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6299 SENATE JUDICIARY

703

THE DEATH PENALTY

A FAILURE OF EXECUTION

LIFE IN PRISON ONE-SIXTH AS EXPENSIVE

By DAVE VON DREHLE
Herald Staff Writer

At first glance, executions appear cheap.

Funeral suit from Jim Tatum's Fashion Showroom in Jacksonville — "We Fit Them All, Big and Tall" — costs \$150. Florida's budget for the last meal: \$20. Executioner's fee: \$150. Undertaker: \$525, box included.

But the true cost of an execution is closer to \$3.2 million.

To execute a prisoner, the state of Florida spends six times as much money as it would to keep him in prison until he dies of natural causes.

How come? Why does the death penalty cost so much more than life without parole?

Government agencies and independent analysts in eight states have scrutinized the ledgers. Said Jonathan Gradess, who calculated the cost of a proposed death penalty in New York: "People in states that have the death penalty kept telling me, 'I hope you're ready to go bankrupt.'"

Cases cost more

Although the numbers vary, all the studies agree that death penalty cases cost more than life-in-prison cases at every level — from pretrial investigation to last-gasp appeals.

To begin with, death penalty cases almost always require a trial. They usually generate a lot of publicity, making prosecutors reluctant to plea-bargain. And only a suicidal defendant pleads guilty when facing death.

And death penalty trials take longer. Attorneys have unusual freedom to question potential jurors one by one — a very time-consuming process. Fighting for their clients' lives, defense attorneys file twice as many pretrial motions as in the average nondeath murder trial, a California study found.

Once the defendant is found guilty, the law requires a second trial to decide if the prisoner should live or die.

To show why they should live, defendants often call as witnesses psychiatrists, family members, former teachers, even accomplices in past crimes. The witnesses have to be located, which can take months of expensive investigation.

To show why the defendant should die, the state tries to persuade the jury that he is hopelessly evil, a permanent danger to society. For this, prosecutors rely heavily on high-priced psychiatrists.

The total additional cost for trial and sentencing over a no-execution murder trial: at least \$36,000, a Maryland study showed. A similar study in Kansas figured the additional costs at \$116,700.

After sentencing, every death verdict must be reviewed by the state Supreme Court. The U.S. Supreme Court requires it. And every defendant is entitled to a state-paid lawyer.

Bob Spangenberg, a consultant for the American Bar Association, surveyed more than 150 capital cases across the country. For defense alone, these mandatory reviews cost an average of \$34,740 each, Spangenberg computed.

Six levels of appeals

That's just the beginning. After the mandatory review there are at least six levels of appeals. Spangenberg calculated these costs. Average cost for government-salaried defense lawyers: \$137,410.

This is a bargain compared to costs racked up by prestigious volunteer lawyers handling death penalty appeals. Wilmer, Cutler and Pickering, a big-name Washington firm, figures it has already laid out \$1.2 million in attorney time and \$173,000 in hard cash arguing federal appeals for serial killer Ted Bundy.

There are two sides, of course, to every appeal. The prosecution needs lawyers, too. Repeated studies show that prosecutors match defense attorneys dollar-for-dollar.

In Florida, state-paid prosecutors and defense attorneys received

'The costs are going to add and add and add and add. It's going to add up until something gives.'

—BOB SPANGENBERG

about \$3 million last year — to fuel a system that executed only one man, Willie Darden.

James Rinaman, former president of the Florida Bar Association, has studied the process at length, hoping to speed it up. He believes more lawyers are needed. To keep up with the demands of Florida's enormous death-penalty system, Rinaman estimates, taxpayers should be shelling out \$12 million a year for lawyers alone.

"It boggles the mind," he says.

Analyst Spangenberg estimates the cost of appellate lawyers will soon top \$30 million a year nationwide.

In the past, states kept costs down by relying on volunteer defense lawyers. Now there are too many cases and too few lawyers.

'Isn't good publicity'

Says Clearwater's Pat Doherty, one of Florida's busiest volunteer capital attorneys: "It isn't good publicity. If you're going to do volunteer work, you're better off representing the Poor Clares."

Then comes the expense of prison. Death Rows cost more to run than ordinary maximum security cell blocks, according to studies in Kansas and Alaska. Florida prison officials say specific calculations are impossible.

Florida officials calculate one cost, however. When the governor signs a death warrant and an inmate's execution is scheduled, the doomed man is moved to a cell nearer the electric chair. For 30 days, guards keep a round-the-clock watch to make sure the inmate doesn't kill himself.

The cost in overtime for guards each time a warrant is signed is \$13,800.

There have been 199 warrants signed in Florida since 1973. Sometimes the state saves money because the guards can watch several doomed men at once.

Merely feeding and housing a Death Row prisoner long enough to execute him costs, on average, \$108,000.

Total it up.

\$57 million since 1973

Florida taxpayers have paid more than \$57 million for the death penalty since 1973. This number is based on the most conservative figures available. The real cost could easily be twice that or more.

Divide the \$57 million by 18 executions. The bottom line: at least \$3.2 million per execution. And the cost is growing.

Bob Spangenberg, the bar association consultant: "The costs are going to add and add and add and add. It's going to add up until something gives."

Jonathan Gradess, who studied the issue for the state of New York: "You're going to see a death penalty that costs a billion dollars nationwide."

PRICE OF VENGEANCE

The death penalty costs more than life in prison. Here's how much more. The numbers show the range of estimates.



TRIAL & SENTENCING: \$36,000-\$116,700

The average death penalty case requires more investigation, more pretrial motions, more expert witnesses and a longer jury selection process. A separate sentencing trial is also required — not required in nondeath cases.



MANDATORY STATE REVIEW: \$69,480-\$160,000

Every death sentence must be reviewed by the state Supreme Court — not required in non-death cases.



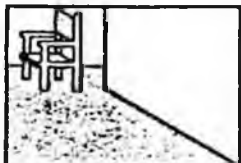
ADDITIONAL APPEALS: \$274,820-\$1 million-plus

After conviction is affirmed by the state Supreme Court, at least six levels of appeals remain open.



JAIL COSTS: \$37,600-\$312,600

Death Row requires extra guards for high security. The prison also feeds and houses inmates through their long appeals.



EXECUTION COSTS: \$845

Florida pays \$150 for the executioner, \$150 for a death suit, \$20 for the last meal and \$525 for burial.

By DAVE VON DREHLE
Herald Staff Writer

In 1974, the year President Nixon left the White House and Americans lined up at the gasoline pumps, Charles Proffitt waited for the executioner on Florida's Death Row. Proffitt had stabbed a sleeping man with a bread knife.

Nearby waited Howard Douglas, the killer a jury thought should live and a judge thought should die. Vernon Cooper, who may or may not have killed a policeman, waited, too.

The executioner never came. In fact, if Florida's Death Row Class of '74 held a reunion, two-thirds of the inmates could attend.

In bluntest terms, the death penalty was supposed to kill these men. It failed, as it has failed in 97 percent of America's death cases in the past 15 years.

Scholars, lawyers, judges — even pro-death penalty politicians — conclude that such a dramatic failure demands change: Fix it or get rid of it. They propose a bunch of solutions, most of which would do neither.

Proffitt, Douglas and Cooper were among the first killed and sentenced to die under new laws intended to make the death penalty rational and swift.

But just one in 30 people sentenced to death under those laws has been executed — leading some experts to argue that the laws aren't very rational. As for swift — consult the Class of '74.

America's death penalty enterprise has cost millions. Courts and legislatures have anguished uncounted hours. Capital punishment has driven an emotional wedge through the ranks of the law-abiding.

Now, attention is focused on a few highly publicized cases — Ted Bundy's, for example. Undoubtedly, much of an angry public would hail the execution of Bundy as the triumph of capital punishment — cost, delay and frustration be damned.

And yet, the truth is that the death penalty is a failure in the over-

'FIX IT OR GET RID OF IT'

Without dramatic change, America's capital punishment paralysis is going to get much worse. Here are the most discussed solutions.

whelming majority of cases. Almost everyone is dissatisfied, from advocates who demand vengeance to opponents who mourn each death.

Without dramatic change, America's capital punishment paralysis is going to get much worse. Here are the most discussed solutions:

Limit those eligible for execution

In most states, it is legal to execute juveniles and the mentally retarded.

But most Americans strongly oppose the idea of executing the mentally retarded. For example, a 1985 poll conducted in Florida showed eight of 10 people opposed. Americans also tend to oppose executions of juveniles — though many are undecided.

James Terry Roach was 17 and had an IQ of just 64 when he and two pals murdered a young couple in Columbia, South Carolina in 1976. A decade later, in 1986, Roach was electrocuted — despite pleas for mercy from Mother Teresa and the United Nations.

Increasingly, people argue that killers like Roach should not be executed. The Georgia Legislature recently outlawed executions of the retarded, and next year, the U.S. Supreme Court will take up the question of the death penalty for juveniles.

But eliminating juveniles wouldn't reduce the numbers noticeably: Only 32 of the more than 2,100 inmates on America's Death Rows were sentenced before their 18th birthday.

Joe Spicola, general counsel to Florida Gov. Bob Martinez, balks on principle. "A lot of our worst criminals are juveniles," he says. "You wouldn't believe some of the things they do."

No one knows how many condemned inmates are retarded. Some experts say hundreds. Even so, removing them from the process would not make a crucial difference to the nation's overloaded courts.

Executing the insane is a more difficult problem. Although laws forbid it, judges differ drastically on who's crazy and who isn't.

Anthony Antone, 66, his brain damaged by syphilis, did not meet the standard. He went to Florida's

electric chair in 1984 convinced that when the surge went through him, his spirit would emerge via his pineal gland, ascend through the nine layers of the Universe, and come to rest on a throne from which he would rule the world.

David Funchess, executed by Florida in 1986, was diagnosed as suffering an uncontrollable violent reaction to the stress of Vietnam.

Criminologists have argued for decades over what constitutes insanity. Even if they agreed, the cost of thousands of lengthy psychiatric evaluations would be staggering.

Take politics out of the system

Florida's governors have not recommended clemency in a capital case since 1982. Their explanation is that the appeals process has become so refined that no marginal case gets as far as a clemency hearing.

In fact, though, Bob Graham and Bob Martinez acknowledge they have had substantial "problems" with 10 percent to 20 percent of the cases they have reviewed. Rather than reducing these sentences to life in prison, they have pitched them into limbo by refusing to sign death warrants.

Critics say Florida's governors don't grant clemency because it is politically unpopular. They believe the political dangers are exaggerated.

One of America's most popular governors, New York's Mario Cuomo, has twice vetoed capital punishment bills. When advocates complain, Cuomo answers: "If you like capital punishment so much, don't vote for me." Cuomo won re-election in a landslide.

Larry Spalding, director of the state agency that handles Death Row appeals, says Florida could "dramatically improve" the situation in another way: Eliminate "judicial override."

In more than 20 percent of Flori-

IN KANSAS: Expense, waste killed death penalty measure

By DAVE VON DREHLE
Herald Staff Writer

Kansas state senators voted for the death penalty when they knew the governor would veto it. But when they got a new governor, pro-death penalty, the senators decided they had better take a hard look at the price tag.

What they saw made them change their minds.

Faced with a sagging farm economy, the conservative senators couldn't stomach the waste and expense of the modern-day American death penalty.

"I voted against it, and some people have tried to say I coddle

criminals. Well, I don't coddle criminals," draws Frank Gaines, a 16-year Senate veteran, one of the last of a dying breed of populist Kansas stump orators.

"It costs a lot more money to have capital punishment, and frankly, I think life in prison is just as tough a penalty," says Gaines. "You just get yourself a confining building and put all them animals in there together. If it was me, I'd rather be put out of my damn misery than have to live like that."

Senators who voted no had nightmares of political disaster. After all, the new governor, Mike Hayden, had made support of the

death penalty a major part of his campaign. And voters gave him a solid victory.

But the backlash hasn't come.

"I never received as much mail as I did on that issue — but it was thank-you mail. That's real unusual," says Senate President Ross Doyen, who changed his mind after years of supporting the death penalty. "I think a lot of people say they favor it, but when you pin 'em down on the specifics, they're not so sure."

The most eye-opening specific was the bottom line: \$11.5 million

for the first year of the death penalty alone, according to the Legislature's researchers.

"And those costs are deceptive," says researcher Mary Galligan. "They stack up over the years."

The Senate killed the death penalty initiative. Doyen, the Senate president, doesn't expect the issue to decide any future elections.

"Some people will be upset with you because you support it, and some will be upset because you don't. But it's no pendulum swinger."

"I think this issue is greatly overplayed."

Death, dollars and the scales of justice

Weighing the costs of capital punishment, life imprisonment

By DAN GROTHAUS
Post Reporter

What does capital punishment cost the state? The state doesn't know. Conventional criminal justice wisdom says it costs more to keep 'em than to kill 'em.

But in reality, it costs the state more to execute an inmate convicted of capital murder than it would cost to convict the same suspect of non-capital murder and lock him up — literally — for life.

Considering the current prison housing shortage, the state could build a new prison holding 2,250 inmates for what it has spent to place 712 inmates on death row since 1980 and keep them there.

Since executions began again in 1982, Texas has executed 19 inmates, more than any other state.

In Harris County alone, the pursuit of death sentences in the 245 capital murder trials held since 1980 represents approximately \$86.3 million, or about \$1 million per death row inmate sentenced in Harris County. Only 88 death sentences were granted in those 245 capital murder trials. If those cases had been prosecuted for non-capital murder and the 88 death row inmates were instead locked up until age 65, the cost would have been \$40,672,370. The difference would be \$45.6 million.

However, no one at the state or county level has ever attempted to determine the cost of capital punishment.

Management questions

"You're asking for basic management questions," answered Scott McCown, the Attorney General's law enforcement chief. "And the state gives us no money to provide answers like that. We're just inundated with (appellate) work."

However, the question of capital punishment's cost-effectiveness is gaining attention in other parts of the country. Last year the American Bar Association endorsed a research project that developed a formula to determine the actual cost of capital punishment.

Since 1978, the only three studies that assessed the cost of capital punishment concluded that the death penalty was not cost-effective. "The argument that the death penalty costs less to punish than does life imprisonment is erroneous," concluded a heavily documented article published in 1985 in the University of California-Davis Law Review.

Statewide, since 1980, only 40 percent (212) of the state's capital murder trials (519) have resulted in a death sentence.

Of those death sentences, the Court of Criminal Appeals, since 1972, has reversed 30 percent of all death penalty cases it has reviewed. That court currently has 122 cases pending on appeal.

Using Harris County cost figures, the state's pursuit of the death penalty has cost taxpayers \$183.2 million.

If these same suspects had been prosecuted for non-capital murder and placed in prison until their 65th birthday rather than sent to death row, it would have cost the state \$103.6 million, or \$79.6 million



less. The projected costs of building the new prison in Palestine, for 2,250 inmates, is \$67 million.

These figures were derived from computerized averages of capital murder trials in Harris County, actual cost figures from the Texas Department of Corrections and estimates of average appellate costs based on more than 30 interviews at the county, state and federal level.

In Harris County, the average capital murder trial costs \$308,125. The average appellate process and death row incarceration costs an additional \$176,305. The total: \$482,130.

Figuring the cost

The cost of capital punishment includes court costs, court-appointed attorneys' fees, average appellate costs at the coun-

ty, state and federal level, housing costs during the average six years spent on death row awaiting execution and the \$36.95 cost of the lethal injection.

The cost of capital punishment was compared to the county court administrator's average cost of a non-capital murder trial (where life is the maximum penalty) and TDC's costs of locking up someone until age 65. The average capital murder suspect in Texas is 27 at the time of conviction.

The average cost of a non-capital murder trial is \$22,640. The TDC says incarceration costs \$11,388 per inmate per year, or \$432,744 for 38 years. The total: \$455,384.

Harris County District Attorney John B. Holmes said he was "not surprised" at these cost figures or the results of this comprehensive yet unscientific study.

"But the cost doesn't enter into it when I look at pursuing the death penalty," Holmes said. "That should be a factor for the Legislature to question: Should we have a death penalty, or is it too costly a luxury?"

State Sen. Ray Farabee of Wichita Falls, who serves on the state affairs and criminal justice committees, said he supports the feelings of his constituents, no matter how much it costs the state to execute a convicted killer. "I'm not surprised at those figures (almost \$500,000 to gain and affirm a death sentence), but my constituency is overwhelmingly in favor of the death penalty," he said.

Referring to the statewide cost of capital punishment since 1980 compared to the cost of a new prison, he said, "That's an impressive comparison, but it still costs more to keep them in prison than execute them."

"It ought to be a capital offense to use that kind of logic," said Henry Schwarzschild, with the American Civil Liberties Union. "The notion that executing two people will save \$30,000 from next year's prison budget is laughable."

Favor executions

The vice chairman of the House committee on law enforcement also feels Texas want capital punishment no matter what the cost. State Rep. Allen Hightower of Huntsville, when told the cost of the state's 212 death sentences since 1980 would more than pay for the new prison being built in Palestine, said, "I think you'll find the people in Texas would still rather pursue the death penalty regardless of the cost."

There are currently 241 inmates awaiting execution on the state's death row, including 81 from Harris County.

TDC's death row population in Huntsville ranks second only to Florida. If Harris County were a state, its death row population would rank sixth in the nation.

Texas ranks first in modern-day executions with 19. Five of those executed inmates were convicted in Harris County.

The 1986 Texas Crime Poll, released Nov. 19 by the Criminal Justice Center at Sam Houston State University, showed that 85 percent of those questioned favored the death penalty. Nearly 75 percent, the survey stated, believe too few criminals have been executed.

Although popular support of the death penalty where capital punishment exists hasn't diminished, there is a small movement around the country to re-evaluate the actual cost of capital punishment.

One study, completed in 1982 by the New York State Defenders Association, was based on hypothetical figures drawn from proposed capital punishment legislation. The executive director of that association said the total costs may vary from state to state but the cost difference between pursuing a death or a life sentence remains the same.

"The cost ratio of 10 to 1 (\$500,000 to \$50,000) for a capital murder trial versus a non-capital murder trial is what we found

in New York and what we would expect to find anywhere else," said Johnathon Graves.

In the most recent study, Margot Garey concluded that the minimum cost of carrying out one execution was \$600,000.

"Although the cost of lifelong incarceration surely would be high, the cost of execution with constitutional protections is staggering," said Garey in a lengthy, heavily documented article, published July 1985 in the University of California-Davis Law Review. As a result of these questions being raised, the American Bar Association has decided it is time to provide factual answers in questions on the cost of capital punishment.

Research formula developed

Last year, a committee of prosecutors, defense attorneys and judges developed a research formula to determine the actual expense of seeking the death penalty.

"We did it because no one had ever done it before," said North Carolina Supreme Court's Chief Justice-elect James Exum. The conventional wisdom that a execution was ultimately less expensive than a life sentence has never been tested against an actual study, he said.

Exum hopes to use the formula next year to assess the cost of capital punishment in North Carolina.

The project's director, Richard Van Duzend of the National Center for State Courts in Virginia, refused to speculate on what he expects will be "the actual cost of capital punishment."

District Attorney Holmes, who has sent more convicts to death row than any other prosecutor in the state, believes in the death penalty, although he is not a zealous proponent of executions.

Holmes said the death penalty serves as a deterrent, "even if it keeps just one guy from killing an innocent person."

But if there were such a thing as a life sentence without parole, Holmes believed most citizens and juries would prefer as a saving life in prison rather than death sentences, "especially if it's not cheaper to kill them..."

However, Holmes believes there is another factor supporting the death penalty regardless of the cost: "It comforts people to know that that retribution (the death penalty) is available. If we don't have that option, society may decide to scratch that itch itself, like Bernard Goetz did in the New York subway."

One last factor to be considered is the cost of irreversible error.

Following last Thursday's execution of a convicted killer out of Dallas, Attorney General Jim Mattox said he believes one of the 19 inmates executed since 1982 may have been wrongly sentenced to die. He refused to identify the dead man.

Mattox also told reporters there are "legitimate questions" involving the death sentences of two other unidentified inmates currently on death row.

"I think there are cases that it could be argued the punishment chosen was not the proper one, but I don't think I've seen any glaring abuse," Mattox said.

Death Penalty Costs Are Adding Millions to State Government Expenses Across the Nation

The following information is condensed from testimony by Professor David Gottlieb of the University of Kansas School of Law before the Kansas Legislature on Feb. 21, 1987. The Kansas Legislature decided against reinstating the death penalty in that state shortly thereafter.

While on the surface it might seem reasonable to assume that it is less expensive to execute a person than to imprison him for life, that assumption is wrong. As Supreme Court Justice Thurgood Marshall explained in *Furman v. Georgia* in 1972:

"As for the argument that it is cheaper to execute a capital offender than to imprison him for life, . . . it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases.

"At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, and defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long the trial takes.

"During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money and effort of the state....

"When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Every study that has been done since Justice Marshall's writing supports his assertion. Capital cases are very

expensive. There are at least four reasons why this is so.

First, capital cases take far more time to litigate. Because the stakes are life and death, guilty pleas are a rarity. Virtually every case is taken to trial. For similar reasons, the defense contests every potential issue. Preparation for trial of a death penalty case is generally far more extensive, with two to five times as many pretrial motions. Jury selection takes longer, since the jury must be qualified not only to rule on the question of guilt, but also to decide on the death penalty. The trial itself takes up to three times as long as an ordinary first degree murder case, with far more extensive use of experts and investigators.

Second, death penalty cases require a second, separate trial on penalty if the jury returns a guilty verdict. There is no equivalent to this procedure in a regular murder case. The jury must sit for days, in some cases weeks, to hear evidence concerning whether the defendant should live or die. A host of expert witnesses may be required for this determination. As a result of this second phase, the time taken for a death penalty trial is further expanded, while a non-capital trial lasting even a week is fairly atypical, a typical death penalty case may last from three to eight weeks.

Third, if the jury imposes a death sentence, a long appeal process will begin. The process includes a direct appeal to the state supreme court, a petition for certiorari to the U.S. Supreme Court, post-conviction applications in state courts, appeals of those applications, post-conviction applications in federal courts, appeals of those applications in a U.S. Circuit Court of Appeals, second and sometimes third appeals to the U.S. Supreme Court, and finally a petition for state clemency. The process can take more than 10 years. The cost may be 10 times the ordinary murder conviction appeal. Obviously, a defense attorney will be obliged to pursue every possible legal means to avoid execution; unlike the normal case, there is no place for an attorney to recommend

to his client that he not take further appeals.

Fourth, during the time of these appeals, the defendant is housed on death row. Death row costs money to build and is more expensive to staff than an ordinary prison facility. The defendant is housed in a single cell and is unable to contribute to the prison by working in a prison industry.

Defense Costs at Trial

The Kansas public defenders' office estimated that the trial costs of defense services in capital cases could reach \$31,000 per case, more than six times that state's current first degree murder case defense costs. Their estimate was based on the assumption that the defense of a death penalty case would require 800 hours of attorney time for an average bill of \$26,000. They estimated expert services would cost \$3,000 per trial and investigative services \$2,000. They predicted 80 first degree murder cases per year for a total bill for trial-level defense services at \$2,480,000.

The Kansas projections were well below actual figures being spent in many other states. In 1983, the New Jersey public defenders' office budgeted \$100,000 for each capital case. The Ohio public defenders' office estimates the actual cost of capital cases (trial plus appeal) is \$60,000. The Kentucky public defenders' office estimates a typical capital case involves \$10,000 to \$15,000 in expert and investigative fees over and above those in a normal case. The National College of Criminal Defense estimates the investigation costs alone in a capital case at \$10,000 per case. A New York study puts the figure even higher, at \$40,000 for investigative costs.

Prosecution Costs

Just as the defense must file more pretrial motions in a capital case, the prosecution must answer them. The prosecutor, as well as the defense

(See Costs, page 4)

Costs (continued from page 3)

attorney, must be present for voir dire of the jury, for the expanded trial, and for the additional sentencing proceeding. Capital cases will take four times as long for prosecutors if they take four times as long for defense attorneys. Moreover, if the defense presents experts and uses investigators, there is no doubt the prosecutor will utilize such resources as well.

In most states, far more money already is spent on prosecution than is spent on defense. States have estimated the disparity between prosecution and defense resources as anywhere from two to one to as high as 10 to one. The most conservative estimate is from a recent study in Maryland, which found that prosecution and defense costs there were virtually identical. Taking the Maryland figure, Kansas estimated prosecution costs in that state would be \$2,500,000 per year.

Judicial Costs

There are at least three kinds of judicial costs in a trial: jury costs, security costs and the costs of the judges and court personnel.

The Kansas public defenders' office estimated a substantial increase in juror costs for capital trials. Figuring 80 first degree murder cases per year and three weeks longer per trial than in ordinary cases, they projected additional juror costs of \$168,000 per year. If the voir dire panel is 150 instead of 100 persons and voir dire lasts two days instead of one, the additional cost would be \$160,000. The total increase in jury costs would be \$328,000 per year.

Kansas did not develop figures for increased security costs of capital trials, but projected that such additional costs certainly would occur.

The increase in trial time required increases the judicial resources needed. In states where the judiciary chooses not the ask for new judges, the "costs" are borne

at the outset by all those litigants who do not have capital cases. These litigants can expect less time devoted to their cases and increased backlogs. But as backlogs mount, state legislatures eventually are forced to supply additional judges. It costs approximately \$115,000 to staff a courtroom full-time. If five additional judges are added in a state because of backlogs created by capital trials, the additional cost to the state would be \$575,000 per year.

Appellate Defense Costs

The Kansas public defenders' office estimated appellate defense cost increases (for the projected 80 cases) of \$135,000 per year in attorney fees and \$120,000 per year in additional transcript fees. Their estimate was based on a projection that of the 80 cases only 16 would actually result in death sentences and that one attorney could handle four death penalty direct appeals a year. The cost for four additional defense attorneys and one secretary was estimated at \$135,000.

In other states, the cost of each direct appeal has been estimated as an additional \$20,000 in Kentucky and California and up to \$50,000 in New Jersey. Moreover, the estimated amount of time reported in other states was up to six months of attorney time for each appeal.

Prosecution Appellate Costs

As with trial-level costs, the increase in prosecution costs for appeals is similar to the increase for the defense. Thus, Kansas estimated an increase of at least \$135,000 a year in prosecution costs based on 16 death penalty appeals in any one year.

Post-Conviction Costs

After completion of state direct appeals, a series of collateral appeals follows. Post-conviction application are made in state courts and those applications are appealed; post-conviction

applications are made in federal courts and those applications are appealed; final appeals are made to the U.S. Supreme Court and a final petition for state clemency follows. Additional defense and prosecution staff and time are required for these.

The State of Florida, which provides state funding for post conviction appeals, is spending more than \$1,000,000 per year for post-conviction defense alone.

Corrections Costs

Finally, a state with a death row is required to spend millions on housing those convicted of capital crimes. A death row capable of housing 100 inmates (Georgia currently has more than 100 inmates on death row) in maximum security confinement is more than \$7,500,000. According to former Kansas Secretary of Corrections Michael Barbara, construction costs for maximum security are greater than for medium security and run from \$75,000 to \$100,000 per bed. At that rate, a 100-person death row costs from \$7,500,000 to \$10,000,000. The State of Alaska predicted capital expenses of more than \$2,000,000 to construct a 20-person death row facility, a cost of more than \$100,000 per bed.

In addition to the costs of construction, a Department of Corrections is forced to incur additional staffing expenses. Studies have concluded that it costs far more to house an inmate in death row confinement than in the prison's general population. The costs reflect the need to house each inmate in an individual cell, to separate the inmate from the general population, to provide separate recreation, and to increase security. According to representatives of the Florida Clearinghouse on Criminal Justice, during the eight to 10 years involved in post-conviction review, an extra \$15,000 per inmate probably will be required.

Can State Afford Fourth Prosecution Of Spraggins?

BY KATIE WOOD
STAFF REPORTER

Meriwether County Commission Chairman Norman J. Rowe is not about to second-guess the judicial system.

Eddie Lee Spraggins, who is mentally retarded, has been sentenced to death three times for the 1977 rape and murder of Frances Coe in Meriwether County.

Those trials have proved costly to the west Georgia county of 21,000 residents, which not only has paid to prosecute Spraggins, but also has picked up the indigent inmate's defense tab.

Now that the Georgia Supreme Court has ordered a fourth trial in its Feb. 18 decision, *Spraggins v. State*, Case No. 44903, the county is facing what truly could be a \$64,000 question.

Has the time come for a plea bargain to avoid the expense of another trial?

"You ask me a loaded question there," Rowe responded.

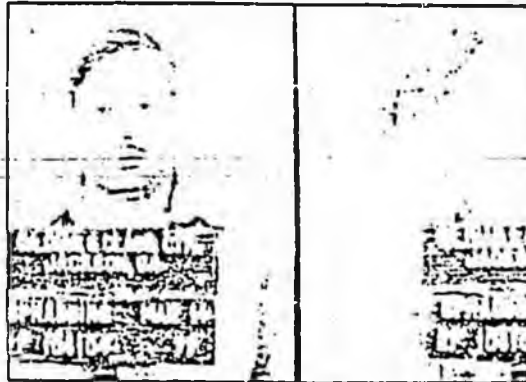
Rowe said that cost should not compromise justice and that his faith in the judicial system, despite the number of trials for Spraggins, has not been shaken.

"Not only in this case, in any case, a compromise should not be made. That's just not the way to operate," Rowe said. "In my opinion, why have a justice system that's equal and fair if you're going to compromise down the road?"

"I feel like a lot of times it's an unnecessary burden on the system, but the system does work. All in all, it works out for the best and right," Rowe said.

The burden the county has borne for the trial totals more than \$84,000 and the defense attorney's bill for Spraggins' appeal which led to the order for the fourth trial has not yet been submitted.

Meriwether County, with a \$4 million annual budget has spent more than \$84,000 on the *Spraggins* case, not including his lawyer's fees for a winning appeal and the cost of a fourth trial.



Defense counsel Michael Kennedy McIntyre, right, says he hopes prosecutors will agree to a plea bargain to avoid a fourth trial for his client, convicted murderer Eddie Lee Spraggins, left.

Meriwether County has an annual budget of just \$4 million, Rowe said. "It affects a small county with a small budget more than it would if we had a budget of \$100 million," Rowe said of the trial costs.

The first two trials—the second was a resentencing trial ordered by the Supreme Court in *Spraggins v. State*, 240 Ga. 759 (1978)—cost \$20,000, Rowe said.



Spraggins' third trial in November of 1986 came after his conviction was overturned by the federal courts—*Spraggins v. Francis*, Criminal Case No. C82-167N (N.D.Ga. Apr. 8, 1983), affirmed by the 11th U.S. Circuit Court of Appeals in *Francis v. Spraggins*, 720 F.2d 1190 (1983). The federal courts held that Spraggins' first attorney, the late A. Vernon Belcher, was ineffective in his assistance to the defendant.

The cost to Meriwether County of the third trial was \$64,887.76, Rowe said, of which the county was reimbursed \$4,000 by the state for the price of a transcript.

Of that amount, Spraggins' attorney, Atlanta sole practitioner Michael Kennedy

Comments on Death Penalty Defense Costs

EDITOR'S NOTE: On April 18, 1986 the Criminal Law Subcommittee of the Joint Interim Committee on Judiciary met in Eugene to hear testimony concerning indigent defense. Mike Hansen from the State Indigent Defense Board, Greg Veralrud from OCDLA, and Mike Phillips, an OCDLA member who tried the death penalty case of *State v. Benn; Lee Chaffin*, presented testimony. What follows are edited excerpts from the prepared comments of Mike Phillips concerning the cost of defending death penalty cases.



We are all aware that the American judicial system is an advocacy system. It is premised on the notion that the most reliable decisions, both legal and factual, come from skilled advocacy of opposing views. In any criminal case, not just death penalty cases, the failure to provide adequate counsel in a real sense, rather than merely a legal sense, has at least two social costs. First, there is the social cost in wrong factual decisions, which result in the conviction of the innocent. Second, there is a fiscal and social cost in procedural error, resulting in the cost of appeal, or post-conviction relief and retrial.

In death penalty cases, there is an additional societal interest in providing the accused adequate counsel. Under the Oregon death penalty scheme, guilt of aggravated murder begins, rather than ends, the inquiry with regard to whether death should be imposed. Therefore, citizens of the state have a right to assurance that before a person is killed in their name, both the guilt phase and the penalty phase are resolved as reliably as possible.

The present defense delivery system is being compensated by the state at the rate of about \$45 per compensable lawyer hour in addition to out-of-pocket expenses. For that expenditure the state obtains a fully operating law office complete with staff, equipment, physical plant, automobile, and generally a library. It also obtains the right to borrow from the lawyer in that it is required that certain costs (long distance phone calls, photocopies, travel expenses, photo development and enlargement, exhibit preparation, etc.) be advanced and reimbursed later. After payment of those matters, the attorney is compensated for their skill, training, and expenditure of time.

As a recent overhead cost survey demonstrates, overhead costs in running a law office typically range from \$23 to \$33 per hour. In many law offices the costs are well over \$40 per hour. By way of comparison, my overhead expense is at the low end of the range, at about \$23 per hour. To earn a pretax income comparable to either a senior prosecutor (as was assigned in the Chaffin case) I would need to charge and collect at a rate of about \$75 per hour. To earn a pretax income comparable to a district court judge, I would need to charge at a rate of about \$92 per hour.

It should be noted that the total cost of providing defense is for the most part determined reactively. That is, it is based upon choices made by prosecutors and judges, rather than the choice made by defense counsel. There are

more than sixty ways in which a person can commit aggravated murder, and thus be subjected to the death penalty. The choice of a prosecutor to charge a particular murder as a death penalty case, rather than a non-death case, dramatically affects the total defense cost. Similarly, the choice to proceed to trial and seek the death penalty, rather than resolve the case by a guilty plea resulting in life imprisonment, also affects that cost.

The decision of the judge about what sorts of evidence are admissible affects the cost of determining the sorts of things that must be investigated. Since the Oregon death penalty scheme requires that as soon as practicable after a determination of guilt, the penalty phase hearing be held before the same jury, counsel must be thoroughly prepared to try both the guilt and the penalty phase before the trial ever commences. In *State v. Chaffin*, more than 600 hours, or more than one half a year's billable hours, were expended on defense. In *State v. Quinn*, the first case tried under the previous death penalty scheme, 900 hours were expended. In *State v. Klinefelter*, the other case tried through the penalty phase under the statute, about 550 hours were expended.

Back in 1974, when I defended my first client accused of murder, the trial court judges and the chief justice authorized defense compensation at the rate of at least \$50 per hour. Not only has there not been an adjustment for inflation during the past ten years, there has actually been a ten per cent cut of this rate.

In addition to the compensated time, an attorney in a death penalty case which results in a sentence of death, is faced with the certainty that one of the defendant's latter steps will be to seek judicial review of the adequacy of representation. This will involve a donation as a state's witness of many hours in reconstructing each decision that was made which will be analysed with the benefit of hindsight that the defense was ultimately unsuccessful.

These comments are made with the hope that the Legislature, when confronted with requests for funding for death penalty defense by the State Indigent Defense Board, will recognize those requests as being real, necessary, and reasonable compensation rather than as a request to provide some sort of windfall to defense lawyers.

✓ Costs high in pursuing death penalty

Hard choice: Reduce charge
or commit money, resources

By Lorr Montgomery

OF THE TIMES HERALD STAFF

The State of Texas has been trying to kill Ronald "Buffalo" Chambers since 1975. Twice sentenced to death for the fatal beating of a Texas Tech student in Dallas, Chambers today is one step away from winning a third trial.

Over 13 years Chambers, 35, has traveled a circuitous route through the criminal justice system: His case has been considered by no less than 10 judges and two juries at an estimated cost to taxpayers of \$1.5 million. The state has spent at least \$130,000 supporting Chambers, who beat 22-year-old Michael McMahan in the head with a shotgun.

The case is not unusual. With an intricate appeals system at their disposal, Death Row inmates can easily prolong their lives, or dodge the executioner altogether. That fact, plus an explosion in the number of local capital-murder indictments, increasingly forces Dallas County prosecutors to make a tough choice — reduce charges or commit substantial money and resources to seek capital punishment.

"There are a lot of them that need to die," said First Assistant District Attorney Norm Kinne, who has final review of all capital cases. "But we have to make a decision about whether this is the kind of case we want to put all our efforts into, to spend that kind of money and time trying."

Of 34 men sentenced to die by Dallas County juries since 1974, only two have been executed.

Twenty inmates are still waging expensive legal fights for their lives; 11 have won reduced sentences. One inmate was slain in prison.

Please see DEATH/A-20
FX

DEATH

From A-1

Because a death sentence rarely leads to execution, prosecutors carefully pick their shots. Twelve capital murder cases have been handled by district attorneys this year, but only four have been tagged for the death penalty. Five defendants have been or will be tried on lesser charges.

Three defendants were allowed to plea bargain for their lives. Rodney Dewayne Davis, 25, received a life sentence for raping and smothering a 3-year-old girl. Gary Ray Jackson, 29, fatally shot and beat a 65-year-old woman while burglarizing her home. He received a 55-year sentence. Anthony Carter, 19, shot and killed a Fair Park grocer and received a 60-year sentence.

All three men will be eligible for parole in 15 years.

The four death penalty cases involve the slaying of a woman and her two children, the fatal beating of a prominent North Dallas businessman during a burglary, and the shooting deaths of two Dallas police officers in separate incidents.

In deciding whether to pursue the death penalty, prosecutors weigh several elements: the facts of the case, the strength of the evidence and the records of the defendant and victim. Prosecutors also must be able to convince a jury that the defendant killed deliberately and is capable of future violent acts.

Unless a case is strong on all points — "pretty much open-and-shut" as Kinne put it — prosecutors will forgo the death penalty, reasoning the sentence would be rejected by a jury or overturned on appeal. Although Davis was indicted for a capital crime — murder during the commission of another felony, rape — prosecutors were hard-pressed to prove he would commit future acts of violence because he had no previous criminal record.

"If there's a question, we're not going to waste the taxpayers' money going for death," Kinne said. "Since the trial is long and expensive we only try those cases for death that we intend to get death on."

Defense attorneys in Texas and elsewhere have long argued that no death penalty case — even those that prosecutors call sure bets — is worth the cost to the public. Studies in New York and California have concluded that the pursuit of capital punishment can cost about three times

more than locking up a killer for life.

