to testify.

27. Anthony Ray Peek Florida Conviction: 1978
Convicted of murder and sentenced to death. His conviction was overturned when expert testimony was shown to be false. He was acquitted at his second retrial.

28. Juan Ramos Florida Conviction: 1983
Sentenced to death for rape and murder. The decision was vacated by the Florida Supreme Court because of improper use of evidence. At his retrial, he was acquitted.

29. Robert Wallace Georgia Conviction: 1980
Sentenced to death for the slaying of a police officer. The 11th Circuit ordered a retrial because Wallace had not been competent to stand trial. He was acquitted at the retrial because it was found that the shooting was accidental.

1988

30. Jerry Bigelow California Conviction: 1980
Convicted of murder and sentenced to death after acting as his own attorney. His conviction was overturned by the California Supreme Court and he was acquitted at the retrial.

31. Willie Brown Florida Conviction: 1983
32. Larry Troy Florida Conviction: 1983
Originally sentenced to death after being accused of stabbing a fellow prisoner, Brown and Troy were released when the evidence showed that the main witness at the trial had perjured himself.

33. William Jent* Florida Conviction: 1980
34. Earnest Miller* Florida Conviction: 1980
A federal district court ordered a new trial because of suppression of exculpatory evidence. Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Dept. because of official errors.

1989

35. Randall Dale Adams Texas Conviction: 1977
Adams was ordered to be released pending a new trial by the Texas Court of Appeals. The prosecutors did not seek a new trial due to substantial evidence of Adam's innocence. Subject of the movie, *The Thin Blue Line*.

36. Jesse Keith Brown* South Carolina Conviction: 1983
The conviction was reversed twice by the state Supreme Court. At the third trial, Brown was acquitted of the capital charge but convicted of related robbery charges.

37. Robert Cox Florida Conviction: 1988
Released by a unanimous decision of the Florida Supreme Court on the basis of insufficient evidence.

38. Timothy Hennis North Carolina Conviction: 1986
Convicted of three counts of murder and sentenced to death. The State Supreme Court granted a retrial because of the use of inflammatory evidence. At the retrial, Hennis was acquitted.

39. James Richardson Florida Conviction: 1968
Released after reexamination of the case by prosecutor Janet Reno, who concluded Richardson was innocent.

1990

40. Clarence Brandley Texas Conviction: 1980
Awarded a new trial whe.. 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

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[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

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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

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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.

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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."

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19 See R. Marcus, *Execution Stalled on 11th-Hour Claim of Innocence*, The Washington Post, Feb. 25, 1992, at A3: "Lawyers for the state of Texas and a death row prisoner engaged in a last-minute sprint through the federal court system over the execution, which had been scheduled to take place before sunrise." The execution did not take place that night because a Texas state court decided to issue a stay. Herrera's case was argued before the Supreme Court on Oct. 7, 1992. The Court decided Herrera was not entitled to a hearing on his innocence claims, and he was executed in May, 1993.

20 M. Allen, *Coleman is Electrocuted*, Richmond Times-Dispatch, May 21, 1992 at A11.

21 Coleman v. Thompson, 111 S. Ct. 2546 (1991).

22 See, e.g., J. Smolowe, *Must This Man Die?*, Time Magazine, May 18, 1992, at 41 (cover story).

Meaning of "Innocent"

In the criminal justice system, defendants are presumed to be innocent until proven guilty beyond a reasonable doubt. Thus, a person is fully entitled to a claim of innocence if charges are not brought against him or if the charges brought are not proven. A person may be guilty of other crimes or there may be some who still insist he is guilty, but with respect to the charge in question, he is innocent.

In some cases, the investigative process does conclusively determine innocence. A piece of evidence may demonstrate that a suspect or defendant could not have been the perpetrator, or someone else confesses, eliminating other suspects. Under the law, there is no distinction between the definitively innocent and those found innocent after a trial but about whom there may remain a lingering doubt.

Extra-Judicial Redress

In the absence of adequate legal mechanisms, the most serious errors in the criminal justice system are sometimes uncovered as a result of such extra-judicial factors as the media and the development of new scientific techniques. These following cases illustrate the randomness of how the legal system works.

Role of the Media: Randall Dale Adams

One unpredictable element that can affect whether an innocent person is released is the involvement of the media. In Randall Dale Adams' case, film producer Errol Morris went to Texas to make a documentary on Dr. James Grigson, the notorious "Dr. Death."[23] Grigson would claim 100% certainty for his courtroom predictions that a particular defendant would kill again, and he made such a prediction about Randall Adams.

In the course of his investigation of Grigson, Morris became interested in Adams' plight and helped unearth layers of prosecutorial misconduct in that case. He also obtained on tape a virtual confession by another person. Morris' movie, *The Thin Blue Line*, told Randall Adams' story in a way no one had seen before. The movie was released in 1988 and Adams was freed the following year.

Role of the Media: Other Cases

Similarly, all charges and death sentences against Thomas Gladish, Richard Greer, Ronald Keine, and Clarence Smith were dropped in 1976 thanks, in part, to the *Detroit News* investigation of lies told by the prosecution's star witness.[24]

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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.

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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.

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[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 in 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

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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

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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.

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[41] See *Herrera*, supra, at 23, n.14.

[42] See *Clemency: Fail-safe System or Political Football?*, The Oakland Tribune, June 27, 1993 (41 additional clemencies have been granted for judicial expediency, to save time and expense after court rulings requiring a new sentencing).