The reason is that defendants who face execution are entitled an array of constitutional protections that apply before the trial begins and long after conviction.

'We're not going to waste the taxpayers' money going for death.'

Norm Kinne, prosecutor

The average murder trial in Dallas County, for example, lasts less than a week. When prosecutors seek the death penalty, jury selection often takes a month and testimony can last an additional two weeks or more.

The initial trial, considering the cost of investigators, prosecutors, defense attorneys, expert witnesses and court staff, can cost as much as \$1.5 million, according to a 1982 study by the New York State Defenders Association. Texas defense attorneys say the price typically ranges from \$400,000 to \$800,000, depending on the length of the trial.

That's just the first round. The complicated appeals process begins with automatic review by the Texas Court of Criminal Appeals, which can take as long as three years to rule. Eight levels of appeal can follow, including petitions to federal district and appeals courts and three separate trips to the U.S. Supreme Court.

Nearly all defense costs after first appeal are borne by the lawyers, who generally volunteer their time. But taxpayers pay hundreds of thousands of dollars for prosecutors and the courts. The typical death penalty case, considering the first trial and appeals, costs \$1 million or more, attorneys say.

Many defendants, however, are able to keep the meter running. Some continue to appeal; those who win new trials can start the whole process over again.

Appeals judges have granted retrials in a third of the 34 Dallas County cases since 1974, the year the Texas Legislature reinstated capital punishment. Some defendants successfully challenged jury selection procedures by prosecutors; others argued that their

rights were violated during examination by Dallas County psychiatrist James Grigson, a frequent state witness in capital cases.

Both issues figured in Chambers' case. In 1984, the Texas Court of Criminal Appeals ruled that Chambers was deprived of his constitutional right against self-incrimination during his interview with Grigson.

Chambers won a new trial but again was sentenced to die. He now says that the prosecution intentionally excluded blacks from the jury in his second trial. This month visiting Judge Tom Ryan agreed and recommended that the Texas appeals court grant Chambers a third trial.

Prosecutors and some defense attorneys predict there will be fewer retrials in the future. As the courts settle challenges to the death-penalty law, prosecutors make fewer errors in jury selection and during trials, giving defense attorneys fewer targets.

"Since 1980 or 1981, the rate of reversal has been much less. There aren't that many doors open any more," said Mark Stevens, a San Antonio defense attorney.

Stevens, however, might have found one. The U.S. Supreme Court earlier this year heard his arguments on behalf of Death Row inmate Donald Gene Franklin, who was convicted of killing a San Antonio nurse in 1975 and retried and convicted in 1982.

At issue is whether defense attorneys should be allowed during the penalty phase of a trial to ask jurors to consider "mitigating circumstances." Franklin argues that the judge in his second trial did not instruct jurors to consider his good behavior in prison when assessing the danger he posed in the future.

Judges have halted executions in Texas pending the outcome. If the Supreme Court rules in Franklin's favor, criminal attorneys say, the decision could launch new appeals by many of the state's 270 condemned inmates.

And that could further add to the cost of justice.

"As long as lawyers have minds, there will be new issues," said Houston defense attorney Carolyn Garcia. "As long as the state wants to kill people, there will be people questioning whether it's the right thing to do."

Kelly B. Szymore of the Times Herald Staff contributed to this story.

A MATTER OF LIFE AND DEATH

Capital cases clog courts, can cost \$5 million and up

(Continued from page A1)

To help ease the financial burden created by death penalty trials, California spends \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of murder trials in smaller counties.

But despite this infusion of state funds, many financially strapped smaller counties still can't afford to prosecute complicated death-penalty cases, district attorneys said.

Some small counties have only one prosecutor with little or no experience in death-penalty cases; no investigators; a single Superior Court judge; and not enough unbiased people to qualify as potential jurors.

Other criminal cases are delayed or years while death-penalty cases are decided. Ironically, Sierra County has had to cut police services to pick up the tab.

For prosecutors, taking on a death-penalty case is a high-stakes gamble with low odds of success. Only one in 10 capital cases filed in California results in a death verdict, according to the California Appellate Project.

Every death verdict is automatically appealed to the California Supreme Court, which now spends more than half its time reviewing death cases, experts noted. Nearly 600 death cases are currently under review by the high court, which gets about 30 new such cases each year.

The current California Supreme Court, headed by Chief Justice Malini Lurns, is deciding death cases twice the rate of the previous court headed by Rose Bird.

But even at the current court's accelerated pace, it will be impossible to erase the backlog. The Supreme Court, which has more than 400 criminal and civil cases pending, is viewing ways to speed up its work. A proposal is to hire a pool of lawyers to work exclusively on death-penalty cases for the court.

Only 14 inmates on San Quentin's death row have had their verdicts affirmed by the California Supreme Court. Those cases have kicked up the courts for an average of

to steal their car for a robbery.

The case "symbolizes the people's efforts over the last 13 years to establish a working, valid capital-punishment law," said Deputy Attorney General Michael Wellington. "We don't have an execution date yet. I can't even say we've got an execution date in sight."

Defenders must be paid

Prosecutors and defense attorneys alike agree that California's death-penalty law, as a practical matter, doesn't work.

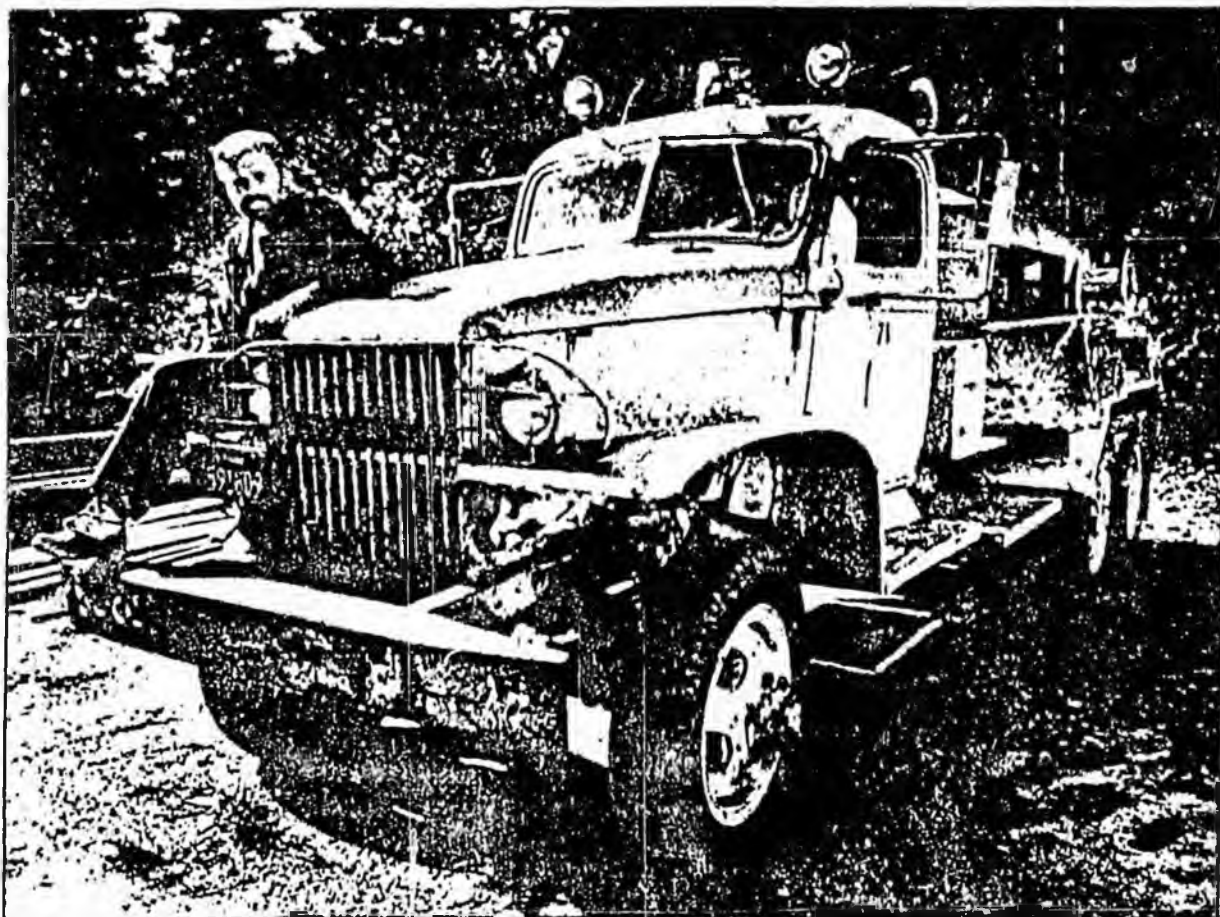
"You're not getting your money's worth," said Michael Millman, director of the California Appellate Project. "It's true that the money could be spent on AIDS research or a lot of things, but the worst thing about capital punishment is that it's an irrelevant diversion from the problems of society. The ethos is, we will feel better if we kill the SOB rather than taking the money and using it to prevent the causes of violent crime."

Chief Assistant Attorney General White also expressed dissatisfaction with the capital-punishment system. "We have the worst of all possible worlds: a society that has the death penalty as a social and moral judgment and then doesn't have the character to carry it out," he said.

Wellington favors a law that would force a defendant to make all his legal challenges at trial instead of dragging out the issues through a seemingly endless series of appeals the way Harris did. "If you give them (Harris' attorneys) nine more years, they'll think up other issues. There's never going to be a time that imaginative defense counsel runs out of issues," said Wellington.

Gov. Deukmejian and many prosecutors claim that the removal of Chief Justice Rose Bird and Associate Justices Cruz Reynoso and Joseph Grodin in 1988 will speed a condemned man's trip to the gas chamber. But even Southern states, which have managed to sufficiently speed up the legal process so that executions now take place regularly, require an average of seven years to execute someone from the date of his arrest, Millman said.

Because "death is a different kind



By Michael Williamson

Among Sierra County chief mechanic Richard Blankenbiller's responsibilities is to maintain a 1943 compressor truck. There is no money to replace it with a newer model.

Sierra County robs police to pay lawyers

By Stephen Magagnoli
Her Staff Writer

DOWNIEVILLE — Sierra County, hit by its worst murder wave this century, is trying to put five men to death.

But while this remote, Northern California county spends millions of dollars on several lengthy death-penalty trials, it can't afford to fill vacant positions in its Sheriff's Department — and the county's crime rate keeps rising.

The little county, which has a single prosecutor and no investigators, has been forced to hire an outside prosecutor to handle one of the murder cases. The county has had to spend \$291,000 to hire outside county counsel because District Attorney James Reichle, who used to serve as county counsel too, now devotes nearly all his

time to homicide cases," said Board of Supervisors Chairman Craig McHenry. "There's no way we can afford these cases," he said, even though the state reimburses small counties up to 80 percent of the cost of homicide cases.

All of Sierra County's death-penalty cases are being tried elsewhere, because the county population of only 3,500 makes it impossible to assemble enough jurors who haven't learned about the murders through the media.

What really rankles local officials is the fact that only one of the murders they are forced to prosecute involved Sierra County residents. "They (the suspects) just happened to take the wrong damn exit off the freeway," said District Attorney Reichle. "If they'd taken the next exit, they'd be tried in Nevada County right now."

them to end from jails in neighboring counties, some more than 100 miles away.

Since Sierra County's staggering death-penalty bills are largely the result of bad luck and outside traffic, Supervisors McHenry and Jerome McCaffrey tried to pass a resolution last year refusing to prosecute murders committed by out-of-county residents.

"These acts have been committed in largely rural locations used by much of the state of California," McHenry said. "We were going to inform the state that we weren't going to prosecute, that it was a state problem and the attorney general's office should come in and take over."

The resolution was defeated 3-2, McHenry said, because the other supervisors were afraid that an alleged criminal wouldn't be prosecuted.

each, according to information compiled by San Quentin information officer Dave Langerman, and the meter is still running.

State officials said the case of Earl Lloyd Jackson, convicted of murdering two elderly Los Angeles women in 1977, has already cost more than \$5 million.

"The cost of a death-penalty case could range from \$750,000 to — the limit," said Deputy Attorney General Michael Wellington. His Chief Assistant Attorney General Steve White, estimated that each death-penalty case has cost at least \$1 million to prosecute so far at the trial and appellate levels.

The prosecution of Robert Alton Harris — a seemingly open-and-shut case that included six confessions — was dragged through the court system for 10 years. Harris, considered the most likely person to be executed next in California, was convicted in 1979 of murdering two youngsters

death-penalty cases must be tried differently from other murder cases. In California, defendants of capital cases are entitled to not one but two defense attorneys at public expense during the trial stage. Taxpayers also pay for psychiatrists, forensic specialists and other expert witnesses for the defense.

San Francisco Public Defender Jeff Brown said a typical death-penalty defense costs an additional \$25,000-\$30,000 for a special investigation of the case; and \$15,000 for psychiatrists or other expert witnesses.

Months — and sometimes years — go by before the actual trial starts. Potential jurors must be questioned individually to probe their personal biases and feelings on capital punishment. Jury selection routinely takes six weeks or more.

Death-penalty trials are often stalled by dozens of pre-trial maneuvers: a change of venue because of

state had to pass emergency legislation to pick up most of the tab.

If the expenses keep piling up, Sierra County could be broke by May, said the county's auditor, Don Hemphill. The county is currently providing health services and police protection at "a minimal level," he said, and morale has hit bottom because the county's 100 employees — already among the lowest-paid in the state — weren't even granted cost-of-living raises last year.

"Our general-fund revenues (from local taxes) amount to about \$2 million a year, and we're spending in excess of \$1.2 million a year just on

drugs with out in other and then with'd each other and dumped the bodies here," Reichle said.

"If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement," said Reichle. "The sewage system at the courthouse is falling, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue."

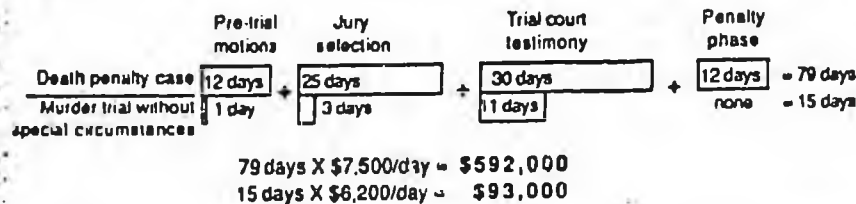
Meanwhile, the county jail can't hold all the defendants, so sheriff's deputies have been forced to spend valuable time transporting

suspects down to the Capitol and handcuff them to the front door. We won't be able to get the state's help until we actually put the criminals on their doorstep."

Sheriff's Sgt. Lee Adams is fixing up the gallops in Downieville these days. It's been 103 years since a body swung from it, and Adams is restoring the green scaffold to preserve a piece of California's frontier history. But he understands the public's frustration with the expense and time it takes to carry out the death penalty: "Somewhere along the line, things seem to have gotten lost." The jail's warden, he said, "certainly reflects simpler times."

Legal time is money

(Average trial times, not including appeals)



Source: 1985 U.C. Davis Law Review study, 1986-87 study by the Administrative Office of the Courts and interviews with defense attorneys and prosecutors

See graphic

Death-penalty trials take an average of two years from arraignment to verdict — three times longer than other murder cases, The Bee found. And the longer the case, the more margin for error and grounds for appeal, said prosecutors and defense lawyers.

Death-penalty trials cost an average of six times more than other murder trials — \$592,500 compared to \$93,000, based on an analysis of average daily court costs.

There are 328 capital trials in progress in California. If the cases follow the normal course, approximately 175 of them will be decided by juries, 70 will result in life in prison or death for the defendant and 35 defendants will wind up on death row.

Since death-penalty trials cost more and last longer than standard murder cases — about \$7,500 a day for 79 days instead of \$6,200 a day for 15 days for a standard murder case — California taxpayers spend an extra \$78 million a year on death-penalty trials.

Additionally, each year the state spends an extra \$2.8 million for special housing of death-row inmates,

another \$1.8 million to prosecute death row inmates on appeal, and yet another \$7.8 million defending condemned prisoners on appeal.

Add it all up and you get \$90 million a year spent on the death penalty.

This doesn't include the cost of federal appeals. "The first federal appeal and the first habeas corpus petition consume an average of 1,000 hours of attorney time, or \$75,000 to the taxpayers," Millman said.

No one knows how many people will be executed in California in a given year, but when the state was executing inmates, it averaged about six per year.

In Texas, where more murderers are executed than in any other state, about five inmates have been given lethal injection each year since 1982.

Thus, if California continues as expected to pursue the death penalty at a cost of \$90 million per year — and if the state moves at its historical rate of six per year — it will cost taxpayers about \$15 million per execution.

blanket pre-trial publicity; a community attitude survey; suppression of evidence or a confession; requests for release of additional evidence or exclusion of witnesses; motions for a dismissal or a new trial.

Michael Burt, a San Francisco deputy public defender, said defense attorneys and prosecutors battled

seven months over one pre-trial motion concerning the admissibility of bloodstained evidence during a recent trial in San Diego.

Once a defendant is found guilty of murder, a special penalty trial is held to decide whether to impose death or life without possibility of parole.

The added time and expense of capital cases are enough to discourage some small counties from seeking the death penalty, said Assistant Attorney General White.

"In talking to district attorneys, some of them have taken the view that it is so expensive and so unlikely to get a death judgment that they will simply seek life imprisonment without possibility of parole," White said.

Marin County recently signed a novel agreement with six defense attorneys hired to represent three San Quentin inmates accused of conspiring to murder a correctional officer — a crime punishable by death. Each attorney will receive a flat fee of \$225,000, said court administrator Howard Hanson.

Hanson acknowledged that the cap on attorney fees could jeopardize the defendants' right to a fair trial if the trial costs far exceed the cap. But Hanson said that the defendants agreed to the contract. If the trial lasts two years as projected, he said, defense attorneys will receive the equivalent of \$75 an hour.

But San Francisco Deputy Public Defender Burt said that if the trial lasts longer than expected, "they could end up making \$2.25 an hour."

The real battle is joined before the state Supreme Court, which routinely takes five years to uphold or overturn a death verdict. By then, virtually no defendants can afford their own lawyer, so the court assigns them a new attorney, at taxpayers' expense. A typical death-penalty appeal consumes about 1,000 attorney hours a year — about \$62,000 — according to the California Judicial Council.

Other states have decided that the expense of the death penalty outweighs any benefits. Last year, the Kansas Legislature voted down the death penalty — even though Gov.

Mike Hayden campaigned on a promise to bring it back and polls indicated that 80 percent of the population supports it.

A coalition of Kansas death-penalty opponents estimated that capital punishment would cost Kansas taxpayers in excess of \$50 million by the time a 100-inmate death row had been built and the first person was executed.

Imperial County's lesson

In California, county officials who balk at the high price of capital trials could learn a lesson from Imperial County, which in 1982 refused to pay \$13,000 for the defense of a man it was trying to send to the gas chamber.

Instead of saving money, Imperial County ended up spending \$500,000, only to see accused murderer Robert "King Kong" Corenevsky go free more than five years after he was arrested and charged with the murder and robbery of a Manhattan Beach jeweler in a Calexico motel room.

The county budget officer also spent three days in jail for refusing to pay the bill.

Imperial County supervisors argued at the time that the Corenevsky case could bankrupt the county and said they'd "be damned" if they'd pay for a murderer's defense. (Corenevsky's past included a murder conviction in Mexico.)

This brazen policy ended up cost-

ing Imperial a bundle. Superior Court Judge William Lehnhardt reduced the charges and took away the county's right to seek the death penalty — which meant the state no longer had to reimburse the county for defense costs.

The case went all the way to the California Supreme Court, which threatened to send troops to the county auditor's office to collect.

Corenevsky's lawyer, Stephen Feldman, said the case "is an allegory for what happens in a system that doesn't fairly deliver services to a man the state is trying to kill. This innocent man could have been killed because the state illegally refused to pay for his defense."

County Supervisor James Bucher, a former judge, agreed that the death-penalty system is a failure, but for different reasons: "I don't believe justice has much to do with the court system any more; it's all dollars and cents and gamesmanship. There should be limits on what people are expected to pay for these bastards who get themselves in trouble. We pay for his doctors, his housing, his attorney and he's a goddamned convicted killer."

Corenevsky commented, "If you believe they should have the death penalty in California, you believe in Santa Claus. It's never gonna happen because it's never gonna be fair. Jesus Christ himself couldn't have had a fair trial in Imperial County."

THE SERIES

SUNDAY: California will soon send a man, most likely Robert Alton Harris, to the gas chamber. What are the implications?

TODAY: If California abolished the death penalty, taxpayers could save \$90 million a year, according to figures compiled by The Bee.

TUESDAY: What are the moral arguments for and against the death penalty? And what do the victims' families have to say?

PLEASE USE BUS FASTPASS

Execution Does Not Pay

Barbarism Aside, the Death Penalty Simply Isn't Cost Efficient

The Washington Post

Sunday, February 28, 1988

By Jonathan E. Grules

FIFTEEN years ago the Supreme Court ruled that the death penalty as then applied in the United States was unconstitutional (*Furman v. Georgia*). One brief sentence in Thurgood Marshall's opinion, overlooked by many, noted that "when all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Today, there are more than 1,900 men, women and children as young as 16 on death row, and American policy makers, political officials and criminal justice experts are beginning to regret skipping so lightly over Justice Marshall's comment.

In 1982, my office conducted a national survey to determine the cost of capital litigation. We examined the nature of capital cases, identified 11 levels of review and defined a minimum of 144 "cost centers" that determine the total price-tag of capital litigation. Based on proposed but never enacted legislation to reinstate the death penalty in New York, and using conservative estimates, we projected the potential costs of litigating a model New York capital case across just the first three levels of review—the trial and penalty phase, the appeal to the New York State Court of Appeals, and subsequent review in the United States Supreme Court. The cost of that limited process: \$1.8 million per case. The cost of life imprisonment for 40 years: \$602,000.

Since then, many more states have looked at the cost of capital punishment, including Maryland, Alaska, Hawaii, Vermont, Texas, Florida, Kansas, Ohio and New Jersey. Some authorities have estimated that capital cases cost 10 times as much as non-

capital cases. A Pennsylvania journalist has estimated the cost of a single capital case at \$5 to \$7 million. There is no longer any doubt that criminal-justice systems with a death penalty cost inordinately more to maintain and expand than criminal-justice systems without a death penalty.

Before policy can change, however, the American people need to understand why capital cases cost more than non-capital cases, why there is no chance that costs can be reduced, and why we can expect that they will exponentially increase yearly until the death penalty is abolished.

Capital cases are more expensive than non-capital cases essentially for three reasons: they are *practically* different than non-capital cases; they are *legally* different; and they are *reviewed more thoroughly*.

■ *The practical difference.* For more than a century, capital cases have been treated differently from non-capital cases. They take longer. Frequently more than one attorney is appointed for a capital defendant. Because life is at stake, trial judges provide more latitude and appeal judges search more carefully for reversible error. (The reversal rate is about 50 percent for death cases and about 7 percent for non-capital cases.) Because the decision to kill is unpleasant, responsibility in capital cases is often diffused—which makes for longer trials, lengthy delays and frequent reversals.

■ *The legal difference.* Ten years ago, the Supreme Court made it clear that heightened standards of due process must be applied to death penalty cases. Consequently, a new jurisprudence—a "super due process"—has evolved governing the trial and appeal of such cases. The investigation is more extensive, the number of pre-

trial proceedings is substantially increased, and jury selection takes longer. After conviction, a separate "penalty phase" is conducted to determine the sentence. Because mandatory death sentences have been ruled unconstitutional, the sentencing jury must consider a defendant's individual characteristics. Preparation for this phase is extensive; in essence, it is a trial for life. The defense commonly tries to talk with as many of the defendant's friends, associates, teachers and co-workers as it can reach, to trace his life history, to visit all of the places he has lived and to vigorously pursue all leads in the search for mitigating evidence.

■ *Longer review.* Any defendant convicted in a state court has the right to initiate judicial review at 11 different levels. However, the Supreme Court's ruling that poor people are entitled to appointed counsel applies to only the first two stages; representation in the remaining nine stages essentially depends on volunteer counsel. Ordinarily, lawyers do not volunteer to represent an indigent robber, burglar or non-capital murderer at those stages, but they routinely do so for death-penalty defendants. While these lawyers are not paid, the final stages of a capital case can last a decade or more and generate enormous litigation costs. Police officers and witnesses are brought in. State attorneys general are called upon to respond. Judges must preside. Court time is used up. The United States Court of Appeals for the 11th Circuit in Atlanta, deep in the heart of the nation's death-penalty belt, complains that more than 30 percent of its docket is tied up with death-penalty cases. And all the while, the prisoner is held in a costly high-security death-row cell year after year.

What, then, is the answer? Short-

circuit the process and step up the pace of executions? Most Americans recognize that our sophisticated appellate-review process, though seemingly laborious, is a fundamental part of our legal system and protects our citizens against government error and abuse. Even with 11 levels of review, we still convict and condemn the innocent. A study in the November 1987 *Stanford Law Review* cites more than 100 examples of innocent people sentenced to death since 1900, of whom 23 were executed.

Nor is it reasonable to expect a significantly quickened pace of execution. Since 1977, when we reintroduced the idea of slaying citizens to stop crime, there have been more than 200,000 homicides in the United States, about 2,000 death sentences but fewer than 100 executions. Not even death-penalty proponents believe the American people would tolerate the wave of executions needed to empty death row and keep it that way.

Since both the Constitution and a permanent death-row population are likely to be with us for some time, the cost of the death penalty is certain to grow at an ever-greater rate. The numbers of capitally-sentenced defendants will continue to increase. As cases are appealed, new issues decided in favor of death-penalty defendants will affect all cases not yet final. As issues increase in scope and complexity, costs will escalate. And these factors will combine with the high costs of death-row construction and security.

The cost of the death penalty is emerging as one of our most serious public policy questions. In Kansas last year, the newly-elected governor promised Kansas a death penalty while simultaneously calling for bud-

get cuts for each state agency. The high cost of capital litigation, the establishment of a death row, maintenance of death-row prisoners, the high costs and inordinate delays of the appellate process were debated not only by politicians but by university professors, governmental research units and by Kansas citizens. Opponents cited racial discrimination in the conduct of capital punishment, its lack of deterrence, its inability to stop crime, its potential for erroneous convictions, its immorality and—not least—its high cost. In the end, massive numbers of citizens declared "no" to the reintroduction of the capital sanction and the death penalty was defeated.

Other Americans will eventually realize, as did the citizens of Kansas, that there is not an endless supply of money for the criminal-justice system. Policy choices need to be made. From a conservative cost-benefit analysis, we must declare the death penalty an inordinate waste of resources that deprives our citizens of adequate police protection and reconciliation systems to make both victims and offenders whole.

As the New Jersey public defender budgets more than \$100,000 per capital case and anticipates total defense costs in the millions, as the federal judiciary beams the resource drain caused by capital litigation and as California prosecutors declare cases non-capital at the outset to save money, the dollars and cents of the death penalty may in fact be the clarion call that sounds the defeat of this archaic and brutal policy.

Jonathan Grules is executive director of the New York State Defenders Association.

McIntyre, said his fees ran \$19,000 from his pretrial appointment through the trial. The third trial was more expensive than the first two, McIntyre said, not only because it took longer, but also because the jurors were selected from a nearby county as a result of the judge's ruling on a change-of-venue motion.

McIntyre has not submitted his bill for the expense of Spraggins' appeal to the Supreme Court; that appeal resulted in the Feb. 18 ruling overturning the 1986 murder conviction due to an error the judge made charging the jury on the effects of a guilty-but-mentally-ill verdict. The judge's error, the Supreme Court held, may have caused the jury to render a guilty verdict. (See the Feb. 26, 1988, issue of the Daily Report.)

The Georgia attorney general's office represents the state in death-penalty appeals, but Attorney General Michael J. Bowers said he could not accurately estimate the amount spent on one case.

Bowers said the division which handles those cases is his office's largest, with a \$750,000 annual operating budget. He said there are eight attorneys, two paralegals and four secretaries in the division, which handles about 110 cases per year.

As for Meriwether County's costs, Rowe said he was unable to estimate what the cost of a fourth trial would be.

McIntyre, meanwhile, said he is hopeful that a fourth trial will not be necessary.

The defense attorney said he would prefer a plea bargain which would spare Spraggins the possibility of an unprecedented fourth death sentence.

District Attorney William G. Hamrick Jr. of the Coweta Judicial Circuit could not be reached for comment on the possibility of a trial, but, technically, the Supreme Court appeal is not over. The state attorney general's office filed a petition last Friday with the Supreme Court, asking it to reconsider its decision.

Patsy Morris, who monitors death-penalty appeals for the American Civil Liberties Union of Georgia, said three other Georgia death-row inmates have been sentenced to death three times. The death sentence in the case of one of those inmates, Andrew Legare, has been reversed, she said. No new trial has been scheduled, Morris said, apparently because Legare was 17 years old at the time he committed the crime. Pending before the U.S. Supreme Court is *Thompson v. Oklahoma*, a case to determine the constitutionality of the execution of juvenile offenders.

"Of all people to have four trials, Ed- [Spraggins] is the most pathetic one," said McIntyre, who has maintained that his client is mentally retarded.

During Spraggins' third trial, McIntyre sought the guilty-but-mentally-ill charge because that provision in the law, OCGA §17-7-131 (a)(2), contains a definition of mental retardation.

Spraggins' mental retardation was formally raised as a defense for the first time in his third trial.

The issue was touched upon in Spraggins' first trial. Ironically, it was the first defense attorney's attempt to explain Spraggins' retardation during closing arguments which caused the federal courts to overturn the conviction.

The problem, according to the 11th Circuit opinion, was that Belcher, the defense attorney in the first trial, in an attempt to explain Spraggins' retardation, told the jury that his client was guilty of the murder even though Spraggins had denied guilt on the witness stand.

Belcher told the jury: "Really, I think what happened here, I think the man was intoxicated. He was heavily intoxicated. He was on drugs. And he is a retarded man too. And I think he is telling the truth when he says he doesn't remember going in the [Coe] house. He told me that all the time, but I think he did, from the evidence that the state has put up. I think he committed the crime of murder probably. ... [H]e being drunk and having this mental condition, being on drugs too, he just went all to pieces and doesn't know what he did. That oftentimes happens when you are dealing with people in that condition...."

Although the question of the constitutionality of executing a retarded person was raised in Spraggins' most recent appeal, the state Supreme Court did not reach the issue because it decided a new trial was in order due to the erroneous jury charge.

In the meantime, the General Assembly has continued to consider the issue of mental retardation and the death penalty from a policy perspective.

On Feb. 24, the state Senate passed a non-binding resolution, S.R. 388, urging the State Board of Pardons and Paroles to commute the death sentences of mentally retarded death-row inmates.

McIntyre said that measure, although non-binding, may strengthen his hand in negotiations with the district attorney in Spraggins' case.

But McIntyre said he has not given up hope that a stronger measure will be adopted before the General Assembly adjourns.

On Monday, the Senate Special Judiciary Committee voted 4-2 to amend H.B. 878 to answer a question the Supreme Court seemed to raise in its latest *Spraggins* decision.

In setting aside Spraggins' conviction because the jury charge seemed to preclude a guilty-but-mentally-ill verdict, the court said in a footnote that a difference between that verdict and a guilty verdict would be inconsequential if the death penalty applied to both. The court said it was not ready to make a decision on that question.

The Senate committee voted to give the court an answer. The amendment the committee added to the bill would state that a person found guilty but mentally ill, which already includes a definition of mental retardation, could not be put to death.

The provision was attached to a bill that creates a procedure for determining whether a death-row inmate is incompetent to be executed under the standards set by the U.S. Supreme Court in *Ford v. Wainwright*, 106 S.Ct. 2595 (1986).

Sen. Arthur B. "Skin" Edge IV, R-Newnan, argued against attaching the amendment because it may lead to defeat of the measure containing the procedure made necessary by *Ford*.

But Sen. Alex Crumbley, D-McDonough, who suggested the amendment, noted that even Bowers, in opposing previous attempts to legislate an exemption, has said he is opposed to executing the mentally retarded.

So late in the legislative session, Crumbley said, H.B. 878 "may be the best and most logical vehicle we have to accomplish what everybody says they want to do." □



State Attorney General Michael J. Bowers says the division in his office which handles death-penalty cases is his largest, with a budget of \$750,000.

THE DEATH PENALTY: A FAILURE OF EXECUTION

Bottom line: Life in prison one-sixth as expensive

By DAVE VON DREHLE
Special Staff Writer

At first glance, executions appear cheap.

Funeral suit from Jim Tatuni's Fashion Showroom in Jacksonville — "We Fit Them All, Big and Tall" — costs \$150. Florida's budget for the last meal: \$20. Executioner's fee: \$150. Undertaker: \$525, box included.

But the true cost of an execution is closer to \$3.2 million.

To execute a prisoner, the state of Florida spends six times as much money as it would to keep him in prison until he dies of natural causes.

How come? Why does the death penalty cost so much more than life-without-parole?

Governmental agencies and independent analysts in eight states have scrutinized the ledgers. Said Michael Gradson, who calculated the cost of a proposed death penalty in New York: "People in states that have the death penalty kept telling me, 'I hope you're ready to go bankrupt!'"

Although the numbers vary, all the studies agree that death penalty cases cost more than life-in-prison cases at every level — from pretrial investigation to last-gasp appeals.

To begin with, death penalty cases almost always require a trial. They usually generate a lot of publicity, making prosecutors reluctant to plea bargain. And only a suicidal defendant pleads guilty when facing death.

And death penalty trials take longer. Attorneys have unusual freedom to question potential jurors one by one — a very time-consuming process. Fighting for their clients' lives, defense attorneys file twice as many pretrial motions as do the

average non-death murder trial, a California study found.

Once the defendant is found guilty, the law requires a second trial to decide if the prisoner should live or die.

To show why they should live, defendants often call as witnesses psychiatrists, family members, former teachers, even accomplices in past crimes. The witnesses have to be located, which can take months of expensive investigation.

To show why the defendant should die, the state tries to persuade the jury that he is hopelessly evil, a permanent danger to society. For this, prosecutors rely heavily on high-priced psychiatrists.

The total additional cost for trial and sentencing over a non-execution murder trial: at least \$38,000, a Maryland study showed. A similar study in Kansas figured the additional cost at \$116,700.

After sentencing, every death verdict must be reviewed by the state Supreme Court. The U.S. Supreme Court requires it. And every defendant is entitled to a state-paid lawyer.

Bub Spangenberg, a consultant for the American Bar Association, surveyed more than 150 capital cases across the country. For defense alone, these mandatory reviews cost an average of \$34,740 each, Spangenberg computed.

That's just the beginning. After the mandatory review there are at least six levels of appeals. Spangenberg calculated these costs: Average cost for government-salaried defense lawyers: \$137,410.

This is a bargain compared to costs racked up by prestigious volunteer lawyers handling death penalty appeals. Wilmer, Cutler and Pickering, a top-name Washington firm, figures it has already laid out

THE PRICE OF VENGEANCE

The death penalty costs more than life in prison. Here's how much more. The numbers show the range of estimates.



TRIAL & SENTENCING:
\$38,000-\$116,700

The average death penalty case requires more investigation, more pretrial motions, more expert witnesses and a longer jury selection process. A separate sentencing trial is also required — not required in non-death cases.



MANDATORY STATE REVIEW: 989,480-\$180,000

Every death sentence must be reviewed by the state Supreme Court — not required in non-death cases.



ADDITIONAL APPEALS: \$274,820-\$1 million-plus

After conviction is affirmed by the state Supreme Court, at least six levels of appeals remain open.



JAIL COSTS:
\$37,800-\$312,800

Death Row requires extra guards for high security.



EXECUTION COSTS:
\$846

Florida pays \$150 for the executioner, \$150 for the last meal and \$525 for burial.

SOURCE: Bureau of Prisons, Florida Dept. of Corrections, Florida attorney general's Florida Office of Capital Collateral Post-conviction, American Bar Association Post-Conviction Death Penalty Program and Proj-

ect, Criminal Justice Act Division, Administrative Office of the U.S. Courts, Committee to Study the Death Penalty in Maryland, Kansas Legislative Research Department, Alaska Department of Corrections, Capital Cases, a report by

the New York Assembly Joint and Intero Committee, The Cost of the Death Penalty in the University of California, Davis Law Review.

\$1.2 million in attorney time and \$173,000 in hard cash arguing federal appeals for serial killer Ted Bundy.

There are two sides, of course, to every appeal. The prosecution needs lawyers, too. Repeated studies show that prosecutors match defense attorneys dollar-for-dollar.

In Florida, state-paid prosecutors and defense attorneys received about \$3 million last year — to fuel a system that executed only one man, Willie Darden.

James Kinross, former president of the Florida Bar Association, has studied the process at length, hoping to speed it up. He believes more lawyers are needed. To keep up with the demands of Florida's enormous death-penalty system, Kinross estimates, taxpayers should be

shelling out \$12 million a year for lawyers alone.

"It boggles the mind," he says. Analyst Spangenberg notes: "As the cost of appellate lawyers will soon top \$30 million a year nationwide."

In the past, states kept costs down by relying on volunteer defense lawyers. Now there are the money cases and too few lawyers.

Says Chairman's Pat DeBorty, one of Florida's best-known volunteer capital attorneys: "It isn't good publicity. If you're going to do volunteer work, you're better off representing the Poor Clares."

Then comes the expense of prison. Death Row cost more to run than ordinary maximum security cell blocks, according to studies in Kansas and Alaska. Florida prison

officials say specific calculations are impossible.

Florida officials calculate one cost, however. When the governor signs a death warrant and an inmate's execution is scheduled, the doomed man is moved to a cell near the electric chair. For 30 days, guards keep a round-the-clock watch to make sure the inmate doesn't kill himself.

The cost in overtime for guards each time a warrant is signed is \$13,800.

There have been 199 warrants signed in Florida since 1973. Sometimes the state saves money because the guards can watch several doomed men at once.

Merely feeding and housing a Death Row prisoner long enough to execute him costs, on average,

\$108,000.

Total it up. Florida taxpayers have paid more than \$37 million for the death penalty since 1973. This number is based on the most conservative figures available. The real cost could easily be twice that or more. Divide the \$37 million by 18 executions. The bottom line: at least \$3.2 million per execution. And the cost is growing.

Bob Spangenberg, the bar association consultant: "The costs are going to add and add and add and add. It's going to add up until something gives."

Michael Gradson, who studied the issue for the state of New York: "You're going to see a death penalty that costs a billion dollars nationwide."

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MONDAY, FEBRUARY 15, 1988

Lawyer/First Lady?

Candidates' Spouses: A New Breed

By RORIE SHERMAN
National Law Journal Staff Reporter

NANCY REAGAN brought clothes by famous fashion designer Adolfo to the White House. But the next first lady may well bring a law degree and a new definition to the unofficial office of first lady.



HARRIET C. BABBITT



ELIZABETH H. DOLE



ELISE R.W. DU PONT



JEANNE H. SIMON

Reflecting the rise of women in professional ranks, four of the presidential candidates' wives are attorneys, their numbers split evenly between the two major parties.

Among the Republicans, two are lawyers already skilled in the art of dealing with the federal government: former Secretary of Transportation Elizabeth "Liddy" H. Dole and her lesser known, but highly respected, colleague in the Reagan administration, Elise R.W. du Pont, former chief of the Agency for International Development's Bureau for Private Enterprise.

In the Democrats' corner are two lawyers gaining recognition on the campaign circuits as formidable advocates for their husbands: Jeanne H. Simon, a former Illinois state legislator, and Harriet "Hattie" C. Babbitt, partner in the Phoenix, Ariz., law firm of Robbins & Green, P.A.

Even at this early stage of the race, they're leaving their mark. Capable of discussing substantive issues and fielding difficult questions, they are acting as their husbands' primary surrogates on the road, enabling the campaigns to cover twice as much territory in the same amount of time.

"I'm frankly astounded by the quality of the spouses," says Irene Natividad, national chairwoman of the
Continued on page 25

DEATH IN THE U.S.A.



Nearly 1,000 U.S. prisoners now await execution by various means, including gas chambers and electric chairs.

Capital Punishment At the Crossroads

At the silent sunrise, on a cold January morning 11 years ago, Gary Mark Gilmore walked into an abandoned cinder block prison shed, calmly took a seat in a black chair, and the state of Utah pumped four rounds of rifle fire into his heart.

By David A. Kaplan

So it was in 1977 that capital punishment resumed in the United States, inaugurated by the fusillade of a volunteer firing squad near Point of the Mountain, Utah. Before that dawn, there had not been an American execution since Aaron
Continued on page 31

More Random Audits

Big Brother Might Be Watching

By RORIE SHERMAN
National Law Journal Staff Reporter

THE NATION'S largest program for randomly auditing lawyers' trust accounts reeled in its biggest fish when it caught its 12th, and most prestigious, attorney using his clients' money as if it were his own.

Walter M.D. Kern Jr. — Republican chairman of the state Assembly Judiciary Committee, longtime legislator, and respected sole practitioner in Ridgewood, N.J. — misappropriated about \$57,000 of the money clients entrusted to his care. And he made the mistake of doing it in his home state, one of five that regularly probe attorneys' trust and business accounts.

Disbarred after 25 years of practice, Mr. Kern is flailing furiously — especially at the procedure that snared him and that is likely to catch other attorneys in the future.

"It's not a random audit, it's a witch hunt," says Mr. Kern.

"The world ought to know about the secret police and dictatorship that has been established in New Jersey," he adds, "because they're trying to push this thing around the country so that there will be a universal police state when it comes to regulation of the practice."

He's right about the nationwide interest: Several bar associations around the country are so impressed with the
Continued on page 30

HIGHLIGHTS

A School's 'Soul' p. 3

A FIGHT over the appointment of a controversial feminist was described by one Yale Law School professor as a battle "for the soul of the school."

Market's Future p. 3

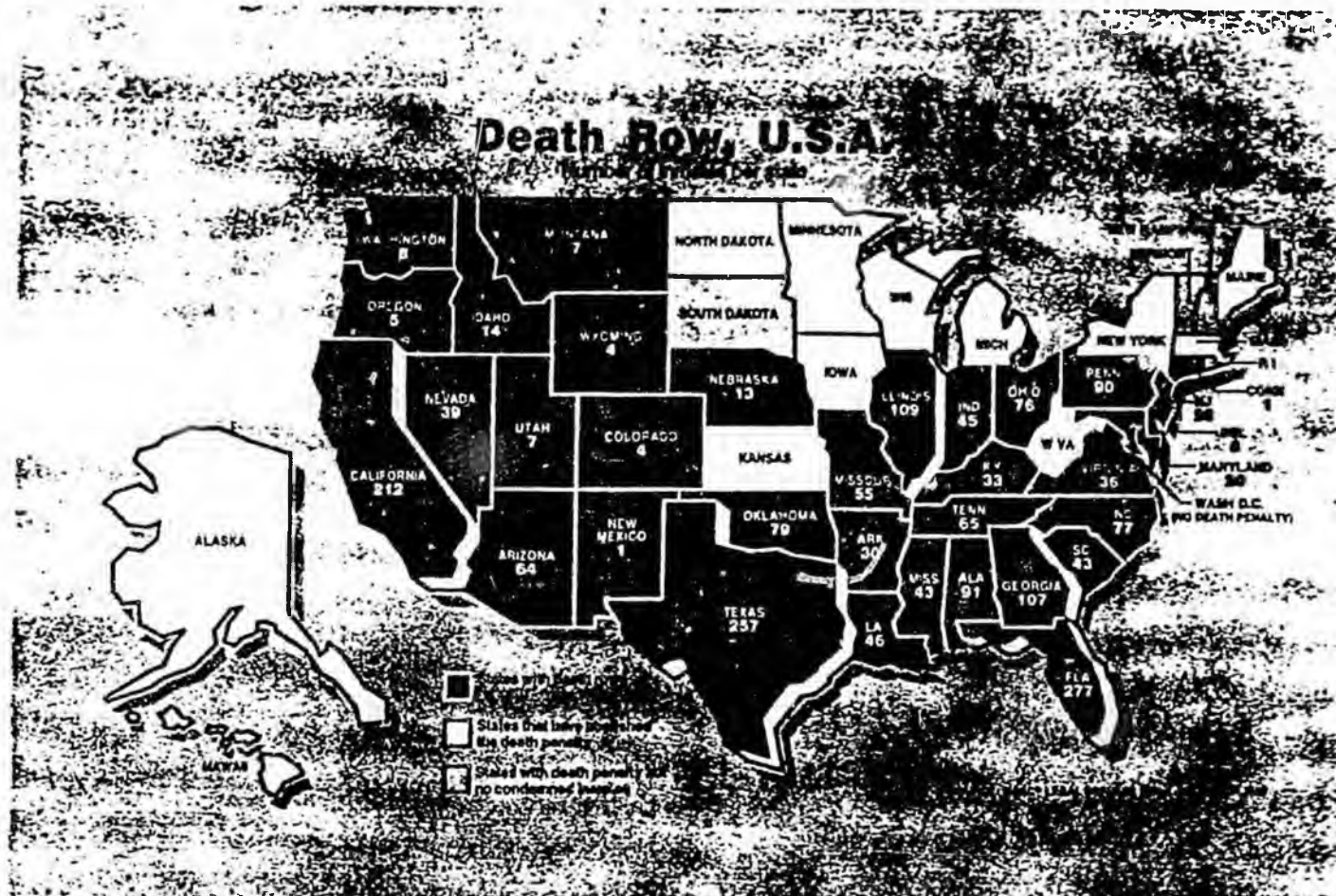
SECURITIES lawyers anxiously awaited the SEC's report on last October's market crash. Now they're not sure what will — or should — happen next.

Legal Practice? p. 3

DISCLOSURES that the FBI spied on political groups raise questions about executive orders and attorneys general's guidelines about such practices.

Career Opportunities: Page 38
The Shopping Guide: Page 40
Lawyers' Service Mart: Page 41

DEATH IN THE U.S.A.



Will Death Penalty Be a Reality in the North?

Continued from page 1

Mitchell was put to death in California 10 years earlier — a gridlock caused by intense litigation and legislative warfare.

Since Gilmore, 93 other inmates have gone the way of the electric chair, gas chamber, lethal needle or rifleman. In 1967 alone, 25 were executed — a total last reached in 1962. It is a significant number, for it troubles death penalty opponents and supporters alike.

"Even I am getting used to them," says Henry Schwarzschild, director of the American Civil Liberties Union's Capital Punishment Project. "But the killings are just as revolting the 25th or 30th time. Our culture seems to be in a very bad mood."

"It's a pittance," counters an assistant attorney general from one Southern state, emphasizing that the national death row population stands at just below 2,000.

U.S. Chief Justice William H. Rehnquist himself has taken note. Several years ago, while still an associate justice, he penned a dissent that skewered his Supreme Court colleagues for allowing a capital "stalemate" to develop. "The existence of the death penalty in this country is largely an illusion," Justice Rehnquist wrote. While hundreds and hundreds had been sentenced to death since the court reinstated capital punishment in 1956, he said, "virtually nothing happens except endlessly drawn-out legal proceedings."

True enough, acknowledges Richard H. Burr III of the NAACP Legal Defense and Educational Fund Inc. (LDF) in New York, but he takes none of the

blame. "A crazy system inevitably produces its own contradictions," he says. Tumbrels' Heyday

Each side has a point. While the annual number of executions in the United

States is far from the tumbrels' heyday during the Depression (199 in 1935 was the peak), it nonetheless represents a figure unheard of in contemporary Western society. Indeed, according to London-based Amnesty International, the only major countries left in the world that regularly execute are China, South Africa, Iran and the Soviet Union. Canada, Mexico and all of Western Europe have abolished the death penalty.

But if the American system is notable for the fact that it has capital punishment at all, it is unique for the way it does not use the penalty. As the end of 1967, the national death row population stood at 1,960. That is 150 more than a year ago — twice as many as in 1962, and more than any nation in the annals of criminal justice.

Florida alone has 282 capital prisoners, tops among the country's 34 separate death rows and the largest state collection of the condemned in American history. (See accompanying chart.) Texas, despite a leading 76 lethal injections since the Gilmore execution ended the modern moratorium, is next with 258 inmates, followed by California with 211 and Illinois with 111. Louisiana, first in executions during 1967 with eight, has 46 more to go. Some inmates, on their fifth or sixth appeal, have been waiting since the mid-1970s.

In Texas, death row is a growth industry. There is enough condemned manpower to run a garment factory annexed to the row. The plant manager boasts that his workers are better than the general prison population. "I wish I had more of them," he told the Associated Press. Jurors and judges

will likely oblige him; Texas officials talk of a 1,000-inmate death row within the next decade.

Creative minds have a field day with those kinds of numbers. According to Amnesty International, the American backlog of death exceeds by a factor of five the total executions in the United States and Western Europe in the last quarter-century. David I. Bruck, a Columbia, S.C. lawyer who has represented several condemned inmates, puts it more sarcastically.

Given the annual additions, he recently said, "you could execute someone every day of the week — including Sundays, Christmas, New Year's Day and Easter — and you still couldn't do it by the end of the century."

Prison officials and state attorneys downplay the significance of the figure of so many warehoused inmates. They say it's a function of all the litigation of the past 10 years and the legal safeguards that ensure fair procedures. Now that the U.S. Supreme Court has thrown out the last of the broad constitutional challenges to capital punishment — based on such issues as race and jury selection procedure — they say the pace of executions should pick up.

Even if that's true — and the experience of just the past year suggests it isn't — the backlog is remarkable. And it's intractable, unless there is a momentous surge in executions or drop in death sentences.

The choice, as Prof. FRANKS Z. Zimring of the University of California at Berkeley School of Law wrote in a recent book, "is between a permanent Reign of Terror or an execution policy

In What State Is It Easiest To Be Sentenced To Death?	
Death Row Inmates Per Capita (in millions)	
<i>The Leaders:</i>	
Nevada	40.2
Florida	24.1
Oklahoma	23.3
Alabama	21.7
Arizona	19.0
Georgia	17.7
<i>Others:</i>	
Texas	15.5
Louisiana	10.2
California	7.8
National Average	8.3

Continued on page 32

Growing Death Row Pushes System to Brink

Continued from page 31

that makes [a] mockery of the legal standards governing the use of the death penalty."

Which it will be — an unprecedented bloodbath or the institutionalizing of a grisly charade — may vary well pivot on the experience of the next few years, as capital punishment, American-style, reaches a key crossroad.

Across Mason-Dixon Line

Since 1976, executions have been almost exclusively a Southern event. Indeed, four states — Texas, Florida, Georgia and Louisiana — are responsible for more than 75 percent of all U.S. executions since 1976, though those states constitute only 18 percent of the nation's population.

The Southern monopoly partially explains why the national debate over state-administered death has not been more acrimonious; that may change when and if the executioner moves north. As lethal injections and electrocutions lose their abstract quality in California, Illinois, Ohio and Pennsylvania (whose death rows make up one-

quarter of the nation's condemned), something will likely give.

Hugo A. Bedau, a professor of philosophy at Tufts University and the leading chronicler of the death penalty for a quarter-century, says American capital punishment historically has been a regional phenomenon.

He explains that "you've got the states that always execute (typically in the South); the states that never execute, whatever their laws provide (typically in New England and the populist Upper Midwest); and then the rest of the states. What happens in places like California and Pennsylvania over the next few years will determine whether we break out of that historical pattern."

"I believe the Southern states are operating at full power," says Mr. Burr of the NAACP Legal Defense Fund. "California will be a turning point."

When will the executioner's song begin to include some Northern and Western stanzas? Though the California Supreme Court stalled most death cases under the now-deposed Chief Justice Rose E. Bird, convicted murderer Bobby Harris lost all his state challenges and is facing his final federal appeal. If he loses — a decision is expected roughly by summertime — San Quentin's gas chamber will go into service for the first time in 21 years.

Illinois, Ohio and Pennsylvania are somewhat behind in having their capital statutes cleared for action, but lawyers on both sides of the emotional aisle expect executions in those states by 1990.

While Professor Zimring acknowledges the significance of the Northern states, he expresses serious doubt any momentous change is in the works. "No one can tell you we won't have 200 executions a year in this country," he says. "We've been hearing every year this decade that the bloodbath is just months away. It isn't happening, and the number of states actually doing the executing is dropping. That is no accident."

At least in California, officials don't agree. Steve White, chief of the criminal division in the attorney general's office, says there will be three or four executions over the next two years, a hiatus as a bunch of cases reach federal court, and then "about 30 a year."

Regulation of Death

Beyond the regional phenomenon, of course, is the continuing legal struggle that gave rise in the first place to the modern era of capital punishment. Twenty years ago, as Professor Bedau points out, "the Supreme Court really hadn't heard of the death penalty."

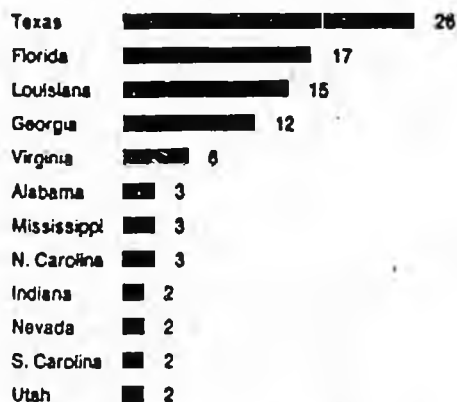
Back then, the civil rights crusade was in full stride, in part due to the litigation efforts of the NAACP Legal Defense Fund. The LDF's civil rights work led to its interest in capital punishment, and that involvement culminated in *Furman v. Georgia*, 408 U.S. 238 (1972), when the Supreme Court, 5-4, ruled the death penalty, as then administered in an "arbitrary and freakish" way, constituted "cruel and unusual punishment" in violation of the Eighth and 14th Amendments.

Most scholars viewed *Furman* as the executioner's death-knell, especially in light of a decade's momentum toward abolition. But such prophecies ignored the public and legislative frenzy that accompanied the court's decision. By 1976, 35 states had enacted new statutes that attempted to correct the constitutional flaws in pre-*Furman* statutes; and that year, the justices, 7-2, upheld death penalty laws as long as they provided "guided discretion" to judges and juries. *Gregg v. Georgia*, 428 U.S. 153.

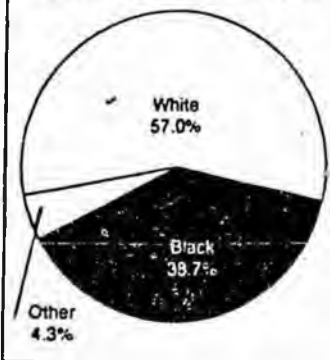
The big question, never fully answered in *Furman*, was thus resolved. For the next decade, particularly the first half of it, the Supreme Court fine-tuned capital statutes — and largely in

Executions by State

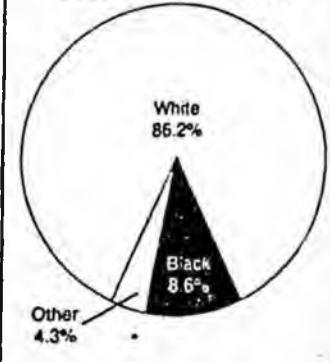
Since 1976



Race of Those Executed



Race of Their Victims



Matching the Races

Since 1976, 85 of 93 murder convictions that resulted in executions involved blacks and whites. How do defendants and victims match up?

White kills white	60%
Black kills white	30%
Black kills black	10%
White kills black	0%



From Chris Todd, *The Chrome Ledger*. Southern prisons, such as the one in Parchman, Miss. (above) have been the site of more than 75 percent of all U.S. executions since 1976.

a way that further reduced the penalty's scope. Mandatory death sentences were struck down. Non-homicidal crimes, such as rape, could not be capital. (Crimes against the state, such as treason, may be an exception.) Defendants were given special procedural protections on the ground that death was different.

Such strictures, however, seemed to mean that nobody got executed. One figure in the early 1980s showed three-quarters of the capital cases before the 5th U.S. Circuit Court of Appeals (based in the South) went the defendants' way.

In the last few years — whether because of increasingly permissive jurisprudence or better-prepared prosecutors and attorneys general — the tide has turned. And the Supreme Court itself has shown impatience at the seemingly interminable delays.

"Death was different," Professor Bedau says, "but it's not very different anymore."

Justices Against Themselves

Virtually every major capital case to come before the justices in the last decade has been won by the state. That is especially ironic, given that the court seems more divided now than at any point since *Gregg*. Gone for the most part are the 7-2 votes, with Justices William J. Brennan Jr. and Thurgood Marshall filing lonely dissents. Key de-

isions last spring — on race and on whether a non-triggerman can nonetheless be sentenced to death — both went 5-4 against the defendants.

Justices Harry A. Blackmun and John Paul Stevens are not abolitionists, but they are far closer on the capital spectrum to the Brennan-Marshall end than to that led by Chief Justice Rehnquist. Whoever takes the currently vacant seat on the court will likely determine death doctrine in close cases.

5th Circuit Judge Anthony M. Kennedy appears to be a capital moderate. One of the decisions last spring, *McCleskey v. Kemp*, indicates the court has come full circle. *Furman*, at its core, was a race case. *Gregg* said capital punishment had cleansed itself of such taint.

McCleskey showed the race issue persists. It isn't that of earlier decades — the *Furman* variety — in which discriminatory imposition of the death penalty against blacks was plain; in fact, of those executed since 1976, 57 percent have been white. It's more subtle, based on the race of the victim rather than that of the defendant. Of the murders resulting in all the executions of the last 11 years, 80 percent have involved white victims. And no white person who killed a black has been executed. In *McCleskey*, the court ruled such a statistical pattern of discrimination was constitutionally allowable. 107 S. Ct. 1756.

"The Supreme Court has neither the ability nor the will to face up consistently to what it has created," says the LDF's Mr. Burr.

The *McCleskey* theory, conceived by the LDF, represented the last global constitutional attack on capital punishment. So with its defeat went the viability of a 20-year strategy. The LDF, the vanguard of anti-death-penalty efforts, can no longer handle it all because there are few cases anymore that raise issues applicable to a large class of condemned inmates. With essentially individual appeals, the work falls to a decentralized and fragmented regiment of government-appointed counsel, public-interest groups and pro bono lawyers.

"It's not that we're cutting back," says the LDF's John Charles Boger, responding to what has become a popular perception. "But we obviously can't provide the comprehensive coverage we used to. Three of us here can't handle 2,000 cases."

State-Supported Defense

Some states, notably California and Florida, have taken up the shortfall — and now, in effect, fund fights against themselves. They guarantee a prisoner counsel for every round of appeals (at

Continued on following page

The Southern monopoly partially explains why the national debate has not been more acrimonious; that may change when and if the executioner moves north. 'California will be a turning point,' says one lawyer.

Continued from preceding page

a total cost in the millions of dollars). In Tallahassee, for example, the Office of the Capital Collateral Representative was established several years ago — not out of altruism, but because it has pressed for it and, more important, the Florida Supreme Court wouldn't tolerate getting emergency petitions for stays of execution from unrepresented inmates.

Whether because of OCR or because of some novel legal questions that have arisen, Florida's pace of putting inmates in "Old Sparky" has dropped to only one execution in 1987. "Nobody wants to see cases that are 15 years old," says Richard E. Doran, an assistant attorney general. "We do want to see cases speeded up."

They've tried. Last summer when the Louisiana electric chair was humming, Mr. Doran says the attorney general's office called its counterpart in Louisiana to ask why there had been so many executions. The answer was the pendency of *McCleskey* at the Supreme Court, which had temporarily spared a whole class of prisoners.

In San Francisco, the California Appellate Project, funded by the state Supreme Court, finds lawyers for capital cases. Established in 1984, the group pays attorneys \$80 an hour. The average appeal, says Executive Director Michael G. Millman, takes between 800 and 1,000 hours.

A former public defender, Mr. Millman applauds the state for the project. "There is a crisis in representation, which the American Bar Association and the bars of many states have recognized," he says. "California is to be commended for creating CAP."

Millions for Death

States providing lawyers for defendants throughout the appeals process obviously also continue to run up costs on the other side. Richard Moran, a

sociologist at Mount Holyoke College, has estimated it costs prosecutors between \$500,000 and \$1.8 million to win a death sentence.

In Texas, the counsel crisis for the condemned is acute. There is no state support for appellate counsel beyond the first round of appeals, and critics there say the day is approaching when an inmate will be executed because he had no lawyer.

Tanya Coke, LDF research director, calls Texas "the vision of disaster and chaos." Lone Star Attorney General Jim Mattox calls that "nonsense."

Whatever the status quo, it isn't likely to change soon. "There's lots of publicity about how few lawyers there are on the defense side in capital cases," Mr. Mattox notes. "But what about how few we've got handling cases for the prosecution? Our entire staff for appellate work is 3 1/2 lawyers."

"I am convinced," Mr. Mattox adds, "that the individuals we've put to death have had superior representation, at least on the appellate level. There is no rush to justice in Texas, just a crawl."

Nonetheless, the attorney general says he expects his state to pare its death row by the 1990s. "You could see 200 executions within a five-year period," he predicts, "though 100 is more likely."

And things could get interesting on Texas television, if the attorney general has his way. He wants cameras in the death chamber so citizens can see what the state is doing in their name and to maximize the punishment's deterrent impact.

"I've always thought that having executions in the dead of night in some secluded place is wrong," says Mr. Mattox, a strong supporter of capital punishment.

System on the Brink

Demand on the legal system go beyond lawyers. From the U.S. Supreme Court down to the state appeals courts, judges increasingly complain about their capital burdens. Late last month, Chief Justice Rehnquist criticized the "chaotic conditions that often develop within a day or two before an execution is scheduled."

"The practical result of this," he explained, "is that judges... are called upon to make important constitutional decisions, often without as much time as would be ideal for making them."

Judges of federal appeals courts in the South and the supreme courts of such states as Florida say death cases take up an oppressive amount of their time and are pushing the appellate system to the brink. The courts are experimenting with different streamlining procedures to cope.

So, it seems, no one is happy with the system of capital punishment. Not the condemned. Not the advocates of the penalty. And not the lawyers and judges who are charged with making the system run. Where does this mean death is headed?

If last year is any indication, there are mixed signals.

In June, Louisiana electrocuted four men in just over a week. On a single day in August, America had its first triple execution in a generation, as Florida, Alabama and Utah all participated.

But before the run of executions, the Kansas Legislature — despite overwhelming popular support and an aggressive, new law-and-order governor — voted down a bill reinstating the death penalty.

It is a strange time.

Two Eras Of Executions Compared

Since 1976

Year	Executions
1976-1979	3
1980	0
1981	1
1982	2
1983	5
1984	21
1985	18
1986	18
1987	25

Prior Decades

1970-1975	0
1960-1969	191
1950-1959	717
1940-1949	1,284
1930-1939	1,667

Figures unavailable before 1930; military executions not included.

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November 1, 1988

DEATH ROW. U.S.A.

TOTAL NUMBER OF DEATH ROW INMATES KNOWN TO LDF: 2,151 ^{*/}

Race: Defendant:

Black	862 (40.07%)
White	1,116 (51.88%)
Hispanic	123 (5.72%)
Native American	32 (1.49%)
Asian	13 (.61%)
Unknown at this issue	5 (.23%)

Sex: Male	2,130 (99.02%)
Female	21 (.98%)

DISPOSITIONS SINCE JANUARY 1, 1973:

Executions: 101 (See page 2)
Suicides: 27
Commutations: 49 (including those by the Governor of Texas
resulting from favorable court decisions)
Died of natural causes, or killed while under death sentence: 40
Sentences vacated under unconstitutional statutes: 558 (rev. est)
Convictions/Sentences reversed on other grounds: 890

JURISDICTIONS WITH CAPITAL PUNISHMENT STATUTES: 39

(Underlined states have statutes but no sentences imposed)

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wyoming, U.S. Government, U.S. Military.

JURISDICTIONS WITHOUT CAPITAL PUNISHMENT STATUTES: 14

Alaska, District of Columbia, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New York, North Dakota, Rhode Island, West Virginia, Wisconsin.

^{*/} Seventeen inmates in this issue appear with a plus sign (+) next to their names. Seven of them (4B, 2W, 1N) are under death sentence in two states, two (1W, 1B) are under death sentence in three states, and the others (2B, 3W, 1N) are serving term sentences previously imposed in other states. All multiple death-sentenced inmates are listed in their respective several state totals, but each is counted as only one inmate in the national total.

This issue of Death Row, U.S.A. includes bracketed names for 144 capital inmates. The brackets indicate that either a new sentence proceeding is pending following a court order, or that a court-ordered reversal of conviction or sentence is not yet final due to an appeal filed by the State.

Thirty two inmates (30 males and two females) appear with a (#) sign next to their names. These inmates were under the age of eighteen at the time of offense.

Racial Combinations

White defendant/White vic . . .	56	(55.45%)
Minority defdnt/White vic . . .	31	(30.69%)
Minority defdnt/Mnrty vic . . .	15	(14.85%)
White defendant/Mnrty vic . . .	0	(0.00%)

Executions by State

Alabama	3	Nevada	2*
Florida	18	North Carolina	3
Georgia	13	South Carolina	2
Indiana	2*	Texas	27
Louisiana	18	Utah	3**
Mississippi	3	Virginia	7

* Both inmates voluntarily gave up appeals

** Two of three executions were voluntary

<u>Date</u>	<u>Defendant</u>	<u>State</u>	<u>Race</u>	<u>Race of Victim(s)</u>
1/17/77	* Gary Gilmore	UT	W	W
5/25/79	John Spenkelink	FL	W	W
10/22/79	* Jesse Bishop	NV	W	W
3/9/81	* Steven Judy	IN	W	W
8/10/82	* Frank Coppola	VA	W	W
12/7/82	Charlie Brooks	TX	B	W
4/22/83	John Evans	AL	W	W
9/2/83	Jimmy Lee Gray	MS	W	W
11/30/83	Robert Sullivan	FL	W	W
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1/26/84	Anthony Antone	FL	W	W
2/29/84	John Taylor	LA	B	W
3/14/84	James Autry	TX	W	W
3/16/84	James Hutchins	NC	W	W
3/31/84	Ronald O'Bryan	TX	W	W
4/5/84	Arthur Goode	FL	W	W
4/5/84	Elmo Sonnier	LA	W	W
5/10/84	James Adams	FL	B	W
6/20/84	Carl Shriner	FL	W	W
7/12/84	o Ivon Stanley	GA	B	W
7/13/84	David Washington	FL	B	W/B
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12/28/84	Robert Lee Willie	LA	W	W
1/4/85	David Martin	LA	W	W
1/9/85	@ Roosevelt Green	GA	B	W
1/11/85	Joseph Carl Shaw	SC	W	W
1/16/85	Doyle Skillern	TX	W	W
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2/20/85	Van Roosevelt Solomon	GA	B	W
3/6/85	Johnny Paul Witt	FL	W	W
3/13/85	* Stephen Peter Morin	TX	W	W
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IN THE U.S. SUPREME COURT

Dugger v. Aubrey Adams (No. 87-121) (review granted March 7 at 108 S. Ct. 1106) (argued November 1, 1988). The Court will decide the applicability of Caldwell v. Mississippi, 472 U.S. 320 (1985), which prohibits a prosecutor from suggesting that the responsibility for sentence rests with the appellate court rather than the jury, to Florida, where the final decision as to punishment rests with the trial judge.

Zant v. Billy Moore (No. 87-1104) (review granted at 108 S. Ct. 1467, April 18) (to be argued November 29). The Court granted Georgia's petition to consider abuse of the writ and procedural default questions in successive habeas corpus petitions.

Tompkins v. Texas (No. 87-6405) (review granted at 56 U.S.L.W. 3789, May 13) (to be argued December 6). (1) Under what circumstances is an instruction on lesser included offenses required in a capital case? (2) Under Batson v. Kentucky, 476 U.S. 79 (1986), what standards should determine whether a prosecutor's explanation for the striking of black jurors is satisfactorily race-neutral, or merely dubious and pretextual?

Penry v. Lynaugh (No. 87-6177) (review granted June 30 at 56 U.S.L.W. 4894) (to be argued January 11, 1989). The Court will decide whether, and under what circumstances, Texas courts must provide a sentencing instruction to juries which allows them to give independent weight to mitigating evidence about the defendant or the crime. A second question raises the constitutionality of executing the mentally retarded

Stanford v. Kentucky (No. 87-5765) (granted October 31 1988 at 57 U.S.L.W. 3259) and Wilkins v. Missouri (No. 87-6025) (56 U.S.L.W. 3894, June 30). Is the execution of a 16-year old and 16-year old is cruel and unusual punishment? (If High v. Zant is suspended; Stanford will be argued tandem with Wilkins).

South Carolina v. Gathers (No. 88-305) (granted October 11 at 57 U.S.L.W. 3259). Whether prosecutorial comment about the character of the victim violated Booth v. Maryland, whether Booth was wrongly decided.

Murray v. Giarratano (No. 88-411) (granted October 31 at 57 U.S.L.W. 3304). Does the right to meaningful access to the courts for death-sentenced inmates require that the State of Virginia provide attorneys and litigation costs for a habeas corpus appeal in the state courts?

Additions or corrections,
contact Tanya Coke

EXECUTIONS

Total Executions since 1976 reinstatement of capital punishment: 101

'76	'77	'78	'79	'80	'81	'82	'83	'84	'85	'86	'87	'88
0	1	0	2	0	1	2	5	21	18	18	25	8

Race of Those Executed		Race of Their Victims	
Black defendants . . .	39 (38.61%)	Black victims . . .	11 (10.89%)
White defendants . . .	56 (55.45%)	White victims . . .	87 (86.13%)
Hispanic defdnts . . .	6 (5.94%)	Hispanic vics . . .	3 (2.97%)
		Asian victims . . .	1 (.99%)

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4/5/84	Arthur Goode	FL	W	W
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6/25/85	o Morris Mason	VA	B	W

7/9/85		Henry Martinez Porter	TX	H	W
9/11/85	#*	Charles Rumbaugh	TX	W	W
10/16/85	*	William Vandiver	IN	W	W
12/6/85	*	Carroll Cole	NV	W	W
1/10/86	#o	James Terry Roach	SC	W	W
3/12/86		Charles William Bass	TX	W	W
3/21/86		Arthur Lee Jones	AL	B	B
4/15/86		Daniel Thomas	FL	B	W
4/16/86	*	Jeffrey Allen Barney	TX	W	W
4/22/86		David Funchess	FL	B	W
5/15/86	#	Jay Pinkerton	TX	W	W
5/20/86		Ronald Straight	FL	W	W
6/9/86		Rudy Esquivel	TX	H	W
6/18/86		Kenneth Brock	TX	W	W
6/24/86	o	Jerome Bowden	GA	B	W
7/31/86		Michael Smith	VA	B	W
8/20/86		Randy Woolls	TX	W	W
8/22/86		Larry Smith	TX	B	W
8/26/86		Wester Wicker	TX	W	W
9/19/86		John Rook	NC	W	W
12/04/86		Michael Wayne Evans	TX	B	H
12/18/86		Richard Andrade	TX	H	H
1/30/87	*	Ramon Hernandez	TX	H	H
3/4/87	*	Elisio Moreno	TX	H	W
5/15/87		Joseph Mulligan	GA	B	B
5/19/87		Richard Tucker	GA	B	W
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6/16/87		Jimmy Wingo	LA	W	W
6/24/87		Elliott Johnson	TX	B	W
7/6/87		Richard Whitley	VA	W	W
7/8/87		John R. Thompson	TX	W	W
7/8/87		Connie Ray Evans	MS	B	A
7/20/87		Willie Celestine	LA	B	W
7/24/87	@	Willie Watson	LA	B	W
7/30/87	o	John Brogdon	LA	W	W
8/24/87		Sterling Rault	LA	W	W
8/28/87		Beauford White	FL	B	B
8/28/87		Wayne Ritter	AL	W	W
8/28/87		Dale Pierre Selby	UT	B	W
9/01/87		Billy Mitchell	GA	B	W
9/10/87		Joseph Starvaggi	TX	W	W
9/21/87		Timothy McCorquodale	GA	W	W
1/07/88	@	Robert Streetman	TX	W	W
3/15/88		Willie Darden	FL	B	W
3/15/88		Wayne Felde	LA	W	W
4/13/88		Leslie Lowenfield	LA	B	B
4/14/88		Earl Clanton	VA	B	B
6/10/88	*	Arthur Bishop	UT	W	W
6/14/88		Edward Byrne	LA	W	W
7/28/88		James Messer	GA	W	W

* Voluntary

Juvenile at time of crime

o Mentally retarded (IQ below 70)

@ Executed after tie votes on stays of execution
at the U.S. Supreme Court

ALABAMA (52B; 40W; 1A)

TOTAL: 93

Electrocution

1. THIGPEN, DONALD (B)
2. RICHARDSON, HERBERT (B)
3. WRIGHT, FREDDIE (B)
4. DANIELS, JOHN R (W)
5. HILL, WALTER (B)
6. # DAVIS, TIMOTHY (W)
7. DUNKINS, HORACE (B)
8. [DANIEL, GEORGE (B)]
9. * THOMAS, PATRICIA (B)
10. COULTER, DAVID (W)
11. CADE, CLYDE (B)
12. NELSON, DAVID (W)
13. KENNEDY, VICTOR (B)
14. HUBBARD, J.B. (W)
15. JULIUS, ARTHUR (B)
16. WATKINS, DARRYL (B)
17. WEEKS, VARNELL (B)
18. GRAYSON, DARRELL (B)
19. THOMAS, WALLACE (B)
20. LINDSEY, MICHAEL (B)
21. MAGWOOD, KENNETH (B)
22. LUKE, JOHNNY (B)
23. [GILES, ARTHUR (B)]
24. JONES, AARON (B)
25. + HEATH, LARRY (W)
26. WALDROP, BILLY (W)
27. [WILLIAMS, ROY (W)]
28. HARRELL, ED (B)
29. * NEELLEY, JUDITH (W)
30. BELL, RANDY (B)
31. CLISBY, WILLIE (B)
32. [HARRIS, JOHNNY (B)]
33. BRADLEY, DANNY JOE (W)
34. SINGLETON, CORNELIUS (B)
35. BALDWIN, BRIAN (B)
36. HORSLEY, EDWARD (B)
37. MORRISON, JESSE (B)
38. PEOPLES, JOHN (W)
39. GODBOLT, JERRY (B)
40. HAYS, HENRY (W)
41. JEFFERSON, ALBERT (B)
42. FORD, PERNELL (B)
43. NICKS, HARRY (B)
44. FREEMAN, DARRYL (B)
45. DUREN, DAVID (W)
46. TARVER, ROBERT LEE (B)
47. DAVIS, JIMMY WAYNE (W)
48. FLOYD, TOMMY (B)
49. HENDERSON, JOE (B)
50. MUSGROVE, PHILLIP (W)
51. THOMPSON, MICHAEL EUGENE
52. HOOKS, JOSEPH (W)
53. THOMPSON, STEVEN ALLEN (W)
54. HENDERSON, CURTIS LEE (B)
55. HAMILTON, TOMMY (W)
56. [RUTLEDGE, MITCHELL (B)]
57. JOHNSON, ANTHONY KEITH (W)
58. MADISON, VERNON (B)
59. MURRY, PAUL (B)
60. FORTENBERRY, TOMMY JERRY
61. MARTIN, JAMES (W)
62. THOMAS, KENNETH GLENN (W)
63. # LYNN, FREDERICK (B)
64. BUI, QUAING (A)
65. FRAZIER, RICHARD (W)
66. MCGAHEE, EARL (B)
67. MCWILLIAMS, JAMES (B)
68. COCHRAN, JAMES (B)
69. HINTON, ANTHONY RAY (B)
70. MAGWOOD, BILLY JOE (B)
71. WILSON, SHEPP (B)
72. TABB, WILLIE (B)
73. BROWNLEE, VIRGIL LEE (B)
74. WHISENHANT, THOMAS (W)
75. BROWN, GARY LEON (W)
76. HALLFORD, PHILLIP (W)
77. POWELL, TIMOTHY (B)
78. SIEBERT, DANIEL LEE (W)
79. BOYD, WILLIAM (W)
80. BANKHEAD, GRADY (W)
81. ARTHUR, THOMAS (W)
82. HOLLADAY, GLENN (W)
83. TARVER, BOBBY (B)
84. CALLAHAN, JAMES (W)
85. HAMM, DOYLE LEE (W)
86. SMITH, JAMES WYMAN (W)
87. DUNCAN, JOSEPH CECIL (W)
88. BROWN, RAYMOND (W)
89. MUSGROVE, DONNIS (W)
90. ROGERS, DAVID (W)
91. HENDERSON, JERRY (W)
92. MCMILLAN, WALTER (B)
93. WESLEY, RONALD (B)