[43] See, e.g., J. Berry, *Governors Shy Away From Death Row Pardons*, The Dallas Morning News, Aug. 15, 1993, at 1J.

[44] See *New Turns in Case of a Texan Scheduled to Die*, The New York Times, Aug. 13, 1993 (stay was ordered pending appeal of judge's order).

[45] B. Reeves, *Execution Stay Upheld*, The Lincoln (Nebraska) Star, Aug. 6, 1992, at 1.

[46] Herrera v. Collins, slip op. No. 91-7328-Dissent (Jan. 25, 1993) (emphasis in original), at 11.

IV. CONCLUSION

It is an inescapable fact of our criminal justice system that innocent people are too often convicted of crimes. Sometimes only many years later, in the course of a defendant's appeals, or as a result of extra-legal developments, new evidence will emerge which clearly demonstrates that the wrong person was prosecuted and convicted of a crime.

Americans are justifiably concerned about the possibility that an innocent person may be executed. Capital punishment in the United States today provides no reliable safeguards against this danger. Errors can and have been made repeatedly in the trial of death penalty cases because of poor representation, racial prejudice, prosecutorial misconduct, or simply the presentation of erroneous evidence. Once convicted, a death row inmate faces serious obstacles in convincing any tribunal that he is innocent.

The cases discussed in this report are the ones in which innocence was uncovered before execution. Once an execution occurs, the small group of lawyers who handle post-conviction proceedings in death penalty cases in the United States move on to the next crisis. Investigation of innocence ends after execution. If an innocent person was among the 222 people executed in the United States since Furman, nobody in the legal system is any longer paying attention.

Many death penalty convictions and sentences are overturned on appeal, but too frequently the discovery of error is the result of finding expert appellate counsel, a sympathetic judge willing to waive procedural barriers, and a compelling set of facts which can overcome the presumption of guilt. Not all of the convicted death row inmates are likely to have these opportunities.

Judging by past experience, a substantial number of death row inmates are indeed innocent and there is a high risk that some of them will be executed. The danger is inherent in the punishment itself and the fallibility of human nature. The danger is enhanced by the failure to provide adequate counsel and the narrowing of the opportunities to raise the issue of innocence on appeal. Once an execution occurs, the error is final.

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Post-it 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 1969, 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.

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January 29, 1998

Honorable Members of the House Finance Committee
State Capitol
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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 <u>not</u> 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 <u>perfection</u>. 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 <u>meant</u> 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 impeding 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 Blackmum, 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 Blackmum 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 Herrara 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 Blackmum, 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 system 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 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 <u>even</u> this committee know these things are all included in the language of the ballot provision? If not, read <u>Herrera v. Collins</u>, 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

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[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. Blackmum'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 presure 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 <u>forever</u>. (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 Herrara, 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 inculpating 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 804, 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 finding 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 <u>will</u> be put to death at sometime in the future - unjustly - if the executions become law?

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

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

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[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.

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[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 conciously 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,

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, AKCLU

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.

(1)

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.

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
586-1378

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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.

Richard K. Heacock Jr.

The Rev. Richard K. Heacock, Jr.
President

Leo A. Walsh Jr.

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

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1/29/98

SB

60

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF SFC APR 9 1997

DATE: 3/11/97

FURTHER:

DATE TURNED IN TO OFFICE: 4-10-97

Finance Committee considered SENATE BILL NO. 60

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

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical change
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Kelly E. Miller	✓	Alan A. Parnell	✓		
John Torgerson	✓	Lee Coghill		X	
		Dave Donley	✓		
Co-Chair:	✓	*Co-Chair:*			
Co-Chair:	✓	*Co-Chair:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
#3 - Division of Elections	3/7/97		3.0

[ ] APPROPRIATION -- no fiscal note

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Revision Date:
Title: An Act providing for an advisory vote on the issue of capital punishment
Sponsor: Sen. Taylor
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component:
COMPONENT SERIAL NO. 788

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 for Phone: 264-8228
Agency: Alaska Court System Date: 04/09/97

Approved by: Stephanie J. Cole, Acting Administrative Director by Date: 04/09/97
Agency: Alaska Court System

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01:38 PM
Rev 1/97

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

Position	Salary	Benefits	Total
Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months	58,500	35,602	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 18D, PFT, 12 months	38,592	15,498	54,090
Bailiff, Statewide, range 6A, NPP, 24 months	40,176	3,985	44,161
			482,918

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. (61,900)

Net personal services 421,018

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 10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ $100 a day	126,000
Offset cost of existing caseload – *See offset note in personal services.*	(16,200)
Net travel	142,200

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 @ 88 days each (3 months), 18 jurors @ $25 a day and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ $25 a day	388,100
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	587,100
Offset cost of existing caseload – *See offset note in personal services.*	(75,300)
Net contractual services	511,800

See additional note on contractual costs on the next page.

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

FISCAL NOTE

No. 5

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB 60
(S) Publish Date: 3-24-97

Revision Date:
Title: "An Act providing for an advisory vote on the issue of capital punishment."
Sponsor: Sen. Taylor
Requestor: (S) Jud

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 97) cost: $ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Should legislation subseuqnelty be enacted, the following fiscal analysis applies.

See attached.

Prepared by: Barbara K. Brink, Director
Phone: (907) 264-4414
Division: Public Defender Agency
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 3/19/97

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Rev: 11/96
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