ARIZONA (8B; 61W; 14H; 1N)

TOTAL: 84

Gas Chamber

1. CLARK, JAMES DEAN (W)
2. [ARNETT, JAMES (W)]
3. MATA, LUIS (H)
4. BISHOP, RONALD (W)
5. [EVANS, LARRY (W)]
6. GREENAWALT, RANDY (W)
7. CEJA, JOSE (H)
8. VICKERS, ROBERT (W)
9. ORTIZ, IGNACIO (H)
10. SMITH, JOE (W)
11. RICHMOND, WILLIE LEE (B)
12. [JEFFERS, JIMMY (W)]
13. BLAZAK, MITCHELL (W)
14. [WORATZECK, WILLIAM (W)]
15. ADAMSON, JOHN (W)
16. GERLAUGH, DARRICK (N)
17. GRETZLER, DOUGLAS (W)
18. ZARAGOSA, RUBEN (H)
19. MCCALL, EDWARD (W)
20. LAMBRIGHT, JOE (W)
21. SMITH, ROBERT (W)
22. SUMMERLIN, WARREN (W)
23. FISCHER, JAMES (W)
24. LIBBERTON, LAWRENCE (W)
25. CARRIGER, PARIS (W)
26. JAMES, STEVEN (W)
27. HARDING, DONALD (W)
28. POLAND, PATRICK (W)
29. POLAND, MICHAEL (W)
30. CLABOURNE, SCOTT (B)
31. + BRACEY, WILLIAM (B)
32. + HOOPER, MURRAY (B)
33. ROSCOE, KEVIN (W)
34. CHANEY, ANTHONY (W)
35. MARTINEZ-VILLAREAL, RAMON (F)
36. NASH, VIVA LEROY (W)

37. GILLIES, JESSE (W)
38. VILLAFUERTE, JOSE (H)
39. SMITH, ROGER LYNN (W)
40. SMITH, BERNARD (B)
41. CHARO, ROBERT PHILLIP (W)
42. + WILLIAMS, RONALD TURNEY (W)
43. MAURO, WILLIAM CARL (W)
44. CORRELL, MICHAEL (W)
45. CASTANEDA, WILLIAM (H)
46. LAGRAN, KARL (W)
47. LAGRAN, WALTER (W)
48. MCMURTREY, JASPER (W)
49. MOORMANN, ROBERT HENRY (W)
50. SHACKART, RONALD (W)
51. BEATY, DONALD (W)
52. SCHAD, EDWARD (W)
53. CONNOR, RONNIE (W)
54. ROCKWELL, RONALD (W)
55. FULMINANTE, ORESTES (H)
56. AMAYA-RUIZ, JOSE (H)
57. PRINCE, LARRY (W)
58. DAVIS, MICHAEL (W)
59. HENSLEY, ROBERT (W)
60. WALTON, JEFFREY (W)

61. FIERRO, JOSE (H)
62. LOPEZ, SAMUEL (H)
63. ATWOOD, FRANK (W)
64. ROMANOSKY, JOHN (W)
65. SERNA, JOHN (H)
66. WALLACE, JAMES (W)
67. STANLEY, MILO (W)
68. TITON, RAYMOND (W)
69. TITON, RICKY (W)
70. MANNING, JAMES (W)
71. HINCHEY, JOHN (W)
72. EPPERSON, GEORGE (B)
73. ROBINSON, FRED (B)
74. MATHERS, JIMMY LEE (W)
75. WASHINGTON, THEODORE (B)
76. # JIMENEZ, JESUS (H)
77. SALAZAR, ALPHONSO (H)
78. HENRY, GRAHAM (W)
79. COMER, ROBERT (W)
80. ROSSI, RICHARD (W)
81. WEST, THOMAS (W)
82. WHITE, MICHAEL (W)
83. COOK, DANIEL WAYNE (W)
84. BREWER, JOHN (W)

ARKANSAS (9B; 20W; 1H; 1N)

TOTAL: 31 Lethal Injection or
Choice of Electrocution for Those
Sentenced Before 3/4/83

1. HULSEY, DEWAYNE (W)
2. + CLARK, ANTONIO (B)
3. SWINDLER, JOHN (W)
4. MILLER, EDDIE LEE (B)
5. HILL, DARRELL (W)
6. FORD, CLAY ANTHONY (B)
7. PERRY, EUGENE (W)
8. SIMMONS, THOMAS (W)
9. HOLMES, JAMES W (W)
10. [CLINES, HOYT (W)]
11. [RICHLEY, DARYL (W)]
12. [ORNDORFF, MICHAEL (W)]
13. HENDERSON, WILBUR (W)
14. HAYES, T.J. (B)
15. PRUETT, MARION (W)
16. RECTOR, RICKY (B)

17. FAIRCHILD, BARRY (B)
18. HILL, STEVEN DOUGLAS (W)
19. FRETWELL, BOBBY RAY (W)
20. SNELL, RICHARD WAYNE (W)
21. [PICKENS, CHARLES (B)]
22. PARKER, WILLIAM FRANK (W)
23. GARDNER, MARK (W)
24. + REMETA, DANIEL (N)
25. STARR, DAVID LEE (B)
26. O'ROURKE, MICHAEL (W)
27. [WILSON, RONALD (B)]
28. WHITMORE, JONAS HOTAN (W)
29. RUIZ, PAUL (H)
30. VAN DENTON, EARL (W)
31. SIMMONS, RONALD (W)

CALIFORNIA (91B; 100W; 30H; 5N; 5A; 2U)

TOTAL: 233 Gas Chamber

1. BELL, RONNIE (B)
2. HARRIS, ROBERT (W)
3. JACKSON, EARL (B)
4. WILLIAMS, KEITH (W)
5. FIELDS, STEVIE (B)
6. GHENT, DAVID (A)
7. [ANDERSON, JAMES (B)]
8. AINSWORTH, STEVEN (W)
9. [PHILLIPS, RICHARD (W)]
10. RUIZ, ALEJANDRO (H)
11. WALKER, MARVIN (B)
12. [BOYD, JUAN (B)]
13. GRIFFIN, DONALD (W)
14. GARRISON, RICHARD (W)
15. RICH, DARRELL (W)
16. [BUNYARD, JERRY (W)]
17. [WARREN, ROBERT (B)]
18. [WARREN, WOODROW (B)]
19. HAMILTON, BERNARD LEE (B)
20. BITTAKER, LAWRENCE (W)
21. HEISHMAN, HARVEY (W)
22. KIMBLE, ERIC (B)

23. WILLIAMS, STANLEY (B)
24. MYERS, VENSON (B)
25. MCLAIN, ROBERT (W)
26. JOHNSON, JOE (B)
27. [RODRIGUEZ, LUIS (H)]
28. BEAN, ANTHONY (B)
29. GONZALEZ, JESSE (H)
30. GATES, OSCAR (B)
31. COLEMAN, CALVIN (B)
32. [BURGNER, MICHAEL (W)]
33. HAMILTON, BILLY RAY (W)
34. [DAVENPORT, JOHN (W)]
35. COLEMAN, RUSSELL (B)
36. HENDRICKS, EDGAR (B)
37. GUZMAN, GARY (W)
38. CARO, FERNANDO (H)
39. [BLOYD, DALE (W)]
40. HAYES, BLUFFORD (B)
41. [LUCERO, PHILIP (H)]
42. [CRANDELL, KENNETH (W)]
43. HOVEY, RICHARD (W)
44. AVENA, CARLOS (H)

45. BROWN, ALBERT (B)
46. JOHNSON, JAMES (B)
47. SANDERS, RONALD (W)
48. PAYTON, WILLIAM (W)
49. BONIN, WILLIAM (W)
50. SILVA, BENJAMIN (A)
51. [MILNER, LYNN (B)]
52. LUCKY, DARNELL (B)
53. BOYDE, RICHARD (B)
54. WILLIAMS, KENNETH (B)
55. WADE, MELVIN (B)
56. HOWARD, GARY (W)
57. GRANT, RICHARD (W)
58. BROWN, JOHN (W)
59. BABBITT, MANUEL (B)
60. JONES, TROY (B)
61. WILLIS, MOSE (B)
62. KARIS, JAMES (H)
63. MIRANDA, ADAM (H)
64. PENSINGER, BRETT (W)
65. BELMONTES, FERNANDO (H)
66. WRIGHT, BRONTE (B)
67. POGGI, JOSEPH (H)
68. ALLEN, CLARENCE R. (N)
69. SANDERS, RICARDO (B)
70. CHAMPION, STEVE (B)
71. ROSS, CRAIG (B)
72. HAMILTON, MICHAEL (W)
73. FARMER, LEE (W)
74. KEENAN, MAURICE (W)
75. GERSON-FULLER, RONALD (W)
76. SIXTO, FELIPE (H)
77. NEELY, CHARLES (W)
78. CLARK, DOUGLAS (W)
79. MURTISHAW, DAVID (W)
80. MELTON, JAMES (B)
81. WILLIAMS, MICHAEL (W)
82. SIRIPONGS, JATURUN (A)
83. HITCHINGS, KEITH (W)
84. ROBBINS, MALCOLM (W)
85. BONILLAS, LOUIS (H)
86. EDELBACHER, PETER (W)
87. ROBERTS, LARRY (B)
88. WEBSTER, LARRY (N)
89. MALONE, KELVIN (B)
90. MORALES, MICHAEL (H)
91. + GALLEGO, GERALD (W)
92. MARSHALL, GEORGE (B)
93. PROCTOR, WILLIAM (W)
94. GONZALEZ, MARTIN (H)
95. ADCOX, KEITH (W)
96. HERNANDEZ, FRANCIS (H)
97. HOWARD, ALBERT C (B)
98. ODLE, JAMES (W)
99. DYER, ALFRED (B)
100. MICKEY, DOUGLAS (W)
101. MAYFIELD, DEMETRIE (B)
102. CARRERA, CONSTANTINO (H)
103. VISCOTTI, JOHN (W)
104. MILLER, DONALD (B)
105. STANKEWITZ, DOUGLAS (N)
106. [MORRIS, OSCAR (B)]
107. THOMPSON, ROBERT (W)
108. MASON, DAVID (W)
109. HARDY, JAMES (W)
110. REILLY, MARK (W)
111. ROBERTSON, ANDREW (B)
112. STANLEY, GERALD (W)
113. BEARDSLEE, DONALD (W)
114. DANIELS, JACKSON (B)
115. JENNINGS, MICHAEL (W)
116. HUNTER, MICHAEL (W)
117. MOORE, CHARLES (B)
118. JACKSON, MICHAEL (B)
119. PINHOLSTER, SCOTT (W)
120. ANDREWS, JESSE J. (B)
121. DIAZ, ROBERT R. (H)
122. HARRIS, VON M. (B)
123. MITCHAM, STEPHAN (B)
124. [EASLEY, ELBERT (W)]
125. BLOOM, ROBERT S (W)
126. KAURISH, JAY (W)
127. KIRKPATRICK, WILLIAM (B)
128. THOMPSON, THOMAS MARTIN (W)
129. MARQUEZ, GONZALO (H)
130. ALLISON, WATSON (B)
131. MCDOWELL, CHARLES (W)
132. LEWIS, ROBERT (B)
133. CARPENTER, DAVID (W)
134. BOYER, RICHARD DELMER (W)
135. LANG, KENNETH (W)
136. TURNER, THADDEUS LOUIS (B)
137. CLARK, JOHN WILLIAM (W)
138. JONES, EARL (B)
139. WEAVER, WARD FRANCIS (W)
140. DOUGLAS, FRED BERRE (W)
141. GORDON, PATRICK (W)
142. COOPER, KEVIN (B)
143. WHITT, CHARLES (W)
144. BURTON, ANDRE (B)
145. MINCEY, BRYAN (W)
146. HASKETT, RANDY (B)
147. HOLLOWAY, DUAYNE (B)
148. STANSBURY, ROBERT (W)
149. RAMIREZ, ANTHONY (H)
150. CUMMINGS, RAYNARD (B)
151. GAY, KENNETH (B)
152. HORTON, JAMES (B)
153. COX, MICHAEL (W)
154. SHELDON, JEFFREY (W)
155. DESANTIS, STEPHEN (W)
156. MATTSON, MICHAEL (B)
157. HAWTHORNE, ANDERSON (B)
158. ANDERSON, STEPHEN (W)
159. MICKLE, DENNY (B)
160. COX, TIEQUON A. (B)
161. DUNCAN, HENRY EARL (B)
162. MCPETERS, RONALD (B)
163. MARSHALL, RYAN (W)
164. TAYLOR, FREDDIE LEE (B)
165. KELLY, HORACE (B)
166. PRICE, CURTIS (W)
167. WILLIAMS, BARRY (B)
168. SULLY, ANTHONY JACK (W)
169. DEERE, RONALD (N)
170. ASHMUS, TROY (W)
171. SILVA, MAURICIO (H)
172. HAYES, ROYAL (W)
173. ALCALA, RODNEY (H)
174. FIERRO, DAVID (H)
175. ESPINOZA, ANTONIO (H)
176. THOMAS, RALPH (B)
177. JENNINGS, WILBUR (B)
178. DANIELSON, ROBERT (W)
179. MONTIEL, RICHARD (H)
180. EDWARDS, THOMAS F. (W)
181. BREAUX, DAVID (W)
182. FRANK, THEODORE (W)
183. MEDINA, TEOFILO (H)
184. DAY, CHRISTOPHER (B)

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| 185. | FRIERSON, LAVELL (B) | 210. | HILL, MICHAEL (B) |
| 186. | BENSON, RICHARD ALLAN (W) | 211. | NOGUERA, WILLIAM (H) |
| 187. | NICOLAUS, ROBERT HENRY (W) | 212. | JOHNSON, LAVERNE (B) |
| 188. | BANIGALUPO, MIGUEL (H) | 213. | OSBAND, LANCE (B) |
| 189. | WHARTON, GEORGE (B) | 214. | RAMOS, MARCELINO (H) |
| 190. | SANDOVAL, ALFRED (H) | 215. | ROGERS, DAVID (W) |
| 191. | WILLIAMS, DARREN C. (B) | 216. | MAYFIELD, DENNIS (B) |
| 192. | LIVADITIS, STEVEN (W) | 217. | RALEY, DAVID (W) |
| 193. | MEMRO, HAROLD (W) | 218. | BRADFORD, BILL (W) |
| 194. | JOHNSON, WILLIE D. (B) | 219. | FAUBER, CURTIS (W) |
| 195. | GARCEAU, ROBERT (W) | 220. | REST, THEODORE (W) |
| 196. | PRIDE, TIMOTHY (B) | 221. | CUDJO, ARMENIA (B) |
| 197. | WASH, JEFFERY DAVID (W) | 222. | HART, JOSEPH (W) |
| 198. | MORRIS, BRUCE (W) | 223. | SAMAYOA, RICHARD (A) |
| 199. | THOMAS, DONRELL (B) | 224. | TURNER, MELVIN (B) |
| 200. | SIMS, MITCHELL (W) | 225. | ROWLAND, GUY KEVIN (U) |
| 201. | FUENTES, JOSE (H) | 226. | HINES, GARY (U) |
| 202. | KIPP, MARTIN (N) | 227. | CAIN, TRACY (B) |
| 203. | TUILAEP, PAUL (A) | 228. | WILSON, ROBERT (W) |
| 204. | FREEMAN, FRED (W) | 229. | WEBB, DENNIS (W) |
| 205. | LUCAS, LARRY (W) | 230. | DENNIS, WILLIAM (W) |
| 206. | CLAIR, KENNETH (B) | 231. | HILL, SHAWN (B) |
| 207. | FUDGE, KEITH (B) | 232. | HALEY, KEVIN (B) |
| 208. | CLARK, RICHARD (W) | 233. | JENKINS, DANIEL (B) |
| 209. | WADER, MICHAEL (W) | | |

COLORADO (2W; 1H) TOTAL: 3 Lethal Injection

1. RODRIGUEZ, FRANK (H)
2. DAVIS, GARY (W)
3. O'NEIL, JOHN (W)

CONNECTICUT (1W) TOTAL: 1 Electrocution

1. ROSS, MICHAEL (W)

DELAWARE (5B; 2W) TOTAL: 7 Lethal Injection or Choice of Hanging for Those Sentenced Before 6/13/86

1. FLAMER, WILLIAM (B)
2. BAILEY, BILLY (W)
3. DEPUTY, ANDRE (B)
4. RILEY, JAMES (B)
5. DESHIELDS, KENNETH (B)
6. SANDERS, REGINALD (B)
7. DAWSON, DAVID (W)

FLORIDA (100B; 168W; 17H; 2N; 1A; 1U) TOTAL: 289 Electrocution

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|-----|---------------------------------|-----|------------------------------|
| 1. | ALVORD, GARY (W) | 22. | HALL, FREDDIE LEE (B) |
| 2. | [COOPER, VERNON (W)] | 23. | [MORGAN, FLOYD (W)] |
| 3. | [JACKSON, RONALD (B)] | 24. | [RUFFIN, MACK (B)] |
| 4. | FORD, ALVIN (B) | 25. | STEINHORST, WALTER (W) |
| 5. | ALDRICH, LEON (W) | 26. | [THOMPSON, WILLIAM (W)] |
| 6. | MEEKS, DOUGLAS (B) | 27. | SMITH, JIMMY LEE (W) |
| 7. | MUHAMMAD, ASKARI (B) | 28. | [BOOKER, STEPHEN (B)] |
| 8. | [HARGRAVE, LENSON (W)] | 29. | MARTIN, NOILLIE (W) |
| 9. | JACKSON, CARL (B) | 30. | [CHRISTOPHER, WILLIAM (W)] |
| 10. | [ARMSTRONG, SAMPSON (B)] | 31. | WHITE, WILLIAM (W) |
| 11. | [STONE, RAYMOND (W)] | 32. | JOHNSON, MARVIN (W) |
| 12. | [FOSTER, CHARLES KENNETH (W)] | 33. | [ADAMS, AUBREY (W)] |
| 13. | [JACOBS, ELIGAAH (N)] | 34. | [JONES, LESLIE (B)] |
| 14. | TAFERO, JESSE (W) | 35. | [DELAP, DAVID (W)] |
| 15. | [ZEIGLER, WILLIAM (W)] | 36. | BREDLOVE, MCARTHUR (B) |
| 16. | [SIRECI, HENRY (W)] | 37. | HEINEY, ROBERT (W) |
| 17. | [ELLEDGE, WILLIAM (W)] | 38. | [RILEY, WARDELL (B)] |
| 18. | CLARK, RAYMOND (W) | 39. | GRIFFIN, KENNETH (B) |
| 19. | [DOWNS, ERNEST (W)] | 40. | [TRAWICK, GARY (B)] |
| 20. | [BUFORD, ROBERT (B)] | 41. | STEWART, ROY (W) |
| 21. | DEMPS, BENNIE (B) | 42. | SIMS, TERRY (W) |

43. [MIKENAS, MARK (W)]
44. BUNDY, THEODORE (W)
45. STEVENS, RUFUS (W)
46. SMITH, FRANK (B)
47. COPELAND, JOHNNY (B)
48. SCOTT, PAUL (W)
49. JOHNSON, LARRY JOE (W)
50. BASSETT, THEODORE (W)
51. LUSK, BOBBY (W)
52. + JUSTUS, BUDDY (W)
53. MILLS, GREGORY (B)
54. BLENDER, BERNARD (W)
55. [COMBS, ROBERT (W)]
56. [WATERHOUSE, ROBERT (W)]
57. [MIDDLETON, WILLIAM (W)]
58. JOHNSON, TERRELL (W)
59. QUINCE, KENNETH (B)
60. AGAN, JAMES (W)
61. ROUTLY, DANIEL (W)
62. MASON, OSCAR (B)
63. DAUGHERTY, JEFFREY (W)
64. [MICHAEL, JOHN (W)]
65. LIGHTBOURNE, IAN (B)
66. BOTTOSON, LINROY (B)
67. MAXWELL, CHESTER (B)
68. O'CALLAGHAN, JOHN (W)
69. SPAZIANO, JOSEPH (W)
70. PORTER, RALEIGH (W)
71. THOMAS, EDWARD (W)
72. HARRIS, THEODORE (B)
73. JONES, RONNIE LEE (B)
74. JONES, LEO (B)
75. PRESTON, ROBERT A. (W)
76. PARKER, NORMAN (B)
77. WILLIAMS, FREDDIE LEE (B)
78. KENNEDY, EDWARD DEAN (B)
79. CARD, JAMES (W)
80. HERRING, TED (B)
81. [PATTEN, ROBERT (W)]
82. SQUIRES, WILLIAM (W)
83. POPE, THOMAS DEWEY (W)
84. HARICH, ROY (W)
85. CLARK, LARRY (B)
86. WHITE, JERRY (B)
87. [CRAIG, ROBERT (W)]
88. DOYLE, DANNY (W)
89. BURR, CHARLIE (B)
90. [BLANCO, OMAR (H)]
91. LARA, MARIO (H)
92. JAMES, DAVIDSON (B)
93. BYRD, MILFORD (W)
94. GRIFFIN, FRANK (B)
95. GORHAM, DAVID (B)
96. BROWN, LARRY (B)
97. BUSH, JOHN EARL (B)
98. HENDERSON, THOMAS (W)
99. CAVE, ALFONSO (B)
100. PARKER, J.B. (B)
101. [MANN, LARRY (W)]
102. MILLS, JOHN (B)
103. HOFFMAN, BARRY (W)
104. GROOVER, TOMMY (W)
105. HARDWICK, KENNETH (W)
106. DAVIS, ALLEN (W)
107. FRANCIS, BOBBY (B)
108. MEDINA, PEDRO (B)
109. DUEST, LLOYD (W)
110. FERGUSON, JOHN (B)
111. PARKER, ROBERT LACEY (W)
112. STANO, GERALD (W)
113. ROSE, MILO A. (W)
114. EUTZY, WILLIAM (W)
115. ROSE, JAMES (W)
116. HOOPER, HAROLD (W)
117. WRIGHT, JOEL (W)
118. WOODS, RONALD (B)
119. GARCIA, ENRIQUE (H)
120. DOLINSKY, RAYMOND (W)
121. WAY, FRED (W)
122. PHILLIPS, HARRY (B)
123. * JACKSON, ANDREA H. (B)
124. PEEDE, ROBERT (W)
125. COOPER, RICHARD (W)
126. GORE, DAVID (W)
127. LAMBRIX, CARY (W)
128. SUAREZ, ERNESTO (H)
129. KELLEY, WILLIAM (W)
130. BERTOLOTTI, ANTHONY (B)
131. OATS, SONNY BOY (B)
132. GLOCK, ROBERT D. (W)
133. PUIATTI, CARL (W)
134. JOHNSTON, DAVID E. (W)
135. DEATON, JASON P. (W)
136. MUEHLEMAN, JEFFREY A. (W)
137. HUFF, JAMES (W)
138. MAREK, JOHN R. (W)
139. + DUFOR, DONALD (W)
140. PROVENZANO, THOMAS (W)
141. KIGHT, CHARLES (W)
142. ATKINS, PHILLIP (W)
143. MELENDEZ, JUAN (H)
144. HAMBLIN, JAMES W. (W)
145. TORRES-ARBOLEDO, OSCAR (B)
146. KOKAL, GREGORY (W)
147. ROGERS, JERRY LAYNE (W)
148. SCOTT, ABRON (B)
149. JACKSON, NATHANIEL (B)
150. TEFFETELLER, ROBERT (W)
151. RAMIREZ, JOSEPH (H)
152. # MORGAN, JAMES (W)
153. NIXON, JOE ELTON (B)
154. RHODES, RICHARD (W)
155. TOMPKINS, WAYNE (W)
156. COCHRANE, GUY (B)
157. COOK, DAVID (B)
158. DOUGLAS, HOWARD (W)
159. BATES, KAYLE (B)
160. TURNER, WILLIAM (B)
161. KING, AMOS LEE (B)
162. SWAFFORD, ROY (W)
163. * BUENOANO, JUDI (W)
164. JACKSON, CLARENCE (B)
165. GROSSMAN, MARTIN (W)
166. KOON, RAYMOND (W)
167. ROBERTS, RICKEY (B)
168. OSBORN, JAMES (W)
169. DIAZ, ANGEL (H)
170. CORRELL, JERRY (W)
171. [TILLMAN, GARY (B)]
172. OWEN, DUANE (W)
173. ENGLE, GREGORY (W)
174. HILL, CLARENCE (B)
175. HARDWICK, JOHN GARY (W)
176. JENNINGS, BRYAN (W)
177. SMITH, FRANK L. (B)
178. [SCULL, JESUS (H)]
179. WILLIAMSON, JOHNNY (W)
180. BRYAN, ANTHONY (W)
181. JACKSON, DOUGLAS (B)
182. REMETA, DANIEL (N)

183. [ROBINSON, JOHNNY L. (B)]
 184. HARVEY, HAROLD (W)
 185. FUENTE, HECTOR (W)
 186. [LONG, ROBERT (W)]
 187. JACKSON, ETHERIA (B)
 188. THOMPSON, RAYMOND (W)
 189. WALTON, JASON DIRK (W)
 190. HILDWIN, PAUL (W)
 191. # LECROY, CLEO (W)
 192. STEWART, KENNETH (W)
 193. BROWN, WALTER (B)
 194. ROUNDTREE, ROBERT (B)
 195. [PRIDGEN, CHARLES (W)]
 196. KYSTER, WALTER (W)
 197. MITCHELL, WILLIE (B)
 198. EDWARDS, JOHN (B)
 199. HOLTON, RUDOLPH (B)
 200. RUTHERFORD, ARTHUR (W)
 201. SPENCER, LEONARD (B)
 202. AMOS, VERNON (B)
 203. REED, GROVER (W)
 204. * DUDLEY, KATSIE (W)
 205. BARWICK, DARRYL (W)
 206. DAVIS, MARK (W)
 207. HUDSON, TIMOTHY (B)
 208. BROWN, JAMES R. (W)
 209. # [LAMB, WILBURN (W)]
 210. FARINAS, ALBERTO (W)
 211. BROWN, PAUL A. (W)
 212. MORRIS JR., GEORGE (B)
 213. CHANDLER, JAMES (W)
 214. THOMPSON CHARLIE (B)
 215. HILL, GEORGE A. (B)
 216. BELLO, CARLOS (W)
 217. HENRY, JOHN (B)
 218. RIVERA, MICHAEL (H)
 219. LUCAS, HAROLD (W)
 220. HALLMAN, DARRELL (W)
 221. ZERQUERA, JORGE (H)
 222. TROTTER, MELVIN (B)
 223. SCHAFER, ARTHUR (W)
 224. RIVERA, SAMUEL (H)
 225. MACK, JAMES (W)
 226. DAILEY, JAMES (W)
 227. COLINA, MANUEL (H)
 228. WILLIAMS, ANDREW (B)
 229. REAVES, WILLIAM (B)
 230. STOKES, JERRY (B)
 231. WRIGHT, MACK RAY (B)
 232. IRVINE, MICHAEL (W)
 233. RHODES, WILLIAM (W)
 234. * CASTEEL, DEE DYNE (W)
 235. BRYANT, JAMES A. (W)
 236. BRUNO, MICHAEL (W)
237. CHERRY, ROGER (B)
 238. KEEN, MICHAEL SCOTT (W)
 239. JACKSON, CLINTON L. (B)
 240. GREEN, ALPHONSO (B)
 241. ALVIN, EDDIE (B)
 242. SOCHOR, DENNIS (W)
 243. DOMINICK, OCCHICONE (W)
 244. MENDYK, TODD (W)
 245. CARTER, ANTONIO (B)
 246. MAHARAJ, KRISHNA (A)
 247. HAKIM, YAQUB (B)
 248. CHRISTIAN, DOY (B)
 249. FREEMAN, JOHN (W)
 250. NOWITZKE, FREDERICK (W)
 251. PENTECOST, DAVID (W)
 252. VENTURA, PETER (W)
 253. SONGER, CARL (W)
 254. SCOTT, BRADLEY (W)
 255. CASTRO, EDWARD (H)
 256. NIBERT, BILLY RAY (W)
 257. SOUTH, GEORGE (W)
 258. FLOYD, JAMES (B)
 259. YOUNG, DAVID (B)
 260. HITCHCOCK, JAMES (W)
 261. ANDERSON, RICHARD (W)
 262. PORTER, GEORGE (W)
 263. VALLE, MANUEL (H)
 264. # HEGWOOD, BERNELL (B)
 265. BOUIE, JOHNNIE (B)
 266. CZUBAK, WALTER (W)
 267. HAMILTON, THEWELL (W)
 268. HALIBURTON, JERRY (B)
 269. PARDO, MANUEL (H)
 270. MCCRAE, JAMES (B)
 271. JOHNSON, PAUL BEASLEY (W)
 272. JONES, RANDALL SCOTT (W)
 273. BLAKLEY, ROBERT (W)
 274. RAGSDALE, EDWARD (W)
 275. CAMPBELL, JAMES (B)
 276. CRAIG, DONNY GENE (W)
 277. BURNS, DANIEL (B)
 278. SMALLEY, LEONARD (W)
 279. DUCKETT, JAMES (W)
 280. DERRICK, SAMUEL (W)
 281. GILLIAM, BURLEY (W)
 282. GARCIA, HENRY (H)
 283. WALLS, FRANK (W)
 284. CARTER, CHARLES (W)
 285. PONTICELLI, ANTHONY (W)
 286. SANCHEZ, RIGOBERTO (H)
 287. LEWIS, LAWRENCE (W)
 288. COX, ROBERT CRAIG (U)
 289. HENRY, ROBERT LAVERN (B)

GEORGIA (46B; 58W; 1U)

TOTAL: 105

Electrocution

1. [JARRELL, DAVID (W)]
 2. DOBBS, WILEY (B)
 3. [MOORE, WILLIAM NEAL (B)]
 4. CHENAULT, MARCUS (B)
 5. [BIRT, BILLY SUNDAY (W)]
 6. [GADDIS, BOBBY GENE (W)]
 7. [CORN, CHARLES (W)]
 8. PEEK, DAVID (B)
 9. MOORE, CARZELL (B)
 10. [DAVIS, CURFEW (B)]
 11. [MORGAN, ALFONSO (B)]
 12. GATES, JOHNNY LEE (B)
 13. FLEMING, SON (B)
 14. WILLIS, HENRY (B)
 15. REDD, BOBB (W)
 16. COLLIER, ROBERT (B)
 17. # HIGH, JOSE (B)
 18. PRESNELL, VIRGIL (W)
 19. BROWN, NATHAN (B)
 20. # BURGER, CHRISTOPHER (W)
 21. STEVENS, THOMAS (W)
 22. JONES, BRANDON (B)
 23. CUNNINGHAM, JAMES (B)
 24. [DICK, DENNIS (W)]
 25. [STEPHENS, WILLIAM (B)]
 26. GILREATH, FRED (W)

27. NELSON, GARY (B)
28. + JUSTUS, BUDDY (W)
29. COLLINS, ROGER (B)
30. DAVIS, FRED (W)
31. CASTELL, JAMES (W)
32. WATERS, EURUS (W)
33. HORTON, JIMMY (B)
34. [HARDY, KENNETH (W)]
35. MATHIS, JAMES (B)
36. HILL, FLOYD (B)
37. *# BUTTRUM, JANICE (W)
38. [SMITH, WILLIAM (B)]
39. WILSON, WILLIE (B)
40. WILLIAMS, HAROLD (W)
41. BURDEN, JIMMY (B)
42. CONNOR, JOHN WAYNE (W)
43. ALLEN, STANLEY (B)
44. MINCEY, TERRY (W)
45. PUTMAN, WILLIAM (W)
46. FELKER, ELLIS (W)
47. ROBERTS, VICTOR (B)
48. [PAGE, JERRY (W)]
49. BAXTER, NORMAN (W)
50. DEVIER, DARRELL (W)
51. INGRAM, NICHOLAS (W)
52. SPIVEY, RONALD (W)
53. FINNEY, EDDIE (W)
54. ROSS, EDDIE LEE (B)
55. BLANKS, KENNITH (B)
56. WALKER, RICHARD (B)
57. ALDERMAN, JACK (W)
58. HANCE, WILLIAM HENRY (B)
59. CONKLIN, ROBERT (W)
60. FORD, JAMES ARTHUR (B)
61. PARKER, BYRON (W)
62. # [LEGARE, ANDREW (W)]
63. CURRY, WALTER (B)
64. DAVIS, GEORGE (B)
65. COOK, JAMES (B)
66. CHILDS, JOHNNY (B)

IDAHO (14W; 1H) TOTAL: 15

1. GIBSON, THOMAS HENRY (W)
2. CREECH, THOMAS (W)
3. MCKINNEY, RANDY (W)
4. PARADIS, DONALD (W)
5. STUART, EUGENE (W)
6. FAIN, CHARLES (W)
7. FETTERLY, DONALD (W)
8. BEAM, ALBERT RAYMOND (W)

ILLINOIS (73B; 38W; 6H) TOTAL: 117

1. SZABO, JOHN (W)
2. [GAINES, DWIGHT (B)]
3. FREE, JAMES (W)
4. DELVECCHIO, GEORGE (W)
5. WILLIAMS, HERNANDO (B)
6. ALLEN, KENNETH (B)
7. GACY, JOHN WAYNE (W)
8. CABALLERO, JUAN (H)
9. JONES, ANDRE (B)
10. RUIZ, LUIS (H)
11. [EDDMONDS, DURLYN (B)]
12. SILAGY, CHARLES (W)
13. [KUBAT, ROBERT (W)]
14. STEWART, WALTER (B)
15. DAVIS, GIRVIES (B)
16. OWENS, ROBIN (B)

67. BECK, ELI (B)
68. DAVIS, JOHN MICHAEL (W)
69. ROGERS, JAMES (W)
70. CARGILL, DAVID (W)
71. [POPE, JOHN DAVID (W)]
72. ROMINE, LARRY (W)
73. FUGITT, JOHN THOMAS (W)
74. HICKS, ROBERT KARL (W)
75. HOUSEL, TRACEY LEE (W)
76. JEFFERSON, LAWRENCE (B)
77. HARRISON, ADEN (B)
78. BLANKENSHIP, ROY (W)
79. GARY, CARLTON (B)
80. # WILLIAMS, ALEXANDER (B)
81. [SKIPPER, GILBERT (W)]
82. FORD, MELBERT RAY (W)
83. HOLIDAY, DALLAS (B)
84. COHEN, MICHAEL (B)
85. FRAZIER, LEONARD (W)
86. CRAWFORD, EDDIE (W)
87. PATILLO, KEITH (W)
88. LIPHAM, WILLIAM (W)
89. WADE, JOHNNY (W)
90. KINSMAN, RONALD (W)
91. FOSTER, TIMOTHY (B)
92. LEE, JESSIE (B)
93. LONCHAR, LARRY GRANT (W)
94. NEWLAND, ROBERT (W)
95. SPENCER, JAMES (B)
96. PRUITT, MARK ANTHONY (W)
97. ALLEN, WILLIAM HORTON (W)
98. MORRISON, ERNEST (W)
99. LEE, LARRY (W)
100. POTTS, JACK (W)
101. MOON, LARRY EUGENE (W)
102. ISAACS, CARL (W)
103. JARRELLS, JONATHEN (W)
104. DANIEL, LARRY (U)
105. FERRELL, ERIC (B)

Lethal Injection or Firing Squad

9. LANKFORD, BRIAN (W)
10. LANKFORD, MARK (W)
11. LEAVITT, RICHARD (W)
12. PIZZUTO, GERALD (W)
13. RHOADES, PAUL (W)
14. PAZ, FEDERICO (H)
15. SIVAK, LACEY (W)

Lethal Injection

17. MACK, LARRY (B)
18. KING, DERRICK (B)
19. COLLINS, ROGER (B)
20. BRACEY, WILLIAM (B)
21. HOOPER, MURRAY (B)
22. STEWART, RAYMOND (B)
23. ALBANESE, CHARLES (W)
24. THOMPCKINS, WILLIE (B)
25. MADEJ, GREGORY (W)
26. HOPE, EDGAR (B)
27. NEAL, JOHN (W)
28. OLINGER, PERRY (W)
29. MORGAN, SAMUEL (B)
30. PEREZ, DOMINGO (H)
31. MONTGOMERY, ULECE (B)
32. GUEST, ANTHONY (B)

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| 33. WHITEHEAD, JOHN (W) | 76. SEUFFER, JAMES (W) |
| 34. ERICKSON, PAUL (W) | 77. [ROGERS, WAYNE (W)] |
| 35. PORTER, ANTHONY (B) | 78. TURNER, ROBERT (W) |
| 36. WRIGHT, PATRICK (W) | 79. ODLE, THOMAS (W) |
| 37. WALKER, CHARLES (W) | 80. BOCLAIR, STANLEY (B) |
| 38. ENOCH, WILLIE (B) | 81. JOHNSON, ANDREW (B) |
| 39. CHRISTIANSON, EDGAR (W) | 82. SMITH, STEVEN (B) |
| 40. LEGO, DONALD (W) | 83. TERRELL, DREW (B) |
| 41. HALL, ANTHONY (B) | 84. [BURCHETTE, FRANKLIN (B)] |
| 42. RICHARDSON, FLOYD (B) | 85. FIELDS, NATHSON (B) |
| 43. YOUNG, WILLIAM (B) | 86. HAWKINS, EARL (B) |
| 44. EVANS, JOHNNIE LEE (B) | 87. EYLER, LARRY (W) |
| 45. HARRIS, JAMES (B) | 88. CHANDLER, MARK (W) |
| 46. SANCHEZ, HECTOR (H) | 89. HAYES, CLARENCE (B) |
| 47. JOHNSON, MILTON (B) | 90. BRISBON, HENRY (B) |
| 48. GACHO, ROBERT (W) | 91. PHILLIPS, JOHN PAUL (W) |
| 49. TITONE, DINO (W) | 92. THOMAS, WILLIE (B) |
| 50. SHURN, KEITH (B) | 93. FRANKLIN, WILLIAM (B) |
| 51. REDD, FRANK (B) | 94. COLEMAN, ALTON (B) |
| 52. MAHAFFEY, JERRY (B) | 95. BEAN, HAROLD (W) |
| 53. MAHAFFEY, REGINALD (B) | 96. WILLIAMS, DENNIS (B) |
| 54. EMERSON, DENNIS (B) | 97. KOKORALEIS, ANDREW (W) |
| 55. ORANGE, LEROY (B) | 98. HOWARD, STANLEY (B) |
| 56. BARROW, RONALD (W) | 99. WEST, PAUL (B) |
| 57. FOSTER, JAMES (B) | 100. STEIDL, GORDON (W) |
| 58. HOLMAN, TAFFORD (B) | 101. HENDERSON, DEMETRIUS (B) |
| 59. KIDD, LEONARD (B) | 102. LUCAS, JOHN (W) |
| 60. FLORES, MARIO (H) | 103. GIBSON, SHERMAN (B) |
| 61. GRIFFIN, HENRY (B) | 104. PUGH, WILLIE (B) |
| 62. CREWS, WILLIAM (W) | 105. PECORARO, JOHN (W) |
| 63. JONES, WILLIAM (B) | 106. STRICKLAND, TYRONE (B) |
| 64. BRITZ, DEWAYNE (W) | 107. JOHNSON, MARK (B) |
| 65. [SIMMS, DARRYL (B)] | 108. THOMAS, WALTER (B) |
| 66. SALAZAR, MANUEL (H) | 109. MAXWELL, ANDREW (B) |
| 67. JIMERSON, VERNEAL (B) | 110. ENNIS, TONY (B) |
| 68. WILLIAMS, BENNIE (B) | 111. WARD, JERRY (B) |
| 69. JOHNSON, BRIAN (B) | 112. EDWARDS, DANIEL (W) |
| 70. SPREITZER, EDWARD (W) | 113. LEGER, WILLIAM (W) |
| 71. ASHFORD, JAMES (B) | 114. JACKSON, LAWRENCE (B) |
| 72. HOUSE, DERRICK (B) | 115. MORGAN, DERRICK (B) |
| 73. HARRIS, TERRY (B) | 116. ST. PIERRE, ROBERT (W) |
| 74. TYE, JIMMY (B) | 117. PITSONBARGER, JIMMY (W) |
| 75. SCOTT, LARRY (B) | |

INDIANA (20B; 28W; 2H)

TOTAL: 50

Electrocution

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| 1. BREWER, JAMES (B) | 25. WOODS, DAVID (W) |
| 2. DANIELS, MICHAEL (B) | 26. RONDON, REYNALDO (H) |
| 3. [WILLIAMS, LARRY (W)] | 27. CHAVEZ, ELADIO MARTINEZ (H) |
| 4. MOORE, RICHARD (B) | 28. * THACKER, LOIS (W) |
| 5. BURRIS, GARY (B) | 29. UNDERWOOD, HERBERT (W) |
| 6. SMITH, TOMMIE (B) | 30. HUFFMAN, RICHARD (W) |
| 7. RESNOVER, GREGORY (B) | 31. MINNICK, WILLIAM (W) |
| 8. SCHIRO, THOMAS (W) | 32. LOWERY, TERRY (W) |
| 9. AVERHART, RUFUS (B) | 33. BELLMORE, LARRY (W) |
| 10. WALLACE, DONALD (W) | 34. + COLEMAN, ALTON (B) |
| 11. LOWERY, JAMES (W) | 35. JOHNSON, GREGORY SCOTT (W) |
| 12. BIEGLER, MARVIN (W) | 36. *+ BROWN, DEBRA (B) |
| 13. VAN CLEAVE, GREG (B) | 37. *# COOPER, PAULA (B) |
| 14. WISEHART, MARK (W) | 38. EVANS, CHARLES (B) |
| 15. BOYD, RUSSELL (W) | 39. CANAAN, KEITH (W) |
| 16. SMITH, CHARLES (B) | 40. BAIRD, ARTHUR (W) |
| 17. SPRANGER, WILLIAM (W) | 41. ROUSTER, GREGORY (B) |
| 18. FLEENOR, D.H. (W) | 42. WILLIAMS, DARNELL (B) |
| 19. DAVIS, FRANK (W) | 43. HOUGH, KEVIN (W) |
| 20. HARRIS, JAMES (B) | 44. KENNEDY, STUART (W) |
| 21. GAMES, JAMES (W) | 45. JACKSON, DONALD (W) |
| 22. DAVIS, GREG (B) | 46. CASTOR, MARVIN (W) |
| 23. MCCULLOM, PHILLIP (B) | 47. ALLEN, HOWARD (B) |
| 24. TOWNSEND, JOHNNY (B) | 48. BERNISCHKE, WILLIAM (W) |

49. CONNER, KEVIN (W)

50. BENEFIEL, WILLIAM (W)

KENTUCKY (8B;.23W)

TOTAL: 31

Electrocution

1. GALL, EUGENE (W)
2. WHITE, GENE 'KARU' (W)
3. MCQUEEN, HAROLD (W)
4. KORDENBROCK, PAUL (W)
5. SKAGGS, DAVID (W)
6. MARLOWE, HUGH (W)
7. ‡ STANFORD, KEVIN (B)
8. MATTHEWS, DAVID (W)
9. HARPER, EDDIE LEE (W)
10. BEVINS, WILLIAM (W)
11. SMITH, DAVID (W)
12. HALVORSEN, LEIF (W)
13. WILLOUGHBY, MITCHELL (W)
14. SLAWTER, JAMES (B)
15. MOORE, BRIAN KEITH (W)
16. ASKEW, ROBERT (B)

17. [WHITE, LARRY (B)]
18. SIMMONS, BEORIA (B)
19. DEAN, ROY WAYNE (W)
20. MORRIS, JAMES E. (W)
21. WALLS, CHRISTOPHER (W)
22. COSBY, TEDDY LEE (B)
23. TAYLOR, VICTOR (B)
24. EPPERSON, ROGER DALE (W)
25. HODGE, BENNY LEE (W)
26. THOMPSON, WILLIAM (W)
27. * FOSTER, LAFONDA FAY (W)
28. SANDERS, DAVID LEE (W)
29. CLARK, MICHAEL (W)
30. THOMAS, ALFRED (W)
31. WILSON, GREGORY (B)

LOUISIANA (23B; 19W)

TOTAL: 42

Electrocution

1. # PREJEAN, DAITON (B)
2. MONROE, RONALD (B)
3. SAWYER, ROBERT (W)
4. JAMES, ANTONIO (B)
5. [NELSON, LANE (W)]
6. WELCOME, HERBERT (B)
7. KIRKPATRICK, FREDERICK (W)
8. RUSHING, DAVID (W)
9. MESSIAK, KEITH (B)
10. BUSBY, ERNEST (W)
11. WILSON, DAVID EARL (B)
12. WARD, THOMAS LEE (B)
13. JONES, ANDREW LEE (B)
14. DEBOUE, THOMAS (B)
15. FORD, GLENN (B)
16. KYLES, CURTIS (B)
17. SULLIVAN, JOHN (W)
18. SCIRE, ANTHONY (W)
19. SMITH, CLARENCE (W)
20. LOYD, ALVIN (W)
21. BATES, WAYNE (W)

22. WILLIAMS, DOBIE (B)
23. THOMPSON, JOHN (B)
24. BROWN, JOHN (W)
25. COPELAND, JAMES (W)
26. BROOKS, GEORGE (W)
27. MARTIN, DARYL (B)
28. PERRY, MICHAEL OWEN (W)
29. # [COMEAUX, ADAM (B)]
30. JOHNSON, SAUL (B)
31. SMITH, NORVELL (B)
32. EL-MUMIT, ABDULLAH (B)
33. WILLE, JOHN FRANCIS (W)
34. EATON, WINTHROP (B)
35. BROWN, BRYAN (W)
36. # DUGAR, TROY (B)
37. LINDSEY, TYRONNE (B)
38. TASSIN, ROBERT (W)
39. GRAHAM, MICHAEL (W)
40. CAGE, TOMMY (B)
41. BURRELL, ALBERT RONNIE (W)
42. LEE, TRACY (B)

MARYLAND (14B; 5W)

TOTAL: 19

Gas Chamber

1. [COLVIN, EUGENE (B)]
2. CALHOUN, JAMES (B)
3. TICHNELL, RICHARD (W)
4. WHITE, DERRICK (B)
5. # TRIMBLE, JAMES (W)
6. THOMAS, DONALD (B)
7. # JOHNSON, LAWRENCE (B)
8. HUFFINGTON, JOHN (W)
9. EVANS, VERNON (B)
10. GRANDISON, ANTHONY (B)

11. BOWERS, MARSELLE (B)
12. [MILLS, RALPH (W)]
13. JONES, GREGORY (B)
14. [HUNT, FLINT GREGORY (B)]
15. [HARRIS, JACKIE (B)]
16. BEDFORD, ROBERT (B)
17. [DOERING, AL WAYNE (W)]
18. COLLINS, KENNETH (B)
19. BOOTH, JOHN (B)

MISSISSIPPI (29B; 18W; 1H)

TOTAL: 48

Gas Chamber or
Lethal Injection

1. CULBERSON, ALVIN (B)
2. REDDIX, WILLIE (B)
3. [WHEAT, KENNETH (W)]
4. [HILL, ALVIN (B)]
5. KING, MACK ARTHUR (B)
6. EDWARDS, LEO (B)
7. BOOKER, JOHN (B)
8. SMITH, WILLIE ALBERT (B)
9. # [TOKMAN, GEORGE (W)]

10. GILLIARD, ROBERT (B)
11. IRVING, JOHN BUFORD (B)
12. [LEATHERWOOD, MICHAEL (W)]
13. NEAL, HOWARD (W)
14. WILCHER, BOBBY (W)
15. [JOHNSON, SAMUEL (B)]
16. STRINGER, JAMES R. (W)
17. BILLIOT, JAMES (W)
18. DUFOUR, DONALD (W)

19. [JORDAN, RICHARD (W)]
20. WILLIAMS, JESSE (W)
21. [ABRAM, DONALD (B)]
22. COLE, WEST (B)
23. JONES, GREGORY M. (B)
24. LANIER, ARTHUR RAY (B)
25. FOSTER, JAMES HENRY (B)
26. WILEY, WILLIAM (B)
27. PINKNEY, BOBBY JOE (B)
28. GRIFFIN, GARY (B)
29. LANIER, JOHNNY (B)
30. [WHITE, WILLIE LEE (B)]
31. LEATHERWOOD, ALFRED (B)
32. FERAGA, LAZARO (H)
33. NIXON, JOHN (W)

MISSOURI (27B; 42W; 1N)

TOTAL: 70

Lethal Injection

1. [NEWLON, RAYFIELD (B)]
2. MERCER, GEORGE (W)
3. STOKES, WINFORD (B)
4. BOLDER, MARTSAY (B)
5. BLAIR, WALTER (B)
6. SHAW, ROBERT (B)
7. GRIFFIN, LARRY (B)
8. SMITH, GERALD (W)
9. BATTLE, THOMAS (B)
10. LARETTE, ANTHONY (W)
11. WILLIAMS, DOYLE (W)
12. # LASHLEY, FREDERICK (B)
13. GILMORE, GEORGE (W)
14. MCDONALD, SAM (B)
15. GUINAN, FRANK (W)
16. PRESTON, ELROY (B)
17. LAWS, LEONARD (W)
18. BYRD, MAURICE (B)
19. JOHNS, STEPHEN (W)
20. BANNISTER, ALAN (W)
21. + MALONE, KELVIN (B)
22. YOUNG, MOSES (B)
23. KENLEY, KENNETH (W)
24. NAVE, EMMETT (N)
25. FOSTER, EMMITT (B)
26. BOLIEK, WILLIAM (W)
27. JONES, MARVIN (W)
28. MATHENIA, CHARLES LEE (W)
29. DRISCOLL, ROBERT (W)
30. ROBERTS, ROY (W)
31. RODDEN, JAMES (W)
32. O'NEAL, ROBERT (W)
33. ZEITVOGEL, RICHARD (W)
34. CHAMBERS, JAMES (W)
35. SCHNEIDER, ERIC (W)

MONTANA (1B; 5W; 2N)

TOTAL: 8

Hanging or Lethal Injection

1. FITZPATRICK, BERNARD (W)
2. COLEMAN, DEWEY (B)
3. MCKENZIE, DUNCAN (W)
4. SMITH, RONALD (W)

34. LOCKETT, CARL (B)
35. WHEELER, NOAH (B)
36. MACKABEE, FRANK (B)
37. WOODWARD, PAUL (W)
38. MEASE, BART (W)
39. BEVILL, RANDY (W)
40. CLEMONS, CHANDLER (B)
41. SHELL, ROBERT LEE (B)
42. WEST, OTHIE LEE (B)
43. LADNIER, JEFFREY (W)
44. HANSEM, TRACY (W)
45. TURNER, KEVIN (B)
46. HOLLAND, GERALD (W)
47. DAVIS, GREGORY (B)
48. THORSON, ROGER (W)

36. SCHLUP, LLOYD (W)
37. ANTWINE, CALVERT (B)
38. POLLARD, ROOSEVELT (B)
39. [MALLETT, JEROME (B)]
40. LINGAR, STANLEY (W)
41. GRUBBS, RICKY LEE (W)
42. # WILKINS, HEATH (W)
43. AMRINE, JOSEPH (W)
44. SANDERS, CLINDELL (B)
45. WALLS, ROBERT (W)
46. MURRAY, ROBERT "TONY" (B)
47. JONES, WILLIAM (W)
48. SIDEBOTTOM, ROBERT T. (W)
49. PARKUS, STEVEN J. (W)
50. S'AN, JEFFREY (W)
51. MONS, ERIC (B)
52. RE, DAVID R. (W)
53. GAIN, MILTON (B)
54. KILGORE, BRUCE (B)
55. OTTWELL, CLARENCE (W)
56. SWEET, GLENNON (W)
57. WELLS, LUTHER (B)
58. GRIFFIN, REGINALD (B)
59. MCMILLAN, RICHARD (W)
60. REESE, DONALD (W)
61. SCHNICK, JAMES (W)
62. * WACASER, NILA (W)
63. FIX, ANDREW (W)
64. FELTROP, RALPH (W)
65. DEBELER, SHELBY (W)
66. WEAVER, WILLIAM (B)
67. SHURN, DARYL (B)
68. SMITH, SAMUEL D. (B)
69. OXFORD, RICHARD (W)
70. PETARY, DONALD (W)

NEBRASKA (2B; 9W; 1N)

TOTAL: 12

Electrocution

1. RUST, JOHN (W)
2. [HOLTAN, RICHARD (W)]
3. ANDERSON, C. MICHAEL (W)
4. OTEY, HAROLD (B)
5. HOCHSTEIN, PETER (W)
6. HARPER, STEVEN (W)

7. WILLIAMS, ROBERT (B)
8. [MOORE, CAREY (W)]
9. REEVES, RANDOLPH (N)
10. PALMER, CHARLES (W)
11. JOUBERT, JOHN (W)
12. RYAN, MICHAEL (W)

NEVADA (11B; 29W; 5H) TOTAL: 45 Lethal Injection

1.	DEUTSCHER, HENRY (W)	24.	MAZZAN, JOHN (W)
2.	WILSON, EDWARD (W)	25.	LOPEZ, MANUEL (H)
3.	OLAUSEN, JOHN (W)	26.	HOGAN, MICHAEL RAY (B)
4.	YBARRA, ROBERT (H)	27.	[FLANAGAN, DALE (W)]
5.	MILLIGAN, RONNIE GAYLE (W)	28.	[MOORE, RANDOLPH (W)]
6.	ROGERS, MARK (W)	29.	COLLIER, GREGORY (W)
7.	* FORD, PRISCILLA (B)	30.	PADILLA, DANIEL (W)
8.	MCKENNA, PATRICK (W)	31.	STEVENS, DWAYNE (W)
9.	PETROCELLI, TRACY (W)	32.	ADAMS, LARRY (W)
10.	MIRANDA, ROBERTO (H)	33.	PERTGEN, WES (W)
11.	NEVIUS, THOMAS (B)	34.	BROWNING, PAUL LEWIS (B)
12.	WILLIAMS, CARY (B)	35.	MCKAGUE, KENNETH (W)
13.	NEUSHAFFER, JIMMY (W)	36.	HARDISON, RICHARD (B)
14.	HOWARD, SAMUEL (B)	37.	PELLIGRINI, DAVID (W)
15.	HILL, JAMES E. (B)	38.	HABERSTROH, RICHARD (W)
16.	SECHREST, RICKY (W)	39.	DAWSON, HENRY (B)
17.	FARMER, ROBERT (W)	40.	JIMENEZ, VICTOR (W)
18.	CRUMP, THOMAS (W)	41.	BEJARANO, JOHN (H)
19.	SNOW, JOHN (B)	42.	FLANAGAN, SEAN (W)
20.	GALLEGO, GERALD (W)	43.	EMIL, RODNEY (W)
21.	THOMPSON, WILLIAM (W)	44.	VALERIO, JOHN (H)
22.	CAVANAUGH, PATRICK (B)	45.	BENNETT, EDWARD (W)
23.	MORAN, RICHARD (W)		

NEW JERSEY (14B; 12W; 1H) TOTAL: 27 Lethal Injunctio

1.	[BIEGENWALD, RICHARD (W)]	15.	MCDUGALD, ANTHONY (B)
2.	WILLIAMS, JAMES (B)	16.	CLAUSELL, JAMES (B)
3.	HUNT, JAMES (B)	17.	HARVEY, NATHANIEL (B)
4.	[ZOLA, JAMES E. (W)]	18.	HIGHTOWER, JACINTO (B)
5.	[KOEDATICH, JAMES (W)]	19.	DIXON, PHILIP (B)
6.	SAVAGE, ROY (B)	20.	JACKSON, KEVIN (B)
7.	PITTS, DARRYL LEE (W)	21.	PERRY, ARTHUR (B)
8.	COYLE, BRYAN (W)	22.	SCHIAVO, DOMENIC (W)
9.	DAVIS, STEVEN RAY (W)	23.	PENNINGTON, FRANK (W)
10.	ROSE, TEDDY (W)	24.	MOORE, SAMUEL LEON (B)
11.	JOHNSON, WALTER (W)	25.	ERAZO, SAMUEL (H)
12.	LONG, RONALD (B)	26.	DIFRISCO, ANTHONY (W)
13.	MARSHALL, ROBERT (W)	27.	[BEY, MARKO (B)]
14.	OGELSBY, WALTER (B)		

NEW MEXICO (1W; 1N) TOTAL: 2 Lethal Injection

1.	CLARK, TERRY (W)
2.	HENDERSON, THOMAS (N)

NORTH CAROLINA (40B; 34W; 1H; 5N) TOTAL: 80 Gas Chamber or Lethal Injection

1.	TAYLOR, NORRIS (B)	20.	ROBBINS, PHILLIP (B)
2.	[MCDOWELL, ROBERT (B)]	21.	BROWN, WILLIE (B)
3.	WILLIAMS, LARRY DARNEL (B)	22.	MCNEIL, LEROY (B)
4.	MCDUGALL, MIKE (W)	23.	GREEN, HARVEY LEE (B)
5.	PINCH, MICHAEL (W)	24.	ARTIS, ROSCOE (B)
6.	[BROWN, DAVID JUNIOR (B)]	25.	MCLAUGHLIN, ELTON (B)
7.	SMITH, KERMIT (W)	26.	ROBINSON, EDDIE (B)
8.	LAWSON, DAVID (W)	27.	WILSON, MICHAEL (W)
9.	WILLIAMS, DOUGLAS (B)	28.	BROWN, THOMAS JACK (W)
10.	MAYNARD, ANSON (N)	29.	SPRUILL, JONNIE LEE (B)
11.	[MOORE, GEORGE (B)]	30.	ZUNIGA, BERNARDINO (H)
12.	OLIVER, JOHN WESLEY (B)	31.	[SIMPSON, PIERRE DYON (B)]
13.	CRAIG, ANDREW (B)	32.	SMITH, TERRY WILLIAM (W)
14.	ANTHONY, FRANCIS (B)	33.	SANDERS, STANLEY (B)
15.	NOLAND, JOHN (W)	34.	LLOYD, OSCAR (B)
16.	BOYD, ARTHUR MARTIN (W)	35.	MCKOY, DOCK (B)
17.	GLADDEN, WILLIE (B)	36.	LAWS, WAYNE ALAN (W)
18.	HUFFSTETLER, DAVID (W)	37.	ROSS, JAMES KEITH (W)
19.	GARDNER, JOHN (W)	38.	HOLDEN, RUSSELL (B)

39. BROWN, BOBBY RAY (W)
40. GREEN, ALTON GARNER (W)
41. DAVIS, EUGENE (B)
42. FULLWOOD, MICHAEL LEE (B)
43. HUNT, HENRY LEE (N)
44. BARNES, ELWELL (N)
45. CASE, JERRY DOUGLAS (W)
46. MONROE, CASEY JACK (B)
47. SANDERSON, RICKY LEE (W)
48. HENNIS, TIMOTHY (W)
49. MILLER, GENERAL SAM (B)
50. SMITH, ROWLAND (W)
51. LYNCH, GREGORY (B)
52. ALLEN, TIMOTHY (B)
53. PORTER, WILLIAM HOWARD (N)
54. HANDY, WILLIAM (B)
55. CUMMINGS, EDWARD LEE (B)
56. BACON, ROBERT JR. (B)
57. HUFF, EVERETT R. (W)
58. CUMINGS, JERRY RAY (N)
59. THOMAS, JAMES EDWARD (B)

OHIO (45B; 36W; 2H; 2N)

TOTAL: 85

Electrocution

1. JENKINS, LEONARD (B)
2. GLENN, JOHN (B)
3. MAURET, DONALD (W)
4. STEFFEN, DAVID (W)
5. MAPES, DAVID (B)
6. MARTIN, ERNEST (B)
7. SPISAK, FRANK (W)
8. BYRD, JOHN WILLIAM (W)
9. * GRANT, ROSALIE (B)
10. BEUKE, MICHAEL (W)
11. SOWELL, BILLIE (B)
12. WILLIAMS, LEWIS (B)
13. BROOKS, REGINALD (B)
14. BARNES, STERLING (B)
15. [JOHNSTON, DALE (W)]
16. SCOTT, JAY D. (B)
17. BUELL, ROBERT (W)
18. HAMBLIN, DAVID (W)
19. ESPARZA, GREGORY (H)
20. [DAVIS, VON CLARK (B)]
21. JESTER, WILLIE LEE (B)
22. WILLIAMS, DONALD (B)
23. SPIRKO, JOHN GEORGE (W)
24. STUMPF, JOHN (W)
25. ZUERN, WILLIAM (W)
26. HOLLOWAY, ALLEN (W)
27. BEDFORD, DANIEL (W)
28. CLARK, JOSEPH LEWIS (B)
29. APANOVITCH, ANTHONY (W)
30. HOOKS, DANNY (W)
31. POST, RONALD (W)
32. + COLEMAN, ALTON (B)
33. BRADLEY, WILLIAM (B)
34. POINDEXTER, DEWAIN (B)
35. * BROWN, DEBRA (B)
36. [GILLARD, JOHN (W)]
37. GREER, PAUL (B)
38. VAN HOOK, ROBERT (W)
39. HENDERSON, JEROME (B)
40. WICKLINE, WILLIAM (W)
41. BROOM, ROMELL (B)
42. BREWER, DAVID (W)
43. JAMISON, DERRICK (B)

60. GREENE, GARY (W)
61. QUICK, HAROLD (B)
62. ROBINSON, DWIGHT (B)
63. PRICE, RICKY LEE (W)
64. COFFEY, FRED (W)
65. WILLIS, JAMES EARL (W)
66. * COX, SUE (W)
67. JONES, WILLIAM O. (B)
68. HEDGEPEETH, ROLAND (W)
69. BROWN, DUANE (B)
70. QUESINBERRY, MICHAEL (W)
71. BRIDGES, WILFRED (B)
72. PAYNE, RANDY JOE (W)
73. ALI, EL-AMIN AHMAD (B)
74. MCCARVER, ERNEST (W)
75. SMITH, ROGER (B)
76. CALDWELL, RICKIE TIM (W)
77. CALDWELL, RICKIE (W)
78. POPE, JIMMIE (W)
79. TURNER, CLAUDE (W)
80. BOYD, KENNETH (W)

44. DICKERSON, FREDERICK (B)
45. ROE, JOHN GLENN (W)
46. MORALES, ALFRED (N)
47. WILES, MARK WAYNE (W)
48. TYLER, ARTHUR (B)
49. HUTTON, PERCY (B)
50. HICKS, JOHN (B)
51. HILL, DANNY LEE (B)
52. LANDRUM, LAWRENCE (W)
53. MORELAND, SAMUEL (B)
54. LAWRENCE, JEFFREY (W)
55. BENNER, GLEN (W)
56. SEIBER, LEE (W)
57. SNEED, DAVID (B)
58. MONTGOMERY, WILLIAM (B)
59. COOEY, RICHARD (W)
60. LORRAINE, CHARLES (W)
61. JOHNSON, GARY (B)
62. RICHEY, KENNETH (W)
63. POWELL, TONY (B)
64. HUERTAS, EDIBERTO (H)
65. CLAYTOR, JUSTIN (B)
66. ELEY, JOHN (B)
67. HEINISH, WAYNE (W)
68. LOTT, GREGORY (B)
69. MURPHY, JOSEPH (W)
70. JELLS, REGINALD (B)
71. FRAZIER, WAYNE (B)
72. EVANS, DERRICK (B)
73. WADDY, WARREN (B)
74. WATSON, KEVIN (B)
75. COMBS, RONALD (W)
76. HENDERSON, CHARLES (W)
77. BONNELL, MELVIN (W)
78. SLAGEL, BILLY (N)
79. SMITH, WILLIAM HENRY (B)
80. JACKSON, ANDRE (B)
81. ROJAS, MARTIN (B)
82. LAWSON, JERRY (W)
83. DAVIS, RAYMOND (W)
84. * GREEN, ELIZABETH (B)
85. MILLS, JAMES E. (B)

OKLAHOMA (17B; 67W; 1H; 8N; 1A)

TOTAL: 94 Lethal Injection

1. HAYS, THOMAS "SONNY" (W)
2. DAVIS, CHARLES (W)
3. PARKS, ROBIN LEROY (B)
4. STOUT, BILLY GENE (W)
5. COLEMAN, CHARLES (W)
6. STAFFORD, ROGER (W)
7. [BROGIE, KIRK (W)]
8. JONES, D.L. (W)
9. BANKS, ANTHONY (B)
10. ROBISON, OLAN RANDLE (W)
11. GREEN, MICHAEL (W)
12. NUCKOLS, KENNETH (W)
13. COOKS, CORNELL (B)
14. JOHNSON, MALCOLM (B)
15. HAYES, ROGER DALE (W)
16. LILES, MARK (W)
17. BRECHEEN, ROBERT (W)
18. ROSS, BOBBY LYNN (B)
19. [CARTWRIGHT, TIMOTHY (W)]
20. BREWER, BENJAMIN (B)
21. FOSTER, CHARLES (B)
22. * SMITH, LOIS NADINE (W)
23. FISHER, JAMES (B)
24. CASTRO, JOHN (W)
25. VAN WOUDEBERG, SAMMY (N)
26. + JAMES, TERRENCE (N)
27. JONES, RICHARD (W)
28. SMITH, PHILLIP (W)
29. + HALE, ALVIE (W)
30. MANN, ANTHONY (W)
31. WASHINGTON, JOHN PAUL (B)
32. NEWSTEAD, NORMAN LEE (W)
33. PORTER, ROGER (W)
34. MOORE, SCOTT LEE (W)
35. WALKER, GARY ALAN (W)
36. BOLTZ, JOHN (W)
37. JOHNSON, ROBERT GRADY (W)
38. NEILL, JAY WESLEY (W)
39. SMITH, HENRY (W)
40. BATTENFIELD, BILLY (W)
41. STOUFFER, BIGLER (W)
42. WALKER, GARY ALAN (W)
43. MUNSON, ADOLF (B)
44. ROJEM, RICHARD (W)
45. MOORE, DEWEY (W)
46. BRENNAN, MARK EDWARD (W)
47. CLAYTON, ROBERT W. (W)

48. MCCARTY, EDDIE (W)
49. LAFEVER, LLOYD (W)
50. CANNON, RANDY (W)
51. STILES, RUSSELL (W)
52. CRAVATT, DARIAS JR. (N)
53. FOX, BILLY (W)
54. FOWLER, MARK (W)
55. ROUBEAUX, JAMES (N)
56. HAWKINS, DON WILSON (W)
57. BOYD, RONALD LEE (B)
58. NGUYEN, TUAN (A)
59. # SELLERS, SEAN (W)
60. CYRIL, WAYNE (B)
61. SMITH, RICHARD (W)
62. WILLIAMS, MELVIN (N)
63. BARNETT, LARRY (W)
64. TIBBS, DEREK (W)
65. ROMANO, JOHN (W)
66. WOODWARD, CLAUDE (W)
67. BERGET, ROGER (W)
68. KATCH, STEVEN (W)
69. WORKMAN, WENDELL (W)
70. DUVALLE, JOHN (W)
71. WOODRUFF, DAVID (W)
72. WILHOIT, GREGORY (W)
73. TRICE, EDDIE (B)
74. THOMAS, DARRELL (W)
75. LONG, MICHAEL EDWARD (W)
76. TATE, KENNETH (W)
77. ALLEN, GARY (N)
78. REVILLA, DANIEL (W)
79. BOOKER, WINFRED (W)
80. HUMPHREY, JACKIE (W)
81. MARTINEZ, GILBERTO (H)
82. PARKER, HENRY (W)
83. LAMBERT, ROBERT (W)
84. HUNTER, THOMAS (W)
85. # HAIN, SCOTT ALLAN (W)
86. WILLIAMSON, ROBERT (W)
87. NOLTE, MICHAEL (W)
88. BOWIE, BENITO (B)
89. MILLER, ROBERT LEE (B)
90. SALAZAR, MAXIMO (N)
91. FONTENOT, KARL (W)
92. ROBERTS, MICHAEL (B)
93. MARQUEZ, HOWARD (N)
94. HOOKER, JOHN (B)

OREGON (1B; 7W; 2H; 1N)

TOTAL: 11 Lethal Injection

1. WAGNER, JEFFREY SCOTT (W)
2. FARRAR, STEPHEN L. (N)
3. MOEN, RONALD H. (W)
4. SMITH, CHARLES F. (W)
5. MIRANDA, REYES (H)
6. NESTEAD, STEPHEN (W)

7. PRATT, JESSE (W)
8. GUZEK, RANDY (W)
9. WALTON, TYRONE (B)
10. MCDONNELL, MICHAEL (W)
11. MONTEZ, MARCO (H)

PENNSYLVANIA (60B; 47W; 4H; 1A; 1U)

TOTAL: 111 Electrocution

1. GRAHAM, HARRISON (B)
2. FREY, RODERICK (W)
3. JONES, JAMES (B)
4. SOULT, CHARLES (W)
5. BEASLEY, LESLIE (B)
6. ZETTLEMOYER, KEITH (W)
7. PURCELL, ALAN (W)
8. LESKO, JOHN (W)
9. HALL, DONALD (B)

10. TRAVAGLIA, MICHAEL (W)
11. MAXWELL, FRED (B)
12. MORAN, WILLARD (W)
13. GREEN, WILLIAM (B)
14. LOGAN, RONALD (B)
15. PETERKIN, OTIS (B)
16. CROSS, CHARLES (W)
17. HARDCASTLE, DONALD (B)
18. BUEHL, ROGER (W)

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| 19. | DOUGLAS, ROBERT (B) | 67. | BANNERMAN, SAMUEL (B) |
| 20. | YARRIS, NICHOLAS (W) | 68. | HOLLAND, WILLIAM (W) |
| 21. | WHITNEY, RAY (B) | 69. | CLAYTON, WILLIE (B) |
| 22. | JONES, THOMAS (B) | 70. | PORTER, ERNEST (B) |
| 23. | WHEELER, RONALD (B) | 71. | PROCTOR, ROGER (B) |
| 24. | ALBRECHT, ALFRED (W) | 72. | JERMYN, FREDERIC (W) |
| 25. | SZUCHON, JOSEPH (W) | 73. | SNEED, WILLIE (B) |
| 26. | MORALES, SALVADOR (H) | 74. | SANTIAGO, SALVADORE (H) |
| 27. | JONES, DAMON (B) | 75. | SMITH, JAY C. (W) |
| 28. | BAKER, LAWRENCE (B) | 76. | JASPER, ALFRED (B) |
| 29. | ABU-JAMAL, MUMIA (B) | 77. | MURPHY, CRAIG (B) |
| 30. | STOKES, RALPH (B) | 78. | THOMAS, BRIAN (B) |
| 31. | LEWIS, REGINALD (B) | 79. | APPEL, MARTIN (W) |
| 32. | MOORE, TYRONE (B) | 80. | ZOOK, ROBERT P. (W) |
| 33. | # HUGHES, KEVIN (B) | 81. | TEDFORD, DONALD (W) |
| 34. | FAHY, HENRY (W) | 82. | BRYANT, ROBERT (B) |
| 35. | WATSON, HERBERT (B) | 83. | BRODE, RICHARD (W) |
| 36. | KINDLER, JOSEPH (W) | 84. | HENRY, JOSEPH (B) |
| 37. | CHRISTY, LAWRENCE (W) | 85. | ROLLINS, SAHARRIS (B) |
| 38. | MORRIS, KEVIN (B) | 86. | JUDGE, ROGER (B) |
| 39. | LAMBERT, JAMES (B) | 87. | CHAMBERS, KARL (W) |
| 40. | NELSON, JOHN ANDREW (W) | 88. | YOUNG, JOSEPH (B) |
| 41. | ROLAN, FLORENCIO (H) | 89. | HAAG, RANDY (W) |
| 42. | BLYSTONE, SCOTT (W) | 90. | BILLA, LOUIS (H) - |
| 43. | CARPENTER, JAMES (B) | 91. | TILLEY, WILLIAM (W) |
| 44. | D'AMATO, CARMEN (W) | 92. | WILLIAMS, KENNETH (W) |
| 45. | GABLER, MILES (W) | 93. | WILSON, ZACHARY (B) |
| 46. | DEHART, ROBERT (W) | 94. | LEE, PERCY (B) |
| 47. | BAKER, HERBERT (B) | 95. | COX, RUSSELL (B) |
| 48. | STRONG, JAMES (W) | 96. | MAYHUE, FRED (W) |
| 49. | MARSHALL, JEROME (B) | 97. | LY, CAM (A) |
| 50. | TERRY, BENJAMIN (B) | 98. | BREAKIRON, MARK (W) |
| 51. | GIBBS, BARRY (W) | 99. | GRAHAM, HARRISON (B) |
| 52. | WILLIAMS, RONALD (B) | 100. | LAIRD, RICHARD (W) |
| 53. | DUFFY, STEVEN (W) | 101. | CHESTER, FRANK (W) |
| 54. | SMITH, JAMES (B) | 102. | WILLIAMS, CRAIG (B) |
| 55. | EDWARDS, GEORGE (W) | 103. | RUSH, LARRY (U) |
| 56. | CRAWLEY, DEWITT (B) | 104. | THOMAS, LEROY (B) |
| 57. | LARK, ROBERT (B) | 105. | HIEDNIK, GARY (W) |
| 58. | ATKINS, ROBERT (B) | 106. | HACHETT, RICHARD (W) |
| 59. | WHARTON, ROBERT (B) | 107. | SPENCE, MORRIS (B) |
| 60. | GRIFFIN, RODNEY (B) | 108. | HENRY, JOSOPH (B) |
| 61. | CHMIEL, DAVID (W) | 109. | YOUNG, JOSEPH LOUIS (B) |
| 62. | WALLACE, WILLIAM (B) | 110. | MORRIS, KELVIN (B) |
| 63. | BANKS, GEORGE (B) | 111. | STARR, GARY (W) |
| 64. | STEELE, ROLAND (B) | 112. | GORBY, THOMAS (W) |
| 65. | MOSER, LEON (W) | 113. | CARTER, DARRYL (W) |
| 66. | O'SHEA, RONALD (W) | | |

SOUTH CAROLINA (20B; 22W) TOTAL: 42 Electrocutation

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| 1. | GLEATON, J.D. (B) | 20. | DRAYTON, LEROY (B) |
| 2. | GILBERT, LARRY (B) | 21. | OWENS, ALVIN (W) |
| 3. | ROBERTS, SAMMY (W) | 22. | HOWARD, RONNIE (B) |
| 4. | BUTLER, HORACE (B) | 23. | [WELDON, DANA (B)] |
| 5. | WOOMER, RONALD (W) | 24. | WEST, FLOYD (W) |
| 6. | ADAMS, SYLVESTER (B) | 25. | MIDDLETON, FRANK (B) |
| 7. | S'ANN, STERLING (B) | 26. | CAIN, RUSSELL (W) |
| 8. | ARNOLD, JOHN (W) | 27. | ELMORE, EDWARD LEE (B) |
| 9. | PLATH, JOHN (W) | 28. | [GATHERS, DEMETRIOUS (B)] |
| 10. | [KOON, PAUL (W)] | 29. | JONES, DONALD ALLEN (B) |
| 11. | GASKINS, DONALD (W) | 30. | MATTHEWS, EARL (B) |
| 12. | [CHAFFEE, JONATHAN (W)] | 31. | [PLEMMONS, JERRY (W)] |
| 13. | [FARRELL, DALLAS (W)] | 32. | ARTHUR, LIMMIE (B) |
| 14. | LUCAS, CECIL (W) | 33. | RIDDLE, ERNEST (W) |
| 15. | SINGLETON, FRED (B) | 34. | TRUESDALE, LOUIS (B) |
| 16. | SOUTH, ROBERT (W) | 35. | SMITH, ANDY LAVERNE (B) |
| 17. | [DAMON, SHELLIE (B)] | 36. | PATTERSON, RAYMOND (B) |
| 18. | KORNAHRENS, FRED (W) | 37. | JOHNSON, RICHARD (W) |
| 19. | BELL, LARRY GENE (W) | 38. | TORRENCE, MICHAEL (W) |

39. CALDWELL, RICKIE TIM (W)
40. ATKINS, JOSEPH (W)

41. GREEN, ANTHONY (B)
42. VICTOR, WILLIAM (W)

TENNESSEE (22B; 48W; 1N) TOTAL: 71 Electrocution

1. AUSTIN, RICHARD (W)
2. GROSECLOSE, WILLIAM (W)
3. RICKMAN, RONALD (W)
4. STROUTH, DONALD (N)
5. HOUSTON, RICHARD (B)
6. DICKS, JEFFREY (W)
7. SIMON, RICHARD (B)
8. COLEMAN, MICHAEL ANGELO (B)
9. [MELSON, HUGH (W)]
10. [JOHNSON, CECIL (B)]
11. COE, GLEN (W)
12. MORRIS, TIMOTHY (W)
13. LANEY, THOMAS GERALD (W)
14. HARRIES, RONALD (W)
15. CAMPBELL, KENNETH (W)
16. WORKMAN, PHILLIP (W)
17. MATSON, MICHAEL (W)
18. CONE, GARY (W)
19. CALDWELL, RICHARD (W)
20. SAMPLE, MICHAEL (B)
21. MCKAY, WILLIAM (B)
22. KING, THOMAS (B)
23. BARNES, JAMES (W)
24. CARUTHERS, WALTER (B)
25. DUNCAN, DAVID (B)
26. HARTMAN, EDDIE (W)
27. TEAGUE, RAYMOND (W)
28. ZAGORSKI, EDMUND (W)
29. SMITH, RICKY (B)
30. GOAD, WILLIAM W. JR. (W)
31. TAYLOR, RICHARD C. (W)
32. SPARKS, WILLY (B)
33. JOHNSON, WALTER (W)
34. MCNISH, DAVID (W)
35. HARBASON, EDWARD (B)
36. CARTER, JAMES DAVID (W)

37. KING, TERRY (W)
38. O'GUINN, KENNETH W. (W)
39. COOPER, VERNON (W)
40. BOBO, TONY L. (B)
41. MCCORMICK, MICHAEL (W)
42. WRIGHT, CHARLES (B)
43. COKER, ROCKY (W)
44. THOMPSON, GREGORY (B)
45. JOHNSON, DONNIE (W)
46. JOHNSON, ERSKINE (B)
47. HINES, ANTHONY (W)
48. * OWENS, GAILE (W)
49. PORTERFIELD, SIDNEY (B)
50. HOUSE, PAUL GREGORY (W)
51. HENLEY, STEVE (W)
52. ADKINS, CARL WAYNE (W)
53. SUTTON, NICHOLAS (W)
54. BELL, ROGER MORRIS (B)
55. BARBER, TERRY (W)
56. IRICK, BILLY RAY (W)
57. MILLER, DAVID (W)
58. WILCOXSON, BOBBY (W)
59. WEST, STEVEN (W)
60. POE, DAVID (W)
61. BATES, WAYNE LEE (W)
62. TAYLOR, DARRYL (W)
63. ALLEY, SEDLEY (B)
64. JONES, JAMES LEE (B)
65. TEEL, BOULDIN (W)
66. PAYNE, PERVIS (B)
67. CAUTHERN, RONNIE (W)
68. BOYD, MICHAEL JOE (B)
69. MCCORD, J.B. (W)
70. HARRIS, EDWARD (W)
71. TERRY, DAVID (W)

TEXAS (102B; 135W; 34H; 2N; 3A) TOTAL: 276 Lethal Injection

1. CORLEY, EDWARD (W)
2. WOODS, BILLY JOE (W)
3. EARVIN, HARVEY (B)
4. GREEN, G.W. (W)
5. WHITE, BILLY WAYNE (B)
6. BIRD, JERRY JOE (W)
7. RUSSELL, JAMES (B)
8. WILLIAMS, JAMES C. (B)
9. HAWKINS, SAMUEL (B)
10. COOK, KERRY MAX (W)
11. SMITH, JACK HARVEY (W)
12. DAVIS, WILLIAM PRINCE (B)
13. [POWELL, DAVID LEE (W)]
14. RILES, RAYMOND (B)
15. [CASS, MARK R (W)]
16. JOHNSON, CARL (B)
17. ARANDA, ARTURO (H)
18. PAYNE, EDWARD (B)
19. VIGNEAULT, DONALD L. (W)
20. [VANDERBILT, JIMMY (W)]
21. GRIFFIN, JEFFERY (B)
22. SELVAGE, JOHN HENRY (B)
23. FIERRO, CESAR (H)
24. DEGARMO, ROGER (W)
25. HOGUE, JERRY (W)
26. PENRY, JOHNNY PAUL (W)

27. RUSSELL, CLIFTON CHARLES
28. MOORE, BOBBY JAMES (B)
29. KING, LEON RUTHERFORD (B)
30. STEWART, DARRYL E. (B)
31. WILLIAMS, CALVIN J. (B)
32. BRIDGE, WARREN (W)
33. [SATTERWHITE, JOHN (B)]
34. SESSION, JAMES (B)
35. BANKS, DELMA (B)
36. BARBER, DANNY LEE (W)
37. [DUNN, KENNETH D. (B)]
38. MITCHELL, ANDREW L (B)
39. WILLIAMS, WILLIE RAY (B)
40. GARDNER, DAVID (W)
41. BRANDLEY, CLARENCE (B)
42. BARNARD, HAROLD (W)
43. JENECKA, ALLEN (W)
44. SOFFAR, MAX (W)
45. KELLY, CARL E. (B)
46. NETHERY, STEPHEN (W)
47. FAULDER, JOSEPH (W)
48. TOMPKINS, PHILLIP D. (B)
49. MEANES, JAMES R. (B)
50. DUFF-SMITH, MARKHAM (W)
51. HOLLOWAY, EMMETT (W)
52. RICHARDSON, MIGUEL A. (B)

53.	GOODMAN, MICHAEL (B)	123.	SPENCE, DAVID WAYNE (W)
54.	FEARANCE, JOHN (B)	124.	CASTILLO, DAVID ALLEN (H)
55.	SANTANA, CARLOS (H)	125.	HARRIS, DANNY RAY (B)
56.	BONHAM, ANTONIO (B)	126.	MCCOY, STEPHEN (W)
57.	# GRAHAM, GARY (B)	127.	WHITE, LARRY WAYNE (W)
58.	JERNIGAN, JOSEPH (W)	128.	* PERILLO, PAMELA (W)
59.	[BEASLEY, RAYMOND (W)]	129.	MARQUEZ, MARIO (H)
60.	DERRICK, MIKEL (W)	130.	SOSA, PEDRO S. (H)
61.	HERRERA, LEONEL (H)	131.	GARRETT, DANIEL (W)
62.	WILLIAMS, WALTER KEY (B)	132.	+ JACKSON, TOMMY RAY (B)
63.	MANN, FLETCHER (W)	133.	MAYS, NOBEL (W)
64.	# CANNON, JOSEPH J (W)	134.	[DUNNE, THOMAS LENNON (B)
65.	BRIDDLE, JAMES (W)	135.	MODDEN, WILLIE MAX (B)
66.	# CARTER, ROBERT ANTHONY (B)	136.	MAYO, RANDY (W)
67.	NICHOLS, JOSEPH B. (B)	137.	MOTLEY, JEFFREY (W)
68.	BELL, WALTER (B)	138.	MAY, JUSTIN LEE (W)
69.	THOMAS, DANNY DEAN (N)	139.	KUNKLE, TROY (W)
70.	FRANKLIN, DONALD GENE (B)	140.	BEATHARD, JAMES LEE (W)
71.	CLARK, HERMAN ROBERT (B)	141.	DEEB, MUNEER M. (W)
72.	MCKAY, DAVID WAYNE (W)	142.	STERLING, TERRY NASH (N)
73.	RECTOR, CHARLES (B)	143.	DAVIS, JAMES CARL LEE (B)
74.	EAST, WAYNE (B)	144.	SMITH, SAMMIE LOUIS (W)
75.	# GARRETT, JOHNNY F. (W)	145.	LITTLE, WILLIAM H. (W)
76.	PHILLIPS, CLIFFORD X. (B)	146.	LIVINGSTON, CHARLES (B)
77.	ANDREWS, MAURICE (B)	147.	PURTELL, ROBERT M. (W)
78.	GUERRA, RICARDO (H)	148.	BARRIENTES, ANTONIO (H)
79.	MILLER, DONALD A. (W)	149.	WESTLEY, ANTHONY RAY (B)
80.	PYLES, JOHNNY (W)	150.	# WILLS, BOBBY JOE (B)
81.	CORDOVA, JOSEPH ANGEL (H)	151.	DUHAMEL, EMILE PIERRE (W)
82.	ANDERSON, LARRY NORMAN (W)	152.	COUNTY, CHARLES (B)
83.	WEST, ROBERT W (W)	153.	LOSADA, DAVIS (H)
84.	ANDERSON, JOHNNY RAY (W)	154.	CRANK, DENTON ALAN (W)
85.	WILLIAMS, ARTHUR LEE (B)	155.	HAWTHORNE, GENE (W)
86.	LAMB, JOHN MICHAEL (W)	156.	ROMERO, JESUS (H)
87.	REED, JONATHAN (W)	157.	# CANTU, RUBEN (H)
88.	PEREZ, MANUEL J. (H)	158.	KINNAMON, RAYMOND (W)
89.	DEMOUCLETTE, JAMES (B)	159.	GREEN, NORMAN EVANS (B)
90.	LACKEY, CLARENCE (W)	160.	HERNANDEZ, RUDOLFO BAIZA (H)
91.	GRANVIEL, KENNETH (B)	161.	WILLIAMS, TOBY LYNN (B)
92.	MONTOYA, RAMON (H)	162.	DEBLANC, DAVID WAYNE (B)
93.	MORELAND, JAMES (W)	163.	HAVARD, PATRICK CURTIS (W)
94.	LANDRY, RAYMOND (B)	164.	* BEETS, BETTY LOU (W)
95.	BUXTON, LAWRENCE (B)	165.	ROBINSON, WILLIAM (B)
96.	SHARP, MICHAEL (W)	166.	ROSALES, MARIANO (H)
97.	SAWYERS, JOHN (W)	167.	FOSTER, RICHARD D. (W)
98.	CUEVAS, IGNACIO (H)	168.	[BENNETT, BABY RAY (B)]
99.	DELUNA, CARLOS (H)	169.	ALLRIDGE, RONALD (B)
100.	SKELTON, JOHN (W)	170.	KNOX, JAMES ROY (W)
101.	# HARRIS, CURTIS PAUL (B)	171.	CHAMBERS, RONALD (B)
102.	ELLIS, EDWARD (W)	172.	ROGERS, PATRICK (B)
103.	TURNER, JOSEPH PAUL (W)	173.	MATA, RAMON (H)
104.	PASTER, JAMES (W)	174.	BLACK, ROBERT (W)
105.	JORDAN, LARENCE (W)	175.	HOLLAND, DAVID LEE (W)
106.	JORDAN, CLARENCE (W)	176.	CUMBO, SAM EDWARD (B)
107.	DREW, ROBERT (W)	177.	MADDEN, ROBERT (W)
108.	GARDNER, BILLY CONN (W)	178.	HAFDAHL, RANDALL W. (W)
109.	ROUGEAU, PAUL (W)	179.	GIBBS, DAVID EARL (W)
110.	WILKERSON, RICHARD (B)	180.	CARTER, JOHNNY RAY (B)
111.	JOHNSON, CURTIS (B)	181.	MILLER-EL, THOMAS JOE (B)
112.	BURDINE, CALVIN (W)	182.	HERNANDEZ, ROGELIO (H)
113.	WYLE, JAMES (B)	183.	MITCHELL, GERALD LEE (B)
114.	SMITH, JAMES E. (B)	184.	MATSON, JOHN, JR. (B)
115.	GENTLEY, KENNETH (W)	185.	EMERY, JEFF (W)
116.	MCGEE, JEWEL R. (B)	186.	FARRIS, TROY DALE (W)
117.	* TUCKER, KARLA FAY (W)	187.	LINCECUM, KEVIN (B)
118.	BOWER, LESTER L. (W)	188.	UPTON, JACKIE WAYNE (W)
119.	LUCAS, HENRY LEE (W)	189.	MONTOYA, IRINEO (H)
120.	RANSOM, KENNETH RAY (B)	190.	RIVERA, ANGEL (H)
121.	MACIAS, FREDERICO (H)	191.	SORIA, JUAN (H)
122.	TREVINO, JOSE MARIO (H)	192.	BURNS, WILLIAM (B)

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| 193. | BELYEU, CLIFTON (W) | 235. | WILLIS, ERNEST RAY (W) |
| 194. | DRINKARD, RICHARD (W) | 236. | NAPIER, CARL (W) |
| 195. | KITCHENS, WILLIAM (W) | 237. | JONES, RICHARD (W) |
| 196. | GOSCH, LESLEY LEE (W) | 238. | RICE, TONY (W) |
| 197. | LAUTI, AUA (A) | 239. | WASHINGTON, TERRY (B) |
| 198. | BAREFIELD, JOHN KENNEDY (B) | 240. | NOBLES, JONATHAN (W) |
| 199. | TEAGUE, DELBERT BOYD (W) | 241. | ROBERSON, BRIAN (B) |
| 200. | WEBB, FREDDIE (B) | 242. | BOGGESS, HOLT (W) |
| 201. | BOYLE, BENJAMIN (W) | 243. | ROBISON, LARRY (W) |
| 202. | BUTLER, JEROME (B) | 244. | RICHARDS, MICHAEL (B) |
| 203. | JOHNSON, DORSIE (B) | 245. | BOYD, CHARLES (B) |
| 204. | RILEY, MICHAEL LYNN (B) | 246. | STOCKER, DAVID (W) |
| 205. | WASHINGTON, WILLIE (B) | 247. | BLACKMON, RICKY (W) |
| 206. | COCKRUM, JOHN (W) | 248. | ELLASON, THOMAS (W) |
| 207. | BALDREE, ERNIE (W) | 249. | FRONCKIEWICZ, MARK (W) |
| 208. | SATTIEWHITE, VERNON (B) | 250. | TURNER, JESSEL (W) |
| 209. | RAMIREZ, CARLOS (H) | 251. | WILKENS, JAMES JAY (W) |
| 210. | PIERCE, ANTHONY LEROY (B) | 252. | JOHNSON, EDDIE (B) |
| 211. | MORENO, JOSE (H) | 253. | BRIMAGE, RICHARD (W) |
| 212. | TENNARD, ROBERT (B) | 254. | KEMP, EMANUEL (B) |
| 213. | ELLIOTT, JOHN (H) | 255. | DELK, MONTY ALLEN (W) |
| 214. | MUNIZ, PEDRO CRUZ (H) | 256. | HARRIS, KENNETH (B) |
| 215. | LONG, DAVID MARTIN (W) | 257. | JOINER, ORIENT (W) |
| 216. | THOMAS, KENNETH WAYNE (B) | 258. | MCBRIDE, MICHAEL (W) |
| 217. | ESEQUEL, BANDA (H) | 259. | VUONG, HAI HAI (A) |
| 218. | GUNTHER, JAMES LEE (W) | 260. | EARHART, JAMES (W) |
| 219. | HAMMOND, KARL (B) | 261. | HUGHES, BILLY GEORGE (W) |
| 220. | LEWIS, DAVID LEE (W) | 262. | DE LA CRUZ, JOSE (H) |
| 221. | MOONEY, NELSON W. (W) | 263. | COLE, TED CALVIN (W) |
| 222. | RICHARDSON, JAMES (B) | 264. | AMOS, BERNARD (B) |
| 223. | JACOBS, JESSE DEWAYNE (W) | 265. | JUAREZ ROSALES, MARIANE (H) |
| 224. | MCGOWEN, ROGER WAYNE (B) | 266. | RABBANI, SYED (A) |
| 225. | NORRIS, MICHAEL (B) | 267. | VALDEZ, ALBERTO (H) |
| 226. | ALLRIDGE, JAMES (B) | 268. | JOHNSON, GARY (W) |
| 227. | FIRST, KENNETH (W) | 269. | LANE, HAROLD (W) |
| 228. | CLARK, DAVID M. (W) | 270. | GOSS, CORNELIUS (B) |
| 229. | LEWIS, ANDRE (B) | 271. | NELSON, MARLIN (W) |
| 230. | JACOBS, BRUCE (W) | 272. | BEAVERS, RICHARD LEE (W) |
| 231. | WHITE, EXCELL (W) | 273. | BEHRINGER, EARL (W) |
| 232. | MCFADDEN, JERRY (W) | 274. | RICHARDSON, DAMON (B) |
| 233. | DRAUGHON, MARTIN (W) | 275. | LOCKHART, MICHAEL (W) |
| 234. | GOODWIN, ALVIN (W) | 276. | COOK, ANTHONY (W) |

UTAH (3B; 3W) TOTAL: 6 Firing Squad or Lethal Injection

1. ANDREWS, WILLIAM (B)
2. TILLMAN, ELROY (B)
3. LAFFERTY, RON (W)
4. GARDNER, RONNIE LEE (W)
5. CARTER, DOUGLAS (B)
6. HOLLAND, JAMES (W)

VIRGINIA (21B; 17W) TOTAL: 38 Electrocution

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|-----|--------------------------|-----|--------------------------|
| 1. | WAYE, ALTON (B) | 17. | WATKINS, JOHNNY (B) |
| 2. | STAMPER, CHARLES (B) | 18. | POYNER, SYVASKY (B) |
| 3. | GIARRATANO, JOSEPH (W) | 19. | [BOGGS, RICHARD (W)] |
| 4. | JUSTUS, BUDDY (W) | 20. | WISE, JOE (B) |
| 5. | BASSETT, HERBERT (B) | 21. | BEAVER, GREGORY (W) |
| 6. | FITZGERALD, EDWARD (W) | 22. | GRAY, COLEMAN WAYNE (B) |
| 7. | COLEMAN, ROGER (W) | 23. | PRUETT, DAVID MARK (W) |
| 8. | PETERSON, DERRICK (B) | 24. | PAYNE, JOSEPH (W) |
| 9. | BUNCH, TIMOTHY (W) | 25. | CORRELL, WALTER (W) |
| 10. | [STOCKTON, DENNIS (W)] | 26. | TOWNES, RICHARD (B) |
| 11. | CLOZZA, ALBERT (W) | 27. | POPE, CARLTON (B) |
| 12. | TUGGLE, LEM (W) | 28. | BARNES, HERMAN (B) |
| 13. | WASHINGTON, EARL JR. (B) | 29. | O'DELL, JOSEPH (W) |
| 14. | JONES, WILLIE LEROY (B) | 30. | WILLIAMS, TERRY (B) |
| 15. | EVANS, WILBURT (B) | 31. | DELONG, WAYNE (W) |
| 16. | EDMONDS, DANA (B) | 32. | TURNER, WILLIE LLOYD (B) |

- 33. FISHER, DAVID LEE (W)
- 34. STOUT, LARRY ALAN (B)
- 35. HOKE, RONALD LEE (W)

- 36. MACKALL, TONY (B)
- 37. BENNETT, RONALD (B)
- 38. WATKINS, RONALD (B)

WASHINGTON (1B; 5W; 1A) TOTAL: 7 Lethal Injection or Hanging

- 1. CAMPBELL, CHARLES (W)
- 2. MAK, KWAN (A)
- 3. JEFFRIES, PATRICK (W)
- 4. HARRIS, BENJAMIN (B)
- 5. RUPE, MITCHELL (W)
- 6. RICE, DAVID LEWIS (W)
- 7. LORD, BRIAN KEITH (W)

WYOMING (3W) TOTAL: 3 Lethal Injection

- 1. HOPKINSON, MARK (W)
- 2. [OSBORN, KEVIN (W)]
- 3. ENGBERG, ROY (W)

FEDERAL JURISDICTIONS (U.S. Military) (3B; 1W) TOTAL: 4
Lethal Injection

- 1. [DOCK, TODD (W)]
- 2. CURTIS, RONNIE ALLEN (B)
- 3. MURPHY, JAMES (B)
- 4. GRAY, RONALD (B)

(B) Black
 (W) White
 (H) Hispanic
 (A) Asian
 (N) Native American
 (U) Unknown at this issue
 * Female
 # Juvenile at time of offense
 + Sentenced to death in the state where listed, but incarcerated under death sentence or under term sentence in another state

Errata from August 1, 1988 issue:

- AZ: #79, JESUS JIMENEZ is a juvenile;
- MD: #13, GREGORY JONES bracketed erroneously;
- NJ: MARKO BEY should have appeared on list with brackets (sentence for this offense is non-juvenile);
- OK: #4, BILLY STOUT and #15, ROGER HAYES, bracketed erroneously;
- TX: #157, RUBEN CANTU is a juvenile;
- VA: #34, LARRY STOUT is black;
- US: TODD DOCK should have appeared on list with brackets;

Alaska State Legislature

Chairman
(907) 465-4523



Jan Faiks
Post Office Box V
Juneau, Alaska 99811

Senate Judiciary Committee

January 30, 1989

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: Judiciary Committee Hearing on Capital Punishment

At its meeting on Tuesday, January 31, the Senate Judiciary Committee will take testimony via teleconference on Senate Bill 17, from two of the nation's leading authorities on capital punishment.

At 2:00, Dr. Stephan Layson, an economist at the University of North Carolina, will offer testimony on the deterrent effect of capital punishment. Dr. Layson is well known for a statistical study he published in 1985, which offered evidence that every execution deters, on average, 18 murders that would have occurred without it.

At 2:30, Professor Ernest van den Haag, the John M. Olin Professor of Jurisprudence and Public Policy at Fordham University, will offer testimony on the philosophical arguments for and against capital punishment. Professor van den Haag is one of the nation's most prominent criminologists, and he has written extensively on the death penalty in both the professional and popular press.

The meeting will be in the Butrovich Room. All senators are welcome to attend.

Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

COMMENTARIES*

THE ULTIMATE PUNISHMENT: A DEFENSE

Ernest van den Haag**

In an average year about 20,000 homicides occur in the United States. Fewer than 300 convicted murderers are sentenced to death. But because no more than thirty murderers have been executed in any recent year, most convicts sentenced to death are likely to die of old age.¹ Nonetheless, the death penalty looms large in discussions; it raises important moral questions independent of the number of executions.²

The death penalty is our harshest punishment.³ It is irrevocable; it ends the existence of those punished, instead of temporarily imprisoning them. Further, although not intended to cause physical pain, execution is the only corporal punishment still applied to adults.⁴ These singular characteristics contribute to the perennial, impassioned controversy about capital punishment.

I. DISTRIBUTION

Consideration of the justice, morality, or usefulness, of capital punishment is often conflated with objections to its alleged discriminatory or capricious distribution among the guilty. Wrongly so. If capital punishment is immoral *in se*, no distribution among the guilty could make it moral. If capital punishment is moral, no distribution would make it immoral. Improper distribution cannot affect the quality of what is distributed, be it punishments or rewards. Discriminatory or capricious distribution thus could not justify abolition of the

* The authors of these Commentaries have not seen drafts of each other's pieces. The Commentary format is not meant to be a debate, but rather is meant to present different perspectives on current issues of public importance.

** John M. Olin Professor of Jurisprudence and Public Policy, Fordham University

¹ Death row as a semipermanent residence is cruel, because convicts are denied the normal amenities of prison life. Thus, unless death row residents are integrated into the prison population, the continuing accumulation of convicts on death row should lead us to accelerate either the rate of executions or the rate of commutations. I find little objection to integration.

² The debate about the insanity defense is important for analogous reasons.

³ Some writers, for example, Cesare Bonesana, Marchese di Beccaria, have thought that life imprisonment is more severe. See C. BECCARIA, *DEI DELITTI E DELLE PENE* 62-70 (1764). More recently, Jacques Barzun, has expressed this view. See Barzun, *In Favor of Capital Punishment*, in *THE DEATH PENALTY IN AMERICA* 154 (H. Bedau ed. 1964). However, the overwhelming majority of both abolitionists and of convicts under death sentence prefer life imprisonment to execution.

⁴ For a discussion of the sources of opposition to corporal punishment, see E. VAN DEN HAAG, *PUNISHING CRIMINALS* 196-266 (1975).

death penalty. Further punishment than in an... Maldistribution bet... tion, unjust. But the punishment. Because grievous maldistribution. However, the frequent refer to maldistribution of the innocent.⁵

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⁵ See *infra* pp. 1664-65.
⁶ Justice Douglas, concurring in... reaches that (discrimin... terms provides the same." *Id.*... result "in terms" would be in... fourteenth amendment, as w... could be changed by cha... standing, a discriminatory re... Penalty ineluctably must produ...

A DEFENSE

death penalty. Further, maldistribution inheres no more in capital punishment than in any other punishment.

Maldistribution between the guilty and the innocent is, by definition, unjust. But the injustice does not lie in the nature of the punishment. Because of the finality of the death penalty, the most grievous maldistribution occurs when it is imposed upon the innocent. However, the frequent allegations of discrimination and capriciousness refer to maldistribution among the guilty and not to the punishment of the innocent.⁵

Maldistribution of any punishment among those who deserve it is irrelevant to its justice or morality. Even if poor or black convicts guilty of capital offenses suffer capital punishment, and other convicts equally guilty of the same crimes do not, a more equal distribution, however desirable, would merely be more equal. It would not be more just to the convicts under sentence of death.

Punishments are imposed on persons, not on racial or economic groups. Guilt is personal. The only relevant question is: does the person to be executed deserve the punishment? Whether or not others who deserved the same punishment, whatever their economic or racial group, have avoided execution is irrelevant. If they have, the guilt of the executed convicts would not be diminished, nor would their punishment be less deserved. To put the issue starkly, if the death penalty were imposed on guilty blacks, but not on guilty whites, or, if it were imposed by a lottery among the guilty, this irrationally discriminatory or capricious distribution would neither make the penalty unjust, nor cause anyone to be unjustly punished, despite the undue impunity bestowed on others.⁶

Equality, in short, seems morally less important than justice. And justice is independent of distributional inequalities. The ideal of equal justice demands that justice be equally distributed, not that it be replaced by equality. Justice requires that as many of the guilty as possible be punished, regardless of whether others have avoided punishment. To let these others escape the deserved punishment does not do justice to them, or to society. But it is not unjust to those who could not escape.

These moral considerations are not meant to deny that irrational discrimination, or capriciousness, would be inconsistent with consti-

⁵ See *infra* pp. 1664-65.

⁶ Justice Douglas, concurring in *Furman v. Georgia*, 408 U.S. 238 (1972), wrote that "a law which . . . reaches that [discriminatory] result in practice has no more sanctity than a law which in terms provides the same." *Id.* at 256 (Douglas, J., concurring). Indeed, a law legislating this result "in terms" would be inconsistent with the "equal protection of the laws" provided by the fourteenth amendment, as would the discriminatory result reached in practice. But that result could be changed by changing the distributional practice. Thus, Justice Douglas notwithstanding, a discriminatory result does not make the death penalty unconstitutional, unless the penalty ineluctably must produce that result to an unconstitutional degree.

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tutional requirements. But I am satisfied that the Supreme Court has in fact provided for adherence to the constitutional requirement of equality as much as is possible. Some inequality is indeed unavoidable as a practical matter in any system.⁷ But, *ultra posse nemo obligatur*. (Nobody is bound beyond ability.)⁸

Recent data reveal little direct racial discrimination in the sentencing of those arrested and convicted of murder.⁹ The abrogation of the death penalty for rape has eliminated a major source of racial discrimination. Concededly, some discrimination based on the race of murder victims may exist; yet, this discrimination affects criminal victimizers in an unexpected way. Murderers of whites are thought more likely to be executed than murderers of blacks. Black victims, then, are less fully vindicated than white ones. However, because most black murderers kill blacks, black murderers are spared the death penalty more often than are white murderers. They fare better than most white murderers.¹⁰ The motivation behind unequal distribution of the death penalty may well have been to discriminate against blacks; but the result has favored them. Maldistribution is thus a straw man for empirical as well as analytical reasons.

II. MISCARRIAGES OF JUSTICE

In a recent survey Professors Hugo Adam Bedau and Michael Radelet found that 7000 persons were executed in the United States between 1900 and 1985 and that 25 were innocent of capital crimes.¹¹ Among the innocents they list Sacco and Vanzetti as well as Ethel and Julius Rosenberg. Although their data may be questionable, I do not doubt that, over a long enough period, miscarriages of justice will occur even in capital cases.

⁷ The ideal of equality, unlike the ideal of retributive justice (which can be approximated separately in each instance), is clearly unattainable unless all guilty persons are apprehended, and thereafter tried, convicted and sentenced by the same court, at the same time. Unequal justice is the best we can do; it is still better than the injustice, equal or unequal, which occurs if, for the sake of equality, we deliberately allow some who could be punished to escape.

⁸ Equality, even without justice, may remain a strong psychological, and therefore political, demand. Yet Charles Black, by proving the inevitability of "caprice" (inequality), undermines his own constitutional argument, because it seems unlikely that the Constitution's fifth and fourteenth amendments were meant to authorize the death penalty only under unattainable conditions. See C. BLACK, *CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE* (1974).

⁹ See BUREAU OF JUSTICE STATISTICS, U.S. DEPT OF JUSTICE, BULLETIN NO. NCJ-98,399, *CAPITAL PUNISHMENT 1984*, at 9 (1985); Johnson, *The Executioner's Bias*, NAT'L REV., Nov. 15, 1985, at 44.

¹⁰ It barely need be said that any discrimination against (for example, black murderers of whites) must also be discrimination for (for example, black murderers of blacks).

¹¹ Bedau & Radelet, *Miscarriages of Justice in Potentially Capital Cases* (1st draft, Oct. 1985) (on file at Harvard Law School Library).

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Despite much recent work demonstration that the death alternative punishments.¹² H for either side. Most abollitio tinue to favor abolition even i more murders than alternativ value the life of a convicted more highly than they value might be spared by deterring

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¹² An excessive number of trucking benefits gained by trucking or the prac situation.

¹³ For a sample of conflicting views see *Work of Thorsten Sellin and Isaac Ehrlich* YALE L.J. 170 (1975); Bowers & Pierce, *Executions?*, 26 CRIME & DELINQ. 453; Isaac Ehrlich's *Research on Capital Punishment: A Critical Evaluation of the Incapacitative Effects*, 6 J. LEGAL STUD. 1; *Punishment: A Question of Life and Death*, 6 J. LEGAL STUD. 35 (1977).

¹⁴ For most abolitionists, the decision is nondecisive: they would favor abolition if

¹⁵ If executions were shown to increase, abolition. Sparing the innocent victims of murderers would be more important. But although there is a lively discussion of the hypothesis that executions produce a net benefit, see *Capital Punishment: New Evidence* arguing that murder rates drop immedi-

held that the Supreme Court has no constitutional requirement of equality is indeed unavoidable. But, *ultra posse nemo obligatur*.

acial discrimination in the sentencing of murder.⁹ The abrogation eliminated a major source of racial discrimination based on the race of the murderer. Discrimination affects criminal justice because murderers of whites are thought more deserving of punishment than murderers of blacks. Black victims are thought more deserving of punishment than white ones. However, because black murderers are spared the death penalty, they fare better than white murderers. They fare better than white murderers because of the racial discrimination behind unequal distribution of punishment. It is not possible to discriminate against blacks. Misdistribution is thus a justifiable reason.

OF JUSTICE

to Adam Bedau and Michael V. L. Bell, *Executed in the United States: The Innocent of Capital Crimes*, and Vanzetti as well as Ethel Rosenberg may be questionable. If the death penalty is not abolished, miscarriages of justice will

inevitable justice (which can be approximated unless all guilty persons are apprehended in the same court, at the same time. Unequal justice, equal or unequal, which occurs to those who could be punished to escape, is a psychological, and therefore political, reality of "caprice" (inequality), undermining the likelihood that the Constitution's fifth and eighth amendments are only under unattainable. THE INEVITABILITY OF CAPRICE.

OF JUSTICE, BULLETIN NO. NCJ-65119, *Executioner's Bias*, NAT'L REV.

against (for example, black murderers of black murderers of blacks). *Centennial Capital Cases* (1st draft).

Despite precautions, nearly all human activities, such as trucking, lighting, or construction, cost the lives of some innocent bystanders. We do not give up these activities, because the advantages, moral or material, outweigh the unintended losses.¹² Analogously, for those who think the death penalty just, miscarriages of justice are offset by the moral benefits and the usefulness of doing justice. For those who think the death penalty unjust even when it does not miscarry, miscarriages can hardly be decisive.

III. DETERRENCE

Despite much recent work, there has been no conclusive statistical demonstration that the death penalty is a better deterrent than are alternative punishments.¹³ However, deterrence is less than decisive for either side. Most abolitionists acknowledge that they would continue to favor abolition even if the death penalty were shown to deter more murders than alternatives could deter.¹⁴ Abolitionists appear to value the life of a convicted murderer or, at least, his non-execution, more highly than they value the lives of the innocent victims who might be spared by deterring prospective murderers.

Deterrence is not altogether decisive for me either. I would favor retention of the death penalty as retribution even if it were shown that the threat of execution could not deter prospective murderers not already deterred by the threat of imprisonment.¹⁵ Still, I believe the death penalty, because of its finality, is more feared than imprisonment, and deters some prospective murderers not deterred by the

¹² An excessive number of trucking accidents or of miscarriages of justice could offset the benefits gained by trucking or the practice of doing justice. We are, however, far from this situation.

¹³ For a sample of conflicting views on the subject, see Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 YALE L.J. 170 (1975); Bowers & Pierce, *Deterrence or Brutalization: What Is the Effect of Executions?*, 26 CRIME & DELINQ. 453 (1980); Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 YALE L.J. 127 (1975); Ehrlich, *Fear of Deterrence: A Critical Evaluation of the "Report of the Panel on Research on Deterrent and Incapacitative Effects"*, 6 J. LEGAL STUD. 293 (1977); Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397, 415-16 (1975); Ehrlich & Gibbons, *On the Measurement of the Deterrent Effect of Capital Punishment and the Theory of Deterrence*, 6 J. LEGAL STUD. 35 (1977).

¹⁴ For most abolitionists, the discrimination argument, see *supra* pp. 1662-64, is similarly nondecisive. They would favor abolition even if there could be no racial discrimination.

¹⁵ If executions were shown to increase the murder rate in the long run, I would favor abolition. Sparing the innocent victims who would be spared, *ex hypothesi*, by the nonexecution of murderers would be more important to me than the execution, however just, of murderers. But although there is a lively discussion of the subject, no serious evidence exists to support the hypothesis that executions produce a higher murder rate. Cf. Phillips, *The Deterrent Effect of Capital Punishment: New Evidence on an Old Controversy*, 80 AM. J. SOC. 139 (1980) (arguing that murder rates drop immediately after executions of criminals).

threat of imprisonment. Sparing the lives of even a few prospective victims by deterring their murderers is more important than preserving the lives of convicted murderers because of the possibility, or even the probability, that executing them would not deter others. Whereas the lives of the victims who might be saved are valuable, that of the murderer has only negative value, because of his crime. Surely the criminal law is meant to protect the lives of potential victims in preference to those of actual murderers.

Murder rates are determined by many factors; neither the severity nor the probability of the threatened sanction is always decisive. However, for the long run, I share the view of Sir James Fitzjames Stephen: "Some men, probably, abstain from murder because they fear that if they committed murder they would be hanged. Hundreds of thousands abstain from it because they regard it with horror. One great reason why they regard it with horror is that murderers are hanged."¹⁶ Penal sanctions are useful in the long run for the formation of the internal restraints so necessary to control crime. The severity and finality of the death penalty is appropriate to the seriousness and the finality of murder.¹⁷

IV. INCIDENTAL ISSUES: COST, RELATIVE SUFFERING, BRUTALIZATION

Many nondecisive issues are associated with capital punishment. Some believe that the monetary cost of appealing a capital sentence is excessive.¹⁸ Yet most comparisons of the cost of life imprisonment with the cost of execution, apart from their dubious relevance, are flawed at least by the implied assumption that life prisoners will generate no judicial costs during their imprisonment. At any rate, the actual monetary costs are trumped by the importance of doing justice.

Others insist that a person sentenced to death suffers more than his victim suffered, and that this (excess) suffering is undue according to the *lex talionis* (rule of retaliation).¹⁹ We cannot know whether

¹⁶ H. Gross, *A THEORY OF CRIMINAL JUSTICE* 409 (1975) (attributing this passage to Sir James Fitzjames Stephen).

¹⁷ *Weems v. United States*, 217 U.S. 349 (1916), suggests that penalties be proportionate to the seriousness of the crime — a common theme of the criminal law. Murder, therefore, demands more than life imprisonment, if, as I believe, it is a more serious crime than other crimes punished by life imprisonment. In modern times, our sensibility requires that the range of punishments be narrower than the range of crimes — but not so narrow as to exclude the death penalty.

¹⁸ Cf. Kaplan, *Administering Capital Punishment*, 36 U. FLA. L. REV. 177, 178, 190-91 (1984) (noting the high cost of appealing a capital sentence).

¹⁹ For an example of this view, see A. CAMUS, *REFLECTIONS ON THE GOLLIVINE* 23-35 (1959). On the limitations allegedly imposed by the *lex talionis*, see Neuman, *Justice, Civilization, and the Death Penalty: Answering van den Haag*, 14 *PEN. & PUB. AFF.* 115, 117-14 (1985).

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V. JUSTICE

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²¹ See *supra* notes 17-19.

²² Some abolitionists challenge: not to advise executions? The answer: deterred, should not serve as public respect our sensibility has chan, would trivialize executions, wedge remedies and the like. Finally, bec of the punishment, rather than th, should execution would present: the moral significance of the of the murderer. We no longer to public view. Why should

²³ See van den Haag, *Punishm-* L. REV. 700, 710 (1981) (explaining how to be satisfied even if deterred

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RELATIVE SUFFERING, IMPRISONMENT

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1901, *PUB. & PUB. AFF.* 115, 117-8

the murderer on death row suffers more than his victim suffered; however, unlike the murderer, the victim deserved none of the suffering inflicted. Further, the limitations of the *lex talionis* were meant to restrain private vengeance, not the social retribution that has taken its place. Punishment — regardless of the motivation — is not intended to revenge, offset, or compensate for the victim's suffering, or to be measured by it. Punishment is to vindicate the law and the social order undermined by the crime. This is why a kidnapper's penal confinement is not limited to the period for which he imprisoned his victim; nor is a burglar's confinement meant merely to offset the suffering or the harm he caused his victim; nor is it meant only to offset the advantage he gained.²⁰

Another argument heard at least since Beccaria²¹ is that, by killing a murderer, we encourage, endorse, or legitimize unlawful killing. Yet, although all punishments are meant to be unpleasant, it is seldom argued that they legitimize the unlawful imposition of identical unpleasantness. Imprisonment is not thought to legitimize kidnapping; neither are fines thought to legitimize robbery. The difference between murder and execution, or between kidnapping and imprisonment, is that the first is unlawful and undeserved, the second a lawful and deserved punishment for an unlawful act. The physical similarities of the punishment to the crime are irrelevant. The relevant difference is not physical, but social.²²

V. JUSTICE, EXCESS, DEGRADATION

We threaten punishments in order to deter crime. We impose them not only to make the threats credible but also as retribution (justice) for the crimes that were not deterred. Threats and punishments are necessary to deter and deterrence is a sufficient practical justification for them. Retribution is an independent moral justification.²³ Al-

²⁰ Thus restitution (a civil liability) cannot satisfy the punitive purpose of penal sanctions, whether the purpose be retributive or deterrent.

²¹ See *supra* note 3.

²² Some abolitionists challenge: if the death penalty is just and serves as a deterrent, why not televise executions? The answer is simple. The death even of a murderer, however well-deserved, should not serve as public entertainment. It so served in earlier centuries. But in this respect our sensibility has changed for the better, I believe. Further, television unavoidably would trivialize executions, wedged in, as they would be, between game shows, situation comedies and the like. Finally, because televised executions would focus on the physical aspects of the punishment, rather than the nature of the crime and the suffering of the victim, a televised execution would present the murderer as the victim of the state. Far from communicating the moral significance of the execution, television would shift the focus to the pitiable fear of the murderer. We no longer place in cages those sentenced to imprisonment to expose them to public view. Why should we so expose those sentenced to execution?

²³ See van den Haag, *Punishment as a Device for Controlling the Crime Rate*, 33 *RUTGERS L. REV.* 706, 719 (1981) (explaining why the desire for retribution, although independent, would have to be satisfied even if deterrence were the only purpose of punishment.)

though penalties can be unwise, repulsive, or inappropriate, and those punished can be pitiable, in a sense the infliction of legal punishment on a guilty person cannot be unjust. By committing the crime, the criminal volunteered to assume the risk of receiving a legal punishment that he could have avoided by not committing the crime. The punishment he suffers is the punishment he voluntarily risked suffering and, therefore, it is no more unjust to him than any other event for which one knowingly volunteers to assume the risk. Thus, the death penalty cannot be unjust to the guilty criminal.²⁴

There remain, however, two moral objections. The penalty may be regarded as always excessive as retribution and always morally degrading. To regard the death penalty as always excessive, one must believe that no crime — no matter how heinous — could possibly justify capital punishment. Such a belief can be neither corroborated nor refuted; it is an article of faith.

Alternatively, or concurrently, one may believe that everybody, the murderer no less than the victim, has an imprescriptible (natural?) right to life. The law therefore should not deprive anyone of life. I share Jeremy Bentham's view that any such "natural and imprescriptible rights" are "nonsense upon stilts."²⁵

Justice Brennan has insisted that the death penalty is "uncivilized," "inhuman," inconsistent with "human dignity" and with "the sanctity of life,"²⁶ that it "treats members of the human race as nonhumans, as objects to be toyed with and discarded,"²⁷ that it is "uniquely degrading to human dignity"²⁸ and "by its very nature, [involves] a denial of the executed person's humanity."²⁹ Justice Brennan does not say why he thinks execution "uncivilized." Hitherto most civilizations

²⁴ An explicit threat of punitive action is necessary to the justification of any legal punishment: *nulla poena sine lege* (no punishment without [preexisting] law). To be sufficiently justified, the threat must in turn have a rational and legitimate purpose. "Your money or your life" does not qualify; nor does the threat of an unjust law; nor, finally, does a threat that is altogether disproportionate to the importance of its purpose. In short, preannouncement legitimizes the threatened punishment only if the threat is warranted. But this leaves a very wide range of justified threats. Furthermore, the punished person is aware of the penalty for his actions and thus volunteers to take the risk even of an unjust punishment. His victim, however, did not volunteer to risk anything. The question whether any self-inflicted injury — such as a legal punishment — ever can be unjust to a person who knowingly risked it is a matter that requires more analysis than is possible here.

²⁵ 2 THE WORKS OF JEREMY BENTHAM 105 (J. Bowring ed. 1972). However, I would be more polite about prescriptible natural rights, which Bentham described as "simple nonsense." *Id.* (It does not matter whether natural rights are called "moral" or "human" rights as they currently are by most writers.)

²⁶ THE DEATH PENALTY IN AMERICA 156-63 (H. Bedau ed., 3d ed. 1982) (quoting *Furman v. Georgia*, 408 U.S. 238, 286, 295 (1972) (Brennan, J., concurring)).

²⁷ *Id.* at 272-73; see also *Gregg v. Georgia*, 428 U.S. 153, 230 (1976) (Brennan, J., dissenting).

²⁸ *Furman v. Georgia*, 408 U.S. 238, 291 (1972) (Brennan, J., concurring).

²⁹ *Id.* at 290.

have had the death penalty; Europe, where it is current, abuse by totalitarian regimes.

By "degrading," Justice degrades the executed convict. Kant and G.F.W. Hegel, however, far from degrading the convict by affirming his rationality and thought that execution, while degrading the convict's dignity, is no more than execution, by itself a denial of autonomy?³⁰

Common sense indicates that death is inhuman. The death penalty degrades when it comes to a deliberate social contract, but as a deliberate social contract, his punishment that his punishment is living; that because he has a community of the living. In degrading, the murderer has a right to remain among the living. The punishment is the punitive essence of the human condition. It appears to, that the death penalty reverses the direction of causality.

Execution of those who would deter only one murder per year. It is also the only fitting re-

³⁰ See Barzun, *supra* note 31, passim.

or inappropriate, and those of infliction of legal punishment. By committing the crime, the risk of receiving a legal punishment is committed. The fact that he voluntarily risked suffering to him than any other event to assume the risk. Thus, the guilty criminal.²⁴

objections. The penalty may be retribution and always morally excessive, one must assume it is heinous — could possibly be neither corroborated

may believe that everybody, the death penalty is "uncivilized and dignity" and with "the sanctity of the human race as nonhumanly degraded,"²⁷ that it is "uniquely its very nature, [involves] a

"²⁹ Justice Brennan does not say. "Hitherto most civilizations

have had the death penalty, although it has been discarded in Western Europe, where it is currently unfashionable probably because of its abuse by totalitarian regimes.

By "degrading," Justice Brennan seems to mean that execution degrades the executed convicts. Yet philosophers, such as Immanuel Kant and G.F.W. Hegel, have insisted that, when deserved, execution, far from degrading the executed convict, affirms his humanity by affirming his rationality and his responsibility for his actions. They thought that execution, when deserved, is required for the sake of the convict's dignity. (Does not life imprisonment violate human dignity more than execution, by keeping alive a prisoner deprived of all autonomy?)³⁰

Common sense indicates that it cannot be death — our common fate — that is inhuman. Therefore, Justice Brennan must mean that death degrades when it comes not as a natural or accidental event, but as a deliberate social imposition. The murderer learns through his punishment that his fellow men have found him unworthy of living; that because he has murdered, he is being expelled from the community of the living. This degradation is self-inflicted. By murdering, the murderer has so dehumanized himself that he cannot remain among the living. The social recognition of his self-degradation is the punitive essence of execution. To believe, as Justice Brennan appears to, that the degradation is inflicted by the execution reverses the direction of causality.

Execution of those who have committed heinous murders may deter only one murder per year. If it does, it seems quite warranted. It is also the only fitting retribution for murder I can think of.

³⁰ See Barzun, *supra* note 3, *passim*.

to the justification of any legal punishment (preexisting law). To be sufficient, it must be the ultimate purpose. "Your money or your life" is not a threat that is a threat. In short, preannouncement is not warranted. But this leaves a very wide range of punishment for a person is aware of the penalty for his crime. His victim, however, is not aware of any self-inflicted injury — such as a person who knowingly risked it is a matter that

writing (ed. 1972). However, I would be surprised to find it described as "simple nonsense" or "moral" or "human" rights as they

ed. ed. 1982) (quoting Furman v. Georgia, 408 U.S. 238 (1972) (concurring)).

U.S. 153, 230 (1976) (Brennan, J., dissenting).

Brennan, J., concurring).

DEATH AND DETERRENCE

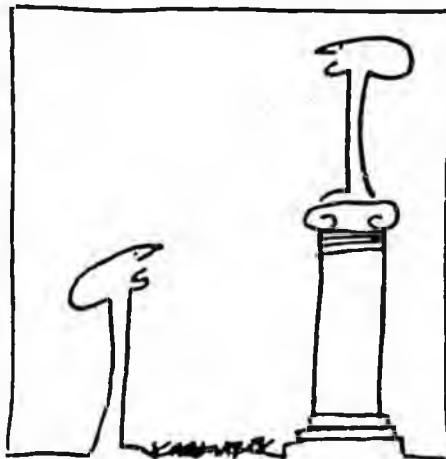
PROFESSOR Stephen K. Layson, an economist at the University of North Carolina at Greensboro, has published in the *Southern Economic Journal* (July 1985) a statistical study of the effects of executions on the murder rate. He concluded that every execution of a murderer deters, on the average, 18 murders that would have occurred without it.

Layson also inquired into the effects of the arrest and conviction of murderers on the murder rate. His correlations indicate that a 1 per cent increase in the clearance (arrest) rate for murder would lead to 250 fewer murders per year. Currently the clearance rate is 75 per cent. Further, a 1 per cent increase in murder convictions would deter about 105 murders. Currently 38 per cent of all murders result in a conviction; 0.1 per cent of murders result in an execution.

Attempts to correlate murder to punishment rates have been made for a long time. Most had flagrant defects. Some correlated murder rates to the presence or absence of capital-punishment statutes—not to executions, which alone matter. Others failed properly to isolate murder rates from variables other than punishment, even when these variables were known to influence murder rates. For instance, changes in the proportion of young males in the population do influence murder rates regardless of executions, since most murders are committed by young males. The first major statistical analysis that properly handled all variables was published by Isaac Ehrlich in the *American Economic Review* (June 1975). Ehrlich found that from 1933 to 1969 "an additional execution per year . . . may have resulted on the average in seven or eight fewer murders."

Ehrlich's study went against the cher-

ished beliefs of most social scientists (after all, it confirmed what common sense tells us). A whole cottage industry arose to refute him. In turn he refuted the refuters. The verdict is inconclusive. As is often the case in statistical matters, if a different period is analyzed, or some technical assumptions are changed, a different result is produced. Thus the testimony of Professor Thorsten Sellin, given in 1953—long before Ehrlich wrote—to the Royal Commission on Capital Punishment in Great Britain, still stands. Asked whether he could "conclude . . . that capital punishment has no deterrent effect," Sellin, an ardent but honest opponent of capital punishment, replied, "No, there is no such conclusion." Despite considerable advances in methods of analysis I think that, as yet, it has not been proved conclusively that capital punishment deters more than life imprisonment, or that it does not. However, the preponderance of evidence now does tend to show that capital punishment deters more than alternative punishments. Professor Layson's paper will add to that preponderance. But many attempts will be made to refute it, and, in all likelihood, the verdict will still be that the statistics are not conclusive.



"You're way up there, but you're not way, way up there."

Mr. van den Haag is John M. Olin Professor of Jurisprudence and Public Policy at Fordham University in New York City.

What are we to deduce? Obviously people fear death more than life imprisonment. Only death is final. Where there is life there is hope. Actual murderers feel that way: 99.9 per cent prefer life imprisonment to death. So will prospective murderers. What is feared most deters most. Possibly, statistics do not show this clearly, because there are so few executions compared to the number of murders. It is even possible that the uncertain prospect of execution deters so few not already deterred by the prospect of life imprisonment that there is no statistical trace. Yet, if by executing convicted murderers there is any chance, even a mere possibility, of deterring future murderers, I think we should execute them. The life even of a few victims who may be spared seems infinitely precious to me. The life of the convicted murderer has but negative value. His crime has forfeited it.

OPPONENTS of capital punishment usually admit that their opposition has little to do with statistical data. When asked whether they would favor the death penalty if it were shown conclusively that each execution deters, say, one hundred murders, such opponents as Ramsey Clark (former U.S. attorney general) or Henry Schwarzschild (ACLU) resoundingly say no. But neither likes the inference that must be drawn: that he is more interested in keeping murderers alive than in sparing their victims, that he values the life of a convicted murderer more than the life of innocent victims. Those who do not share this bizarre valuation will favor capital punishment.

For beyond deterrence, or possible deterrence, there is justice. The thought that the man who cruelly and deliberately slaughtered your child for fun or profit is entitled peacefully to live out his days at taxpayers' expense, playing

(Continues on page 61)

Clemens, a/k/a Mark Twain, who was also known as Papa, though in a more familial and private sense of that endearing term. The endearment was especially pronounced, in this case, because it came from Twain's 12-year-old daughter Susy. She was an unusually bright and sensitive child and very much the natural offspring of the beloved "Livy" and our first truly indigenous storyteller of world rank. This is simply an astonishing book, in several ways at once, and one that must become a necessary reference for all Mark Twain enthusiasts and scholars. It gives Susy's biography of her father for the first time in its entirety, usefully set in large-print type in order to distinguish it from the rest of the text, and introduced by Mark Twain along with his predictably amusing and copious comments. Then there is editor Charles Neider's introduction, with its revelations of Susy as someone rather more complex than an adoring daughter in thrall to the father-genius. More than anything else, however, *Papa* is an intensely human document, which appeared in the great celebratory year of 1985: the 150th anniversary of Mark Twain's birth (1835); the 75th of his death (1910); and the centenary of both the American publication of *Huckleberry Finn* (1885) and Susy Clemens's charming biography of her father. She died at age 24 of spinal meningitis.

THOMAS P. McDONNELL

The Glenn Gould Reader, edited by Tim Page (Knopf, 476 pp., \$20)

"GLENN GOULD," B. H. Haggin once grumbled, "prefers talking nonsense on anything anywhere to playing the piano marvelously in the concert hall." For the benefit of those who appreciated Gould's particular brand of nonsense more than Mr. Haggin did, Tim Page has put together a lengthy collection of essays, speeches, and interviews called *The Glenn Gould Reader*. Gould's prose was as uneven as his piano playing; some of these pieces (particularly "The Prospects of Recording") are startlingly provocative, some embarrassingly sophomoric, one or two just plain dull. Virtually all are more or less perverse: Gould calls Richard Strauss "the greatest musical figure who has lived in this century" on one page and dismisses the Mozart G Minor Symphony as "a half-hour

of banality" on the next. But all are worthy of your closest attention—for despite his extreme (and self-conscious) eccentricities of taste and thought, Glenn Gould was the most gifted pianist of his generation, and his best writings on music were as thought-provoking, closely argued, and compelling as his best performances. Avoid the dragged-out spoofs and parodies; savor the liner notes, which are to recorded classical music as Paul Desmond's triple sec jacket essays were to jazz. A wonderful, irritating book.

TERRY TEACHOUT

VAN DEN HAAG

(Continued from page 44)

tennis or baseball or enjoying the prison library, is hard to stomach. Wherefore about 75 per cent of Americans favor the death penalty, for the sake of justice, and to save innocent lives. I think they are right.

On occasion I have been presented with a hypothetical. Suppose, I have been asked, that each execution were shown to raise rather than reduce the murder rate. Of course this is quite unlikely (wherefore there is no serious evidence): The more severe and certain the punishment, the less often the crime occurs, all other things being equal. The higher the price of anything, the less is bought. But, if one accepts, *arguendo*, the hypothetical, the answer depends on whether one prefers justice—which demands the execution of the murderer—or saving the lives that, by this hypothesis, could be saved by not executing him. I love justice, but I love innocent lives more. I would prefer to save them.

Fortunately we do not face this dilemma. On the contrary. Capital punishment not only satisfies justice but is also more likely to save innocent lives than life imprisonment. □

BROOKS

(Continued from page 36)

U.S. has been able to concentrate its foreign policy on faraway places like the Middle East and Asia precisely because of the lack of any threat close to home. Disorder in Latin America ties down our forces and makes us less able to fulfill commitments in Europe and elsewhere. Meanwhile, every effort to stabilize Latin America draws a flood of anti-American vitriol from

the American Left, our European allies, and the Latin Americans themselves. The Soviets want nothing constructive out of Latin America. They can view the disintegration of Latin America from a distance, hoping the U.S. will get sucked into the mess, while keeping their own hands clean.

In a limited sense, those who say our Latin America problem is not primarily part of the East-West conflict are correct. But neither is the unrest there an indigenous product of poverty and exploitation. Even in Nicaragua, there was no widespread anti-American sentiment before the rise of the Sandinistas. Rather, unrest in Latin America is brought on by a small vanguard of university-educated, upper-middle-class terrorists who have been elevated to guerrilla status by the strategy and support of Fidel Castro. Demographically, these groups are identical to Italy's Red Brigades or the German Baader-Meinhof Gang. The leader of Sendero Luminoso is an old philosophy professor who went off into the hills to form a pseudo-Maoist, pseudo-Inca personality cult. Arturo Cruz captured the character of the Sandinistas when he asked derisively, "Do you think a single one of them—the nine comandantes—could get a job and earn a living?"

In 1981, then Secretary of State Alexander Haig argued for going after what he called "the source" of Central America's trouble by applying direct pressure on Cuba. Since Haig's departure, nobody in the Administration or in Congress has echoed that view. Our hesitancy stems from the myth that the Cubans are Soviet puppets, and thus that pressure on the Cubans is the same as pressure on Moscow. The Cubans are not Soviet puppets but Soviet allies. They are dependent allies to be sure, but Moscow neither demands absolute Cuban obedience nor absolutely supports Cuban adventures. We must adopt a defensive posture vis-à-vis the Soviets because we don't have the power to defang them. But there is no reason to be similarly intimidated by Fidel Castro. We should not be satisfied with confronting Castro over his conquests in Grenada and Nicaragua; we should take aim at the factory of Latin revolution. Our Latin America policy would be more realistic if we were to pretend that except as a source of money and guns, the Soviet Union doesn't exist. □

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Homicide and Deterrence: A Reexamination of the United States Time-Series Evidence*

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1. Introduction

Since the publication of Isaac Ehrlich's controversial articles [6; 9] on murder and capital punishment, there has been extensive criticism of his findings. Using regression analysis with U.S. time-series data, Ehrlich found that increases in the relative frequency of arrest, the relative frequency of conviction given arrest and the relative frequency of execution given conviction, reduce the number of homicides per capita and that the magnitudes of these effects are consistent with sharp predictions—the "elasticity conditions"—derived from the hypothesis that potential murderers act as if they were maximizing expected utility.¹

Among the criticisms of Ehrlich's time-series work on homicide, the most important are: (1) The FBI data used by Ehrlich to measure homicides and the probabilities of punishment is highly suspect, especially during the 1930s [3]. (2) Ehrlich's results are sensitive to the inclusion of additional explanatory variables and the choice of functional form [3; 19; 26]. (3) Ehrlich's regressions are unstable over the 1960s [26]. (4) The negative correlations between the homicide rate and the probabilities of punishment found by Ehrlich may be explained by the effect of the homicide rate on the probabilities of punishment not vice versa [17].

Ehrlich has responded to these criticisms in some detail [7; 8; 9; 11]; perhaps his strongest rebuttal is his cross-sectional study of homicide [9] which replicated the deterrence findings reported in his 1975 time-series article. Recently, however, Ehrlich's cross-sectional results have also come under fire. McManus [25] and Leamer [22; 23] have argued that Ehrlich's cross-sectional finding that capital punishment is a deterrent to homicide is sensitive to one's prior beliefs concerning the variables to be included in the homicide regression.

The purpose of this paper is not to debate the merits of Ehrlich's research but to move the debate forward by presenting new updated time-series estimates of the U.S. homicide function. Within the context of the new estimates presented in this paper, the criticisms of

*The author thanks Gary Becker, Isaac Ehrlich, Terry Seaks and George Stigler for helpful suggestions.

1. Let E_{PA} = the elasticity of homicide with respect to the probability of arrest, E_{PC} = the elasticity of homicide with respect to the conditional probability of conviction and E_{PE} = the elasticity of homicide with respect to the conditional probability of execution. For a group of expected utility maximizing individuals it can be shown that $-E_{PA} > -E_{PC} > -E_{PE}$. See Ehrlich [6, 401].

Ehrlich's results are considered. In section II of the paper Hoernack and Weiler's [17] results are critically examined. In the third section of the paper several improvements are made in the estimation of the U.S. homicide function: the time-series sample is updated to 1977, numerous alternative sets of explanatory variables are considered and most importantly, the homicide rate is measured using Vital Statistics data rather than FBI data. The results in this section confirm Ehrlich's findings. The *t*-statistics of the estimated coefficients on the probabilities of punishment are, in general, highly significant and much larger than the *t*-statistics reported by Ehrlich. Also, the magnitudes of the coefficients on the probabilities of punishment are consistent with the "elasticity conditions" derived by Ehrlich.

In section four the stability and proper functional form of the homicide function are analyzed. The homicide function is shown to be reasonably stable over time. The choice of the proper functional form is carefully analyzed using the Box-Cox analysis: the hypothesis that the homicide function is log-linear cannot be rejected whereas the hypotheses that the homicide function has a semi-logarithmic or a linear functional form are decisively rejected. Also, the optimal functional form resulting from the Box-Cox analysis is highly consistent with the deterrence theory.

II. Hoernack and Weiler's Results Reconsidered

The crucial idea underlying Hoernack and Weiler's [16; 17] (hereafter H&W) argument that Ehrlich's results are spurious is that an increase (decrease) in homicides increases (decreases) the work-loads of the police and courts causing the arrest, conviction, and execution rates to decline (rise), at least in the short run. If the increase (decrease) in homicides is found to be permanent, the amount of resources devoted to enforcing the law against homicide may be increased (decreased), but this occurs only after a time lag. According to this theory, even if potential murderers are unaware of, or unaffected by, changes in the relative frequencies of punishment, one would still expect to observe negative short run correlations between the homicide rate and the relative frequencies of punishment.

After specifying a complete structural model of homicide depicting the response of the law enforcement system to changes in homicides and the response of homicides to changes in deterrence variables, H&W estimate 4 different homicide functions using 2SLS. In their first two regressions which contain the same variables used by Ehrlich, H&W report results that are similar to Ehrlich's. However, after including another age distribution variable not used by Ehrlich, or after replacing Ehrlich's single age distribution variable with two different age distribution variables, H&W get dramatically different results.

In the latter two regressions, the coefficients on the relative frequencies of conviction and execution are both positive. Using tests of overidentifying restrictions and FBI data on the age distribution of arrests, H&W argue that their homicide regressions containing two age distribution variables are superior to Ehrlich's homicide regression containing only one age distribution variable. H&W conclude their paper by arguing that Ehrlich's findings supporting the deterrence theory are spurious and reflect the response of the relative frequencies of punishment to changes in the homicide rate, not the response of the homicide rate to changes in the relative frequencies of punishment. H&W's criticism of Ehrlich's results is too ambitious. At best, they have shown that their 2SLS estimates of the para-

Table I. Definition of Variables in the Regression Analysis

$\ln q^0$	= Natural logarithm of non-negligent homicides per 1000 civilian population based on FBI data.
$\ln q$	= Natural logarithm of non-negligent homicides per 1000 civilian population based on Vital Statistics data.
$\ln PA$	= Natural logarithm of probability of arrest.
$\ln PC$	= Natural logarithm of conditional probability of conviction given arrest.
$\ln PE$	= Natural logarithm of conditional probability of execution given conviction.
$\ln LFP$	= Natural logarithm of proportion of the population in the labor force.
$\ln U$	= Natural logarithm of percent of labor force unemployed.
$\ln Y$	= Natural logarithm of Friedman's estimate of real permanent income per capita.
$\ln NW$	= Natural logarithm of the proportion of the population which is nonwhite.
$\ln REL$	= Natural logarithm of the proportion of the population which belongs to a religion.
$\ln HWF$	= Natural logarithm of the proportion of families that have both husband and wife present.
TT	= Time trend: 1933 = 1, 1934 = 2, . . . , 1977 = 45.
$\ln A1424$	= Natural logarithm of the proportion of the population within the 14-24 age group.
$\ln A2124$	= Natural logarithm of the proportion of the population within the 21-24 age group.
$\ln A2529$	= Natural logarithm of the proportion of the population within the 25-29 age group.
$\ln A2129$	= Natural logarithm of the proportion of the population within the 21-29 age group.

Note: Except for the variable q , the data used in this paper is identical to the data used by Hoernack and Weiler for 1933-1969. For a listing of the instrumental variables used in the 2SLS regressions, see Hoernack and Weiler [17, 329]. A detailed listing of the data sources and data used in this paper is available from the author on request.

meters of the homicide function are sensitive to the inclusion of additional explanatory variables.

In Table II, H&W's 2SLS estimates of the U.S. homicide function are replicated² in equations (1) and (2). Table I defines the variables used in the regression analysis. There is a serious flaw in H&W's estimates replicated in equations (1) and (2). They fail to correct for statistically significant first-order autocorrelation. Possibly they were misled by the reasonable looking Durbin-Watson statistics. The Durbin-Watson statistic, however, is not valid for 2SLS estimation.

Equations (3) and (4) report the 2SLS estimates with a correction for first-order autocorrelation.³ The estimates of the first-order autocorrelation, $\hat{\rho}$, in equations (3) and (4), .572 and .535, respectively, are large and statistically significant. Contrary to H&W's estimates in equations (1) and (2), the coefficients on the probabilities of conviction and execu-

2. See Hoernack and Weiler [17, 334], table 2, equations 10 and 11. The author wishes to thank Hoernack and Weiler for providing me with their data.

3. Beach and MacKinnon's [1] method which retains the first observation has been used to correct for autocorrelation in the residuals. The instrumental variables include the lagged value of the dependent variable and the lagged values of the explanatory variables except for the time trend [12; 14].

Table II. H & W's Results Reconsidered

Equation	(1)	(2)	(3)	(4)	(5)	(6)
Dependent Variable	q°	q°	q°	q°	q°	q°
ln PA	-.186 (2.81)	-.213 (2.70)	-.075 (2.20)	-.097 (2.55)	-.074 (2.60)	-.079 (2.69)
ln PC	.0046 (.39)	.010 (.72)	-.0079 (1.33)	-.0030 (.45)	-.0080 (1.55)	-.0057 (1.03)
ln PE	.00016 (.05)	.00021 (.05)	-.00098 (.63)	-.0019 (1.15)	-.0011 (.94)	-.0016 (1.31)
ln U	-.0024 (.78)	-.0030 (.82)	-.0027 (1.35)	-.0028 (1.27)	-.0026 (1.36)	-.0027 (1.30)
ln Y	-.0048 (.13)	-.023 (.50)	.0159 (.64)	-.0036 (.14)	.016 (.67)	.0021 (.08)
ln LFP	.046 (.57)	.068 (.62)	-.053 (.88)	-.036 (.51)	-.055 (.94)	-.053 (.80)
TT	.00042 (.24)	.00093 (.44)	-.00041 (.46)	-.000047 (.05)	-.00045 (.54)	-.00016 (.18)
ln A1A24	.022 (1.59)		.036 (2.65)		.035 (2.68)	
ln A2A24		.016 (1.07)		.021 (1.50)		.022 (1.48)
ln A2529	.039 (1.74)	.035 (1.43)	.031 (2.27)	.021 (1.13)	.030 (2.38)	.020 (.96)
C	1.08 (2.08)	1.30 (2.01)	.445 (1.81)	.636 (2.41)	.438 (2.09)	.516 (2.40)
p̄			.572 (3.46)	.535 (3.08)	.568 (3.42)	.679 (4.53)
DW	1.75	1.75	1.70	1.80	1.71	1.71
Period	1935-69	1935-69	1935-69	1935-69	1935-69	1935-69

Note: Equations (1)-(4) are estimated with 2SLS. Equations (1) and (2) replicate H & W's [17, 334] results. Equations (3) and (4) are estimated with a correction for first order autocorrelation. Equations (5) and (6) are estimated assuming PA, PC and PE are exogenous variables again with a correction for first order autocorrelation. The absolute value of t-statistics are given in parentheses.

tion in equations (3) and (4) are negative. Also, the ranking of the coefficients on ln PA, ln PC and ln PE in equations (3) and (4) is consistent with the "elasticity conditions."

The correct estimation of H & W's specification of the homicide function yields results consistent with the deterrence theory. The coefficients on the conviction and execution variables, however, remain insignificant in the correctly estimated regressions reported in equations (3) and (4). The weakness of H & W's argument will be demonstrated more convincingly in section III where the OLS regression estimates with lagged relative frequencies of punishment are reported. While both H & W and Ehrlich have used 2SLS estimation

Table III. Results of Hausman's Test

Regression Specification	Coefficients (Absolute Value of <i>t</i> -statistics in parentheses)		
	$\ln \hat{P}A$	$\ln \hat{P}C$	$\ln \hat{P}E$
A1424 and A2529	.006 (.09)	-.0022 (.16)	-.0016 (.67)
A2124 and A2529	.027 (.35)	.012 (.81)	-.0024 (1.06)

based on different theoretical models,⁴ the econometric justification for 2SLS estimation of the U.S. homicide function is weak.⁵ It is possible to test whether the homicide function estimated with OLS methods is misspecified. Using a test developed by Hausman [15], which tests for correlation between the error term in an equation and the possibly endogenous variables, one cannot reject the hypothesis that the probabilities of punishment are exogenous variables. This result is of some importance because in cases where the explanatory variables are orthogonal to the error term, the use of 2SLS estimation yields inefficient estimates, whereas ordinary least squares methods yield efficient estimates.

The test is performed by estimating the regression

$$q^* = X_1 \beta_1 + X_2 \beta_2 + \bar{X}_1 \alpha + u, \quad (7)$$

where q^* is the $T \times 1$ vector of observations on homicides per capita, X_1 is the $T \times 3$ matrix of observations on the relative frequencies of punishment, X_2 is a $T \times 7$ matrix of exogenous variables in the homicide function and \bar{X}_1 is a $T \times 3$ matrix of instruments for the relative frequencies of punishment. β_1 , β_2 , and α are coefficient vectors and u is a vector of error terms subject to first-order autocorrelation. The matrix of instruments, \bar{X}_1 , is found by regressing each of the relative frequencies of punishment on a set of instrumental variables which include the dependent variable lagged one year and the right-hand-side variables in the homicide function lagged one year as well as all the predetermined variables in H&W's [17, 329] model. A test of $H_0: \alpha = 0$ is a test for correlation between the error terms and the probabilities of punishment. If $H_0: \alpha = 0$ is rejected, this indicates that the OLS regression is misspecified and that the homicide function should be estimated with 2SLS. Estimation of equation (7) for the two specifications of the homicide function with different age distribution variables yields the estimates of α reported below in Table III.

The coefficients on the instruments for the probabilities of punishment in Table III are, with only one exception, less than their standard errors. The F -value for the test of the hypothesis $H_0: \alpha = 0$ is .67, well below the critical value of F for this test.⁶ Clearly one cannot reject the hypothesis that the probabilities of punishment are exogenous. Because there is no evidence that the probabilities of punishment are endogenous and because

4. Ehrlich's decision to estimate the homicide function with 2SLS was based on an optimal law enforcement model. Ehrlich hypothesized that exogenous increases in the homicide rate would lead to increases in the probabilities of arrest, conviction, and execution. H&W's disequilibrium model of law enforcement predicts exogenous increases in the homicide rate will cause the probabilities of arrest, conviction and execution to fall.

5. The author [20; 21] did use 2SLS to estimate the Canadian homicide function. Unlike the U.S., Canada has a uniform crime code and law enforcement authority. Because of this difference it is more plausible to believe that law enforcement behavior is endogenous in Canada. The use of 2SLS estimation for the Canadian homicide function was supported by the use of Hausman's test.

6. The 5% critical value of F for 3 and 22 degrees of freedom is 3.95.

2SLS is less efficient than OLS when the explanatory variables are exogenous, the remaining regressions are estimated with OLS methods. Equations (5) and (6) in Table II report the results of estimating the homicide function assuming that PA , PC and PE are exogenous variables. As expected, the coefficients on the deterrence variables in (5) and (6) have smaller standard errors than the coefficients on the deterrence variables in equations (3) and (4) but the difference is not dramatic. The coefficients on the probabilities of conviction and execution in equations (5) and (6) are still less than twice their standard errors.

III. Updating the Homicide Regression and the Choice of Explanatory Variables

In this section the homicide function is estimated using the Vital Statistics data to measure homicides per capita. Bowers and Pierce [3, 187-89] argue persuasively that the FBI measure of homicides during the 1930s is suspect. In the 1930s when the FBI reporting system was just beginning the number of reporting agencies was relatively small. As Bowers and Pierce note, the FBI measure of homicides during the 1930s is 15% below the Vital Statistics measure of homicides. However, after 1939 the two series are in much closer agreement.

Despite Bowers and Pierce's criticism of Ehrlich for using the FBI measure of homicides, they do not present alternative regression estimates utilizing the Vital Statistics measure of homicides. Had Bowers and Pierce shown that the probabilities of punishment have insignificant coefficients in the regression with the Vital Statistics measure of homicides, their claim that Ehrlich's results are an illusion would have been strengthened considerably. H&W [17, 339] are aware of Bowers and Pierce's criticism of the FBI measure of homicides yet they too report only estimates of the homicide function using the FBI measure of homicides. Had Bowers and Pierce or H&W estimated the homicide function with the Vital Statistics measure of homicide they would have found that the resulting regression estimates support the deterrence theory more strongly than the regression estimates with the FBI measure of homicides.⁷

Measuring the Execution Risk

Before the homicide regression can be updated, some provision must be made for measuring the subjective probability of execution from 1968-76 when the relative frequency of execution was zero. Despite the fact that there were no executions in the U.S. from 1968-76, it is doubtful that potential murderers believed there was no possibility of being executed in these years. Another problem with assuming the subjective probability of execution is zero is that it makes the use of the log-linear functional form impossible because the logarithm of zero is undefined.

One solution to this problem is to use an alternative functional form that does not

7. For example reestimating equation (2), Table II with the Vital Statistics measure of homicides yields the following:

Variable	$\ln PA$	$\ln PC$	$\ln PE$
Coefficient	-.136	-.029	-.0058
<i>t</i> -statistic	-1.86	-2.66	-1.64

measure the probability of execution in logarithms.⁸ This approach will be discussed later in section IV. Ehrlich [6, 409] dealt with the problem of zero relative frequencies of execution in the last two years of his sample, 1968 and 1969, by assuming for measurement purposes that 1 execution occurred in each of the years 1968 and 1969. In this section two methods of measuring the probability of execution are used. First Ehrlich's approach is followed by arbitrarily assuming 1 execution per year from 1968 to 1976. Secondly, a Bayesian approach is used which allows potential criminals to annually revise their subjective probabilities in light of new information. The latter method is explained below.

Assume that potential murderers' uncertainty about the relative frequency of execution in 1968 can be described by a beta prior density function

$$f(Pe(t_0)|\alpha, \beta) = [\Gamma(\alpha + \beta)Pe(t_0)^{\alpha-1}(1-Pe(t_0))^{\beta-1}]/[\Gamma(\alpha)\Gamma(\beta)], \quad (8)$$

where $0 < Pe < 1$, $t_0 = 1968$ and Γ is the gamma function defined by

$$\Gamma(\alpha) = \int_0^{\infty} u^{\alpha-1} e^{-u} du \quad \alpha > 0. \quad (9)$$

The expected value of the relative frequency of execution in 1968 is

$$E[Pe(t_0)] = \alpha/(\alpha + \beta). \quad (10)$$

Given $c(t_0)$ independent convictions in 1968, $e(t_0)$ of which result in executions, the posterior distribution of $Pe(t_0)$ is also a beta distribution with a density function⁹ $f(Pe(t_0+1)|\alpha+e(t_0), \alpha + \beta + c(t_0) - e(t_0))$. The expected value of Pe in 1969 is given by

$$E[Pe(t_0 + 1)] = [\alpha + e(t_0)]/[\alpha + \beta + c(t_0) - e(t_0)]. \quad (11)$$

The annual revision of the beta distribution in light of new sample information gives the expected value of $Pe(t)$ in year $t_0 + j$ of

$$E[Pe(t_0 + j)] = [\alpha + \sum_{i=0}^{j-1} e(t_0 + i)]/[\alpha + \beta + \sum_{i=0}^{j-1} c(t_0 + i) - e(t_0 + i)], \quad (12)$$

where $j = 1, \dots, 8$. Because $e(t) = 0$ from 1968 to 1976 equation (12) simplifies to

$$E[Pe(t_0 + j)] = \alpha/[\alpha + \beta + \sum_{i=0}^{j-1} c(t_0 + i)]. \quad (13)$$

The values of α and β are chosen in the following manner. After the class action suits filed by Anthony Amsterdam [17, 331] in 1965 there were only 3 executions in the U.S. in 1966 and 1967. From 1968 to 1976 there were no executions. The estimated sum of homicide convictions in 1966 and 1967 is 9436.¹⁰ Based on the sample information in 1966 and 1967, it is assumed that $\alpha = 3$ and $\alpha + \beta = 9436$, yielding an expected value of Pe in 1968 in percentage points of .032. The implied values of the subjective probabilities of execution for 1969-76 are .0207, .0156, .0124, .0099, .0083, .0071, .0061, and .0052.¹¹

8. Ehrlich [9] argues on both theoretical and empirical grounds that the probabilities of punishment should be measured in logarithms.

9. See DeGroot [4, 40, 60].

10. The number of convictions in 1966 and 1967 are calculated using the formula $PA_t \cdot PC_t \cdot Q_t$, where Q_t is the number of homicides and t is a subscript referring to the year.

11. The value of PE from 1933-67 and 1977 is measured by the number of executions divided by the estimated number of homicide convictions lagged one year. The estimates of homicide convictions are calculated as explained in footnote 10.

The Updated Regressions

The log-linear functional form is used in this section rather than the semilogarithmic form used by H&W. Ehrlich [9] found the cross-sectional evidence to be consistent with the log-linear functional form. Statistical justification for the log-linear functional form is presented in the next section. In the equations in Table IV, a single age distribution variable $A_{21/29}$, the proportion of the population between 21 and 29 years of age, is used rather than two separate age distribution variables.¹² Finally, three new explanatory variables are added to the regressions in Table IV. NW , the proportion of the population that is nonwhite, REL , the proportion of the population that belongs to a religion and HWF , the proportion of families with both husband and wife present.

Equations (14) and (15) in Table IV present the updated estimates of H&W's homicide regression treating the probabilities of punishment as exogenous variables. In equation (14) the probability of execution is measured using the Bayesian approach discussed previously. In equation (15) the probability of execution is measured by assuming 1 execution per year in the years when there were no executions, 1968-1976. The alternative measures of the probability of execution used in equations (14) and (15) yield similar estimates of the elasticity of homicide with respect to the conditional probability of execution, respectively, $-.076$ and $-.068$. These estimates are comparable to the estimates reported by Ehrlich [6, 410].

The probability of arrest, the conditional probability of conviction and the conditional probability of execution all have negative and statistically significant coefficients in equations (14) and (15). Furthermore, the magnitudes of the coefficients on the probabilities of punishment are consistent with the "elasticity conditions." The coefficients on the probability of arrest in equations (14) and (15) are larger at the 5% significance level than the coefficients on the conditional probability of conviction which are in turn larger at the 5% significance level than the coefficients on the conditional probability of execution.

As expected, the age distribution variable $A_{21/29}$ has positive and statistically significant coefficients in equations (14) and (15). The unemployment rate and the labor force participation rate are included in the regressions as measures of the opportunity costs of committing homicide. The unemployment rate is expected to have a positive effect on the homicide rate and the labor force participation rate is expected to have a negative effect. Although the coefficients on the unemployment and labor force participation rates have the expected signs in equations (14) and (15), none of these coefficients are significant. The coefficient on permanent income has a positive but insignificant coefficient in equations (14) and (15) and the coefficients on the time trend are negative and insignificant. Finally, neither equation exhibits much autocorrelation in the residuals.

In the next four equations in Table IV potential murderers' subjective probabilities of punishment are measured by averaging the current values of PA , PC and PE with the two previous years' values. Thus $PA_3 = (PA + PA_{-1} + PA_{-2})/3$, $PC_3 = (PC + PC_{-1} + PC_{-2})/3$ and $PE_3 = (PE + PE_{-1} + PE_{-2})/3$ are used rather than the current values of PA , PC , and PE . This averaging process produces a smoother, less erratic series for these variables which probably corresponds more closely to potential murderers' subjective probabilities than the current relative frequencies.

12. The use of a single age distribution variable instead of two separate age distribution variables makes little difference in the regressions results.

Table IV. Updated OLS Estimates of the U.S. Homicide Function

Equation	(14)	(15)		(16)	(17)	(18)	(19)
Dependent Variable	ln q	ln q		ln q	ln q	ln q	ln q
ln PA	-2.24 (5.91)	-2.31 (5.47)	{ln PAJ}	-1.57 (4.57)	-1.34 (4.81)	-1.21 (3.95)	-1.37 (4.00)
ln PC	-.315 (4.79)	-.307 (4.12)	{ln PCJ}	-.436 (11.8)	-.544 (11.6)	-.547 (9.78)	-.548 (10.45)
ln PE	-.076 (5.21)		{ln PEJ}	-.103 (12.0)	-.098 (13.0)	-.102 (13.2)	-.103 (13.51)
ln PE*		-.068 (3.99)					
TT	-.013 (1.35)	-.011 (1.02)		-.023 (3.33)	-.005 (1.32)	-.013 (1.51)	-.008 (2.06)
ln A2/29	.462 (3.15)	.533 (3.36)		.392 (4.44)	.200 (2.89)	.159 (1.33)	.103 (2.08)
ln U	.010 (.31)	.015 (.40)		-.025 (1.51)	-.027 (1.86)		
ln LFP	-1.03 (1.50)	-.842 (1.03)		-2.33 (7.48)	-2.18 (8.11)	-2.04 (7.35)	-1.95 (6.35)
ln Y	.244 (.87)	.256 (.80)		.297 (1.98)	.244 (2.28)	.422 (5.42)	.340 (2.94)
ln NW				1.10 (1.91)		.333 (.50)	
ln REL					-1.11 (3.47)	-1.17 (2.44)	-1.29 (3.97)
ln HWF							.378 (.67)
C	7.33 (4.84)	7.74 (4.56)		6.22 (7.08)	2.21 (1.50)	1.20 (.67)	1.60 (.80)
$\hat{\rho}$.004 (.024)	.153 (.87)		-.272 (1.60)	-.403 (2.48)	-.360 (2.13)	-.364 (2.17)
R ²	.973	.957		.996	.998	.997	.997
Period	1936-77	1936-77		1936-77	1936-77	1936-77	1936-77

Note: Absolute value of *t*-statistics in parentheses.

Another advantage of averaging the current values of *PA*, *PC*, and *PE* with their lagged values is that it further justifies treating the probabilities of punishment as exogenous variables. Changes in the current homicide rate may affect current and future relative frequencies of punishment in the manner suggested by H&W, but the current homicide rate should have no effect on past values of *PA*, *PC* and *PE*.

As mentioned earlier, some new variables have been added to the regressions in Table IV. Because a disproportionate number of homicide victims and persons arrested for

homicide are nonwhite, NW is expected to have a positive effect on the homicide rate. Ehrlich [5; 9] found in his cross-sectional studies that the proportion of state population that is nonwhite is positively associated with homicide and other felony crime rates. The religion variable, REL , is included in the regressions as a measure of the quality of the environment, moral inhibitions of committing homicide, or possibly as a measure of fears of other worldly punishment for committing homicide.

In equations (16)-(19) in Table IV, the coefficients on $PA3$, $PC3$ and $PE3$ are all negative and highly significant. Comparing equations (14) and (15) with equations (16)-(19), the averaging process reduces the magnitude of the coefficients on the arrest variable but increases the magnitude of the coefficients on the conviction and execution variables. In the latter 4 equations in Table IV, the coefficients on the conviction and execution variables have much larger t -statistics than in equations (14) or (15). The t -statistics on $PC3$ in equations (16)-(19) range from -9.78 to -11.8 ; the t -statistics on $PE3$ in equations (16)-(19) range from -12 to -13.5 . The much larger t -statistics on the conviction and execution variables in the last 4 regressions in Table IV are consistent with the belief that averaging the relative frequencies of punishment over a number of years produces a better measure of criminals' subjective probabilities of punishment than the use of the current relative frequencies of punishment.

Averaging the relative frequencies of punishment has some important effects on the other estimated coefficients too. In contrast to the positive coefficients on the unemployment rate, U , in equations (14) and (15), the coefficients on the unemployment rate are negative in equations (16) and (17). In equation (18) and subsequent equations the unemployment rate is dropped from the regression. The coefficients on the labor force participation, LFP , in equations (16)-(19) are negative, as expected, and highly significant. The t -statistics on the permanent income variable, Y , are also much larger in equations (16)-(19) than in equations (14) and (15).

The coefficient on $\ln NW$ in equation (16) is positive as expected but not quite significant at the 5% level. The coefficient on $\ln REL$ in equation (17), -1.11 , is an estimate of elasticity of homicide with respect to the proportion of the population that belongs to an organized religion. According to this estimate a 10% increase in REL would reduce the homicide rate by approximately 11%. The coefficient on the religion variable in equation (17) is significant at the 1% level.

Equation (18) shows the results of including both the nonwhite and religion variables in the regression. The religion variable remains significant at the 5% level but the t -statistics on the nonwhite variable drops sharply. The age distribution variable also becomes insignificant in equation (18). The coefficients on the nonwhite and age distribution variables in Table IV illustrate what Leamer [22; 23; 24] and other econometricians have been emphasizing recently, that the significance and even the sign of regression coefficients often depend on the set of explanatory variables chosen by the researcher.

Fragility of the Regression Results

To examine the fragility of the regression results in Table IV in a systematic way, the homicide function is estimated with a large number of alternative specifications. Each specification consists of a different subset of explanatory variables taken from a set of variables that includes all the variables listed in Table IV plus the following variables: the

Table V. Specification Search

Variable	<i>N</i>	Negative Coefficient	Negative and Significant	Positive Coefficient	Positive and Significant
ln <i>PA3</i>	210	209 (.995)	134 (.638)	1 (.005)	0 (.0)
ln <i>PC3</i>	210	210 (1.0)	210 (1.0)	0 (.0)	0 (.0)
ln <i>PE3</i>	210	210 (1.0)	210 (1.0)	0 (.0)	0 (.0)
<i>TT</i>	210	173 (.824)	111 (.529)	37 (.176)	2 (.01)
ln <i>A2129</i>	210	7 (.033)	0 (.0)	203 (.962)	87 (.414)
ln <i>LFP</i>	84	84 (1.0)	84 (1.0)	0 (.0)	0 (.0)
ln <i>Y</i>	84	10 (.119)	0 (.0)	74 (.881)	25 (.298)
ln <i>REL</i>	84	84 (1.0)	72 (.857)	0 (.0)	0 (.0)
ln <i>HWF</i>	84	0 (.0)	0 (.0)	84 (1.0)	26 (.310)
ln <i>U</i>	84	63 (.750)	29 (.345)	21 (.250)	0 (.0)
ln <i>NIW</i>	84	13 (.155)	0 (.0)	71 (.845)	12 (.143)
ln <i>MALE</i>	84	84 (1.0)	18 (.214)	0 (.0)	0 (.0)
ln <i>WELF</i>	84	49 (.583)	10 (.119)	35 (.417)	3 (.036)
ln <i>SCH</i>	84	27 (.321)	7 (.083)	57 (.690)	28 (.357)
<i>INF</i>	84	6 (.071)	0 (.0)	78 (.929)	4 (.048)

Note: *N* = number of specifications in which variable appeared. Percentages expressed as a proportion of *N* are given in parentheses.

proportion of the population that is male (*MALE*), real welfare payments (*WELF*), median years of schooling (*SCH*), inflation (*INF*) and the proportion of families that have both husband and wife present (*HWF*).

Each specification consists of 9 explanatory variables: *PA3*, *PC3*, *PE3*, *TT*, *A2129*, plus 4 other variables taken from the 10 remaining variables described above.¹³ The total number of specifications is given by $10^C 4 = 210$. Table V summarizes the results by the sign and significance of the estimated coefficients. A coefficient is considered "significant" in Table V if its *t*-statistic is greater than 2 in absolute value.

In every regression but one, *PA3* has a negative coefficient and the arrest variable is negative and significant in 134 of the 210 specifications. The conviction and execution variables are negative and significant in every one of the 210 specifications. Clearly the conviction and execution variables are robust with respect to the choice of explanatory variables. A further examination of the regressions shows that in 183 of the 210 specifications the magnitude of the coefficients on ln *PA3*, ln *PC3* and ln *PE3* are in accordance with the "elasticity conditions."

Concerning the non-deterrence variables, the labor force participation rate has negative and significant coefficients in each of the 84 specifications in which this variable was used. The religion variable also has negative coefficients in each of the 84 regressions in

13. To provide a valid test of the deterrence theory one must include all 3 of the conditional probabilities of punishment.

which it was used.¹⁴ In 72 of the 84 specifications the coefficient on the religion variable is significant. Two other variables that have coefficients with the same sign in each specification are: (1) the proportion of families with husband and wife present and (2) the proportion of the population that is male. Ironically, both of these variables have coefficients with unexpected signs.

In each of the 84 specifications the proportion of families with both husband and wife present has positive coefficients. It was thought that the proportion of families with both husband and wife present would measure the quality of the social environment and hence would be negatively related to the homicide rate. However, an alternative explanation for the effect of *HWF* consistent with the positive coefficients on this variable is that separation of antagonistic spouses reduces the number of homicides by spouses. The coefficients on *HWF* are significant in 26 of the 84 specifications. Because a disproportionate number of the persons arrested for homicide are males, it was thought that the proportion of the population that is male might have a positive effect on the homicide rate. However, in each case the coefficient on this variable is negative, although the coefficients are significant in only 18 of the 84 specifications.

The age distribution variable *A2129*, has positive coefficients in 203 of the 210 specifications in which this variable appears. In 87 of these specifications the coefficients on the age distribution variable are positive and significant. The time trend has negative coefficients in 173 of the 210 specifications in which it appears and in 111 specifications the coefficients are negative and significant. The permanent income variable, *Y*, has positive coefficients in 74 of the 84 specifications in which it appears and has positive and significant coefficients in 25 of the specifications.

Interestingly, the inflation rate has positive coefficients in 78 of the 84 specifications in which this variable appears. However, this variable is only significant in 4 of the 84 specifications in which it appears. The proportion of the population that is nonwhite has positive coefficients in 71 of the 84 specifications in which it appears but has positive and significant coefficients in only 12 cases. The effects of the remaining 3 variables — unemployment, real federal welfare payments, and schooling — are inconsistent and in most specifications insignificant.

Based on the specification search described in Table V and other considerations equation (19) in Table IV represents the specification of the homicide function that is used for subsequent analysis in this paper. Aside from the deterrence variables, *PAJ*, *PCJ* and *PEJ*, the explanatory variables included are the time trend, age distribution, labor force participation, permanent income per capita, the proportion of the population that is a member of a religious group and the proportion of families with both husband and wife present. The coefficient on $\ln HWF$ in equation (19), .378, is positive but insignificant. The inclusion of the new variable in the homicide function has little effect on the other estimated coefficients as can be seen by comparing equations (16)-(18) to equation (19).

Tradeoff of Executions for Murders

The *ceteris paribus* tradeoff of executions for homicides evaluated at the mean number of homicides \bar{Q} and the mean number of executions \bar{E} is given by

14. However, if the probabilities of punishment are measured by their current values *PA*, *PC*, and *PE*, rather than their averaged values *PAJ*, *PCJ*, and *PEJ*, the coefficient on the religion variable is sometimes positive.

$$\Delta Q/\Delta E = \hat{\alpha}(\bar{Q}/\bar{E}). \quad (20)$$

where $\hat{\alpha}$ is the estimate of the elasticity of homicide with respect to the probability of execution. Letting $\hat{\alpha} = -.1$ based on the estimates reported in equations (16)-(19) of Table IV, the tradeoff of executions for murders is approximately -18.5.

This tradeoff is considerably larger than the estimate tradeoffs of -7 to -8 reported by Ehrlich [6, 414]. There are two reasons for the higher tradeoff reported in this paper. First from equation 20 the tradeoff increases proportionally with \bar{Q}/\bar{E} . In the updated sample used in this paper the value of \bar{Q}/\bar{E} is larger than in Ehrlich's sample.¹⁵ Secondly the value of $\hat{\alpha}$ (-.10) used in computing the tradeoff in this paper is larger than the $\hat{\alpha}$ values used by Ehrlich [6, 410], -.06 and -.065.

A number of qualifications should be considered in interpreting the estimated tradeoff of executions for homicides. First the standard errors of the point estimates of α should be considered. From equations (19) in Table IV, the 99% confidence interval for α is (-.082, -.124). The confidence intervals for α based on equations (16)-(18) yield similar ranges. Evaluating the tradeoff at the lower and higher range of the confidence interval yields tradeoffs of -15.2 and -23, respectively. More importantly the estimated value of α varies considerably depending on the choice of explanatory variables used. From the specification search discussed earlier, 210 different regressions were considered. The values of α in these regressions ranged from a low of -.046 to a high of -.152. The corresponding tradeoff of executions for homicides ranges from -8.5 to -28. It is interesting to note that even at the lower range of α the tradeoff is still substantial.

Finally the estimated tradeoffs reported in this paper are calculated under the *ceteris paribus* assumption. Under certain conditions this may give misleading estimate of the true tradeoff. For example, if juries react to an increased relative frequency of execution by demanding greater proof of guilt before convicting, an increase in the probability of execution may reduce the probability of conviction, wholly or partially offsetting the deterrent effect of the increase in the probability of execution.¹⁶ The author investigated this possibility by regressing the probability of conviction on the probability of execution and other explanatory variables. These regressions provide no evidence in favor of the hypothesis that the probability of execution has a negative effect on the probability of conviction.

IV. The Choice of Functional Form and the Stability of the Homicide Function over Time.

As mentioned in the introduction, Bowers and Pierce [3], Passell and Taylor [26] and Klein, Forst and Filatov [19] have criticized Ehrlich's time-series results as being sensitive to the choice of time period and functional form. To check the stability of the homicide regression over time, equations (21)-(24) in Table VI report the results of estimating the homicide regression over alternative subperiods of the full sample. Equation (21) presents the full sample (1963-77) regression. Equation (22) is estimated over the 1936-69 period to check how sensitive the regression results are to omitting the 1970s data from the sample.

15. For the updated sample used in this paper $\bar{Q}=10696$ and $\bar{E}=58$. For Ehrlich's [6, 414] sample $\bar{Q}=8963$ and $\bar{E}=75$.

16. The author [20, 68] found some evidence of a negative relationship between PC and PE in his study of homicide in Canada.

S Estimates of the Homicide Function Over Alternative Time Periods

Equa..	(21)	(22)	(23)	(24)
Dependent Variable	ln q	ln q	ln q	ln q
ln <i>P43</i>	-1.37 (4.00)	-1.20 (3.66)	-2.02 (3.57)	-1.62 (3.78)
ln <i>PC3</i>	-.548 (10.4)	-.543 (11.4)	-.382 (3.34)	-.576 (7.34)
ln <i>PE3</i>	-.103 (13.5)	-.130 (9.11)	-.073 (1.52)	-.119 (9.26)
<i>TT</i>	-.0083 (2.06)	-.017 (3.34)	-.016 (1.64)	-.0075 (1.69)
ln <i>A2129</i>	.103 (2.08)	-.0087 (.13)	-.226 (1.73)	.130 (2.00)
ln <i>LFP</i>	-1.95 (6.35)	-2.86 (6.39)	-3.28 (6.02)	-1.93 (5.63)
ln <i>Y</i>	.340 (2.94)	.319 (1.79)	-.225 (.64)	-.063 (.20)
ln <i>REL</i>	-1.29 (3.97)	-.886 (2.44)	.173 (.21)	-.685 (1.24)
ln <i>HW'F</i>	.378 (.67)	1.14 (.96)	4.47 (2.03)	.063 (.10)
<i>C</i>	1.60 (.80)	.731 (.29)	7.93 (1.69)	6.02 (1.57)
$\hat{\rho}$	-.364 (2.17)	-.465 (2.66)	-.605 (2.64)	-.439 (2.25)
<i>R</i> ²	.997	.998	.999	.998
Period	1936-77	1936-69	1936-57	1944-77

Note: Absolute value of *t*-statistics are given in parentheses.

Equation (23) reports the regression estimated over the even shorter 1936-57 period. In equation (24) the regression is estimated from 1944-77 to check how sensitive the results are to omitting the first 8 years of the sample. Bowers and Pierce [3] argue that the FBI data on conviction rates is unreliable until the 1940s.

Comparing equations (22) and (24) to the full sample regression, equation (21), one can see that deleting the first 8 observations or the last 8 observations from the sample does not substantially alter the coefficient estimates, or their *t*-statistics. Deleting the last 8 observations from the sample causes the coefficient on the age distribution variable to switch from positive to negative; deleting the first 8 observations causes the coefficient on permanent income per capita to switch from positive to negative. In equation (23), estimated from 1936-57, the *t*-statistic on the coefficient on ln *PE3* falls to -1.52 which is not significantly different from 0 at the 5% level. It is possible, as Passell and Taylor [26] argue, that the sharp decline in the execution rate in the late 1950s and 1960s is a proxy for some

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Table VI. OLS Estimates of the Homicide Function Over Alternative Time Periods

Equation	(21)	(22)	(23)	(24)
Dependent Variable	ln q	ln q	ln q	ln q
ln <i>PAJ</i>	-1.37 (4.00)	-1.20 (3.66)	-2.02 (3.57)	-1.62 (3.78)
ln <i>PC3</i>	-.548 (10.4)	-.543 (11.4)	-.382 (3.34)	-.576 (7.34)
ln <i>PE3</i>	-.103 (13.5)	-.130 (9.11)	-.073 (1.52)	-.119 (9.26)
<i>TT</i>	-.0083 (2.06)	-.017 (3.34)	-.016 (1.64)	-.0075 (1.69)
ln <i>A2129</i>	.103 (2.08)	-.0087 (.13)	-.226 (1.73)	.130 (2.00)
ln <i>LFP</i>	-1.95 (6.35)	-2.86 (6.39)	-3.28 (6.02)	-1.93 (5.63)
ln <i>Y</i>	.340 (2.94)	.319 (1.79)	-.225 (.64)	-.063 (.20)
ln <i>REL</i>	-1.29 (3.97)	-.886 (2.44)	.173 (.21)	-.685 (1.24)
ln <i>HWF</i>	.378 (.67)	1.14 (.96)	4.47 (2.03)	.063 (.10)
<i>C</i>	1.60 (.80)	.731 (.29)	7.93 (1.69)	6.02 (1.57)
\bar{p}	-.364 (2.17)	-.465 (2.66)	-.605 (2.64)	-.439 (2.25)
R^2	.997	.998	.999	.996
Period	1936-77	1936-69	1936-57	1944-77

Note: Absolute value of *t*-statistics are given in parentheses.

Equation (23) reports the regression estimated over the even shorter 1936-57 period. In equation (24) the regression is estimated from 1944-77 to check how sensitive the results are to omitting the first 8 years of the sample. Bowers and Pierce [3] argue that the FBI data on conviction rates is unreliable until the 1940s.

Comparing equations (22) and (24) to the full sample regression, equation (21), one can see that deleting the first 8 observations or the last 8 observations from the sample does not substantially alter the coefficient estimates, or their *t*-statistics. Deleting the last 8 observations from the sample causes the coefficient on the age distribution variable to switch from positive to negative; deleting the first 8 observations causes the coefficient on permanent income per capita to switch from positive to negative. In equation (23), estimated from 1936-57, the *t*-statistic on the coefficient on ln *PE3* falls to -1.52 which is not significantly different from 0 at the 5% level. It is possible, as Passell and Taylor [26] argue, that the sharp decline in the execution rate in the late 1950s and 1960s is a proxy for some

Table VII. Stability of the Homicide Function Over Time

Period	SSR × 100	SE × 100	F	F ₀₅	F'
1936-55	.405078	2.01265	.82	2.30	1.75
1936-56	.503054	2.13851	1.65	2.30	1.44
1936-57	.539733	2.12080	1.54	2.30	1.30
1936-58	.694215	2.31087	1.08	2.30	.823
1936-59	.699655	2.23552	1.39	2.30	1.22
1936-60	.725234	2.19884	1.60	2.30	1.14
1936-61	.725258	2.12905	1.84	2.30	1.26
1936-62	.737985	2.08353	2.64	2.30	1.59
1936-63	.763841	2.05999	3.06	2.30	1.70
1936-64	.848132	2.11278	2.55	2.30	1.15
1936-65	.852513	2.06460	2.52	2.30	1.31
1936-66	.894152	2.06346	2.01	2.28	1.35
1936-67	.978733	2.10921	1.92	2.30	1.22
1936-68	.979003	2.06314	2.23	2.32	1.46
1936-69	.999335	2.04056	2.51	2.36	1.66
1936-70	1.00338	2.00338	2.96	2.41	2.04
1936-71	1.11938	2.07492	2.77	2.47	1.70
1936-72	1.18212	2.09242	2.98	2.57	1.76
1936-73	1.31173	2.16443	2.79	2.71	1.08
1936-74	1.41293	2.20730	2.89	2.93	.0002
1936-75	1.41294	2.17020	4.48	3.32	—
1936-76	1.76421	2.38558	1.24	4.15	—
1936-77	1.83472	2.39447	—	—	—

unknown omitted variables that are really responsible for the rising homicide rate during this period. Another explanation for the insignificant coefficient on $\ln PEJ$ (and $\ln PAJ$) in equation (23) is the small number of degrees of freedom — 13 — combined with the multicollinearity among the explanatory variables.¹⁷

To examine the stability of the homicide regression more systematically, Table VII reports the sum of squared residuals (SSR) and the standard error of the homicide regression (SE) over different time periods beginning with 1936-55 and ending with 1936-77. From column 3 in Table VII one can see that the standard error of the regression is reasonably stable over time, exhibiting no systematic trend. Inspection of column 2 in the table shows a very large increase in the SSR from 1975 to 1976. The large jump in the SSR from 1975 to 1976 is associated with a sharp decline in the homicide rate in 1976. The homicide rate reached its minimum sample value in 1957 and except for a very slight

17. Examples of first-order correlations between variables for the 1936-57 period are: TT and $\ln Y$ (.976), T and $\ln REL$ (.973), TT and $\ln PEJ$ (-.954), $\ln PEJ$ and $\ln Y$ (-.936), $\ln PEJ$ and $\ln REL$ (-.906), $\ln PEJ$ and $\ln PAJ$ (-.899).

decline in 1961 the homicide rate increased steadily from 1957 to 1974. From 1962 to 1974 the average annual rate of increase in the homicide rate was 6%. In 1975 the homicide rate fell by a small amount and then fell very sharply by more than 9% in 1976. The large increase in the SSR from 1975 to 1976 in column 2 reflects the fact that the regression equation does not predict the sharp decline in the homicide rate in 1976.

Column 4 reports the F -values for the Chow tests of the equality of the coefficients for the subperiod in column 1 and the subperiod consisting of the remaining years in the full sample. For example, the first F -value in column 4 is for the test of the hypothesis that the regression coefficients are equal over the 1936-55 and 1956-77 subperiods. Beginning with the 1936-66 and 1967-77 subperiods the F -values are calculated using the Chow test for the case of insufficient degrees of freedom. The 5% critical values of F are reported in column 5.

If the full sample is divided between 1962 and 1965 or between 1969 and 1973 the hypothesis that the coefficients are equal over the two subperiods is rejected at the 5% level. However, if one divides the sample between 1955 and 1961 or between 1966 and 1968, the hypothesis that the regression coefficients are equal over the two subperiods is not rejected. One might argue that dividing the sample at 1957 provides the most plausible division. The trend of the homicide rate was negative from the early 1930s to 1957. In 1957 the homicide rate reached its minimum sample value; thereafter the trend of the homicide rate was increasing until 1974. The F -statistic for the hypothesis that the coefficients are equal from 1936-57 and 1958-77 is 1.54 which is well below the 5% critical value of F .

Even if one were to believe that the division of the sample between 1962 and 1965 or between 1969 and 1973 is more appropriate than some other division, the increased efficiency from using the full sample regression estimates may outweigh the bias in the coefficient estimates resulting from the restriction that the coefficient estimates be equal in the two subperiods. Wallace [28] has shown that if the goal is to minimize the weighted average of the mean square errors of the coefficient estimates, the resulting critical values of F are higher than the conventional F -values for Chow tests. Using Goodnight and Wallace's [13] tables for the weak MSE test for restrictions in regressions, the critical 5% F -value is, 4.29. From column 3 of Table VII the 5% critical value of F for the weak MSE test is never exceeded.

Column 6 presents the F -values for the hypothesis of equal coefficients over the subperiod indicated in column 1 and the remaining years in the full sample except for the last two years, 1976 and 1977. The largest F -value in column 6 is 2.04 which is below the 5% critical of F for the conventional Chow test. Even the weak evidence of instability in the homicide function depends critically on the last two years of the sample. By deleting the last two years from the sample there is no partition of the sample that yields an F -value which exceeds the 5% critical value of F for the Chow test. In summary, the homicide function appears to be reasonably stable over time. The evidence for instability of the homicide is weak and critically dependent on the last two years of the sample.

To test for the optimal functional form for the time-series data, suppose the model to be estimated with the time-series data is

$$q_t^{(A1)} = c + B_1 PAJ_t^{(A2)} + B_2 PCJ_t^{(A2)} + B_3 PEJ_t^{(A2)} + B_4 Y_t^{(A2)} + B_5 LFP_t^{(A2)} + B_6 TT + B_7 A2I29_t^{(A2)} + B_8 REL^{(A2)} + B_9 HWF^{(A2)}. \quad (25)$$

$$u_t = \rho u_{t-1} + \epsilon_t.$$

where $|\rho| < 1$ and ϵ_t is $NID(0, \sigma^2)$. The Box-Cox [2] transformation of the dependent variable is defined by

$$q_t^{(\lambda_1)} = (q_t^{\lambda_1} - 1)/\lambda_1 \quad \text{for } \lambda_1 \neq 0, \quad (26)$$

and

$$q_t^{(\lambda_1)} = \ln q_t, \quad \text{for } \lambda_1 = 0.$$

The transformation of the right-hand-side variables are similarly defined. The log-linear functional form is represented by $(\lambda_1, \lambda_2) = (0, 0)$ and the linear functional form is represented by $(\lambda_1, \lambda_2) = (1, 1)$.

Letting $q^{(\lambda_1)}$ be the vector of transformed observations on the homicide rate, $X^{(\lambda_2)}$ the matrix of transformed observations on the right-hand-side variables, and B the vector of coefficients, the log likelihood function for the sample of observations on the homicide rate is

$$L = -T/2[\ln(2\pi\sigma^2)] + 1/2 \ln(1 - \rho^2) - 1/2(\sigma^2)[q^{(\lambda_1)} - X^{(\lambda_2)}B] V^{-1} [q^{(\lambda_1)} - X^{(\lambda_2)}B] + (\lambda_1 - 1) \sum_{i=1}^T \ln q_{i.}, \quad (27)$$

where V^{-1} is the matrix

$$\begin{bmatrix} 1 & -\rho & 0 & \cdot & \cdot & \cdot & 0 & 0 \\ -\rho & 1+\rho^2 & -\rho & 0 & \cdot & \cdot & 0 & 0 \\ 0 & -\rho & 1+\rho^2 & \cdot & \cdot & \cdot & \cdot & \cdot \\ \cdot & 0 & \cdot & \cdot & \cdot & \cdot & \cdot & \cdot \\ \cdot & \cdot & \cdot & \cdot & \cdot & \cdot & \cdot & \cdot \\ \cdot & \cdot & \cdot & \cdot & \cdot & \cdot & \cdot & \cdot \\ \cdot & \cdot & \cdot & \cdot & \cdot & \cdot & 1+\rho^2 & -\rho \\ 0 & 0 & \cdot & \cdot & \cdot & \cdot & -\rho & 1 \end{bmatrix}$$

Letting the first three terms in equation (27) be denoted by L_1 , equation (27) simplifies to

$$L = L_1 + (\lambda_1 - 1) \sum_{i=1}^T \ln q_{i.}. \quad (28)$$

For given values of λ_1 and λ_2 , maximizing L_1 with respect to B , σ^2 , and ρ is the same as maximizing the log-likelihood function for a linear regression with autocorrelated errors. Beach and MacKinnon's [1] maximum-likelihood technique is used to estimate L_1 for given values of λ_1 and λ_2 and then it is a simple matter to add L_1 and $(\lambda_1 - 1) \sum \ln q_{i.}$ to find L .¹⁸

In Table VIII, the values of the estimated log likelihood function for the 1936-77 data

18. See Seaks and Layson [27] for a more detailed discussion of this procedure.

Table VIII. Test for Functional Form

λ_2	λ_1^*	L	λ_2	λ_1^*	L
-2.0	.0	197.4	.1	-.4	222.0
-1.9	.0	197.5	.2	-.5	220.5
-1.8	.0	197.5	.3	-.5	218.3
-1.7	.0	197.4	.4	-.5	215.6
-1.6	-.1	197.5	.5	-.4	212.6
-1.5	-.1	197.4	.6	-.3	209.6
-1.4	-.1	197.4	.7	-.1	207.0
-1.3	-.1	197.3	.8	.0	204.7
-1.2	-.1	197.2	.9	.1	203.0
-1.1	-.1	197.1	1.0	.2	201.9
-1.0	-.1	197.1	1.1	.2	201.2
-.9	-.1	197.0	1.2	.3	201.0
-.8	-.1	197.0	1.3	.3	201.0
-.7	-.1	197.1	1.4	.3	201.2
-.6	-.1	197.4	1.5	.3	201.6
-.5	.0	198.0	1.6	.4	202.0
-.4	.8	199.8	1.7	.4	202.6
-.3	.6	209.0	1.8	.4	203.2
-.2	.3	216.5	1.9	.4	203.9
-.1	.0	220.8	2.0	.4	204.5
.0	-.3	222.3	2.1	.4	205.1

are computed for different pairs of (λ_1, λ_2) . In constructing Table VIII the value of λ_2 was allowed to vary between -2 and 2.0 in increments of .1, and then for each value of λ_2 , the value of λ_1 was allowed to vary between -2 and 2 in increments of .1. Letting λ_1^* be the value of λ_1 that maximizes L for a given value of λ_2 , the values of L for different ordered pairs (λ_1^*, λ_2) are reported in Table VIII.

The global maximum value of the likelihood function in Table VIII is 222.33 at $(\hat{\lambda}_1, \hat{\lambda}_2) = (-.3, 0)$. The results of estimating this regression are given by

$$\begin{aligned}
 q^{(-3)} = & 3.04 - 2.82 \ln PA3 - 1.25 \ln PC3 - .246 \ln PE3 \\
 & \quad (.70) \quad (3.84) \quad (11.1) \quad (15.2) \\
 & - .020 TT + .207 \ln A2I29 - 5.41 \ln LFP \\
 & \quad (2.30) \quad (1.98) \quad (8.23) \\
 & + .839 \ln Y - 3.27 \ln REL + .717 \ln HWF, \quad \hat{\rho} = -.465. \quad (29) \\
 & \quad (3.32) \quad (4.71) \quad (.58)
 \end{aligned}$$

Table IX. Likelihood Ratio Tests for Alternative Simple Functional Forms

Functional Form	(λ_1, λ_2)	$L(\lambda_1, \lambda_2)$	χ^2
Log-linear	(0, 0)	220.96	2.75
Semi-log	(0, 1)	201.70	41.26
Semi-log	(1, 0)	205.06	34.54
Linear	(1, 1)	198.55	47.56
Optimal	(-3, 0)	222.33	

In equation (29) the coefficients on the probabilities of punishment are all negative, statistically significant,¹⁹ and consistent with the elasticity conditions. It is interesting to note that the transformation of the independent variables, $\lambda_2 = 0$, is consistent with Ehrlich's [9, 734-44] theoretical arguments for measuring the probabilities of punishment in logarithms.

The values of the log likelihood function for 4 alternative simple functional forms and the optimal functional form, $(\hat{\lambda}_1, \hat{\lambda}_2) = (-3, 0)$, are presented in Table IX. The likelihood ratio test statistic for the hypothesis $H_0: (\lambda_1, \lambda_2) = (\lambda_1^0, \lambda_2^0)$ is $2[(\hat{\lambda}_1, \hat{\lambda}_2) - L(\lambda_1^0, \lambda_2^0)]$ which has a χ^2 distribution with 2 degrees of freedom. The last column in Table IX reports the values of this test statistic for 4 alternative simple functional forms. The 5% and 1% critical values of χ^2 are, respectively, 5.99 and 9.21. The hypothesis that the homicide function is log-linear cannot be rejected at the 5% significance level. However, both versions of the semi-log functional form and the linear functional form are easily rejected at the 1% significance level. The finding that the time-series estimates of the homicide function are consistent with the log-linear specification corroborates Ehrlich's [9] finding that the optimal functional form for the cross-sectional homicide function is close to the log-linear specification.

Table X reports the coefficient estimates and *t*-statistics of the probabilities of punishment for the 4 simple functional forms. For all 4 functional forms the probabilities of punishment are negative and statistically significant at the 1% level. The deterrence findings are clearly robust with respect to the choice of functional form. However, the *t*-statistics on the probability of execution measured in natural values are considerably lower than the *t*-statistics on probability of execution measured in logarithms.

V. Conclusion

This paper has presented updated estimates of the U.S. homicide function that strongly confirm Ehrlich's [6; 9] deterrence findings. The basic deterrence results reported here are also consistent with the author's [20; 21] studies of Canadian homicide and Wolpin's [29] study of homicide in England and Wales. For the full sample regressions estimated in this paper, the probability of arrest, the conditional probability of conviction given arrest, and the conditional probability of execution given conviction have negative and statistically significant effects on the homicide rate. In addition the ranking of the estimated elasticities of homicide with respect to the probabilities of punishment is consistent with sharp predictions derived from the hypothesis of expected utility maximization.

19. In equation 29 all *t*-statistics are conditional on the assumption that $\lambda_1 = -3$ and $\lambda_2 = 0$.

Table X. Coefficients on the Probabilities of Punishment for Alternative Functional Forms

Functional Form	Variables		
	<i>ln PA3</i>	<i>ln PC3</i>	<i>ln PE3</i>
Log-linear	-1.37 (4.00)	-.548 (10.4)	-.103 (13.5)
Semi-log	-.118 (3.18)	-.035 (6.01)	-.0058 (6.13)
	<i>PA3</i>	<i>PC3</i>	<i>PE3</i>
Semi-log	-.028 (3.72)	-.021 (7.70)	-.073 (3.28)
Linear	-.0018 (3.71)	-.0014 (7.89)	-.0044 (3.08)

Note: Absolute value of *t*-statistics in parentheses.

In this paper the homicide rate is measured using the Vital Statistics measure of homicides rather than the FBI series. Previous researchers have used exclusively the FBI data in their time-series analysis. Bowers and Pierce [3], however, argue forcefully that the Vital Statistics measure of homicides is superior to the FBI measure. It is found in this paper that the Vital Statistics data supports the deterrence theory more strongly than the FBI series.

Two other important differences between previous research in this area and the estimates presented in this paper are: (1) OLS methods are used in this paper rather than 2SLS and (2) the probabilities of punishment are measured by averaging the current relative frequencies of punishment with their lagged values of the two previous years. The use of OLS methods rather than 2SLS is justified by an application of Hausman's test and by the use of lagged relative frequencies of punishment to measure murders subjective probabilities of punishment. The particular lag structure used to measure the probabilities is very simple and somewhat arbitrary. However, the deterrence findings reported in this paper are found to be robust with respect to the lag structure used.

Three other important issues that have arisen in the debate over Ehrlich's homicide work are carefully discussed: (1) the sensitivity of the deterrence results to the choice of explanatory variables, (2) the stability of the homicide function over time and (3) the choice of functional form. The deterrence findings are found to be robust with respect to the choice of explanatory variables and functional form. The use of the log-linear functional form is justified by the Box-Cox analysis. The homicide function estimated in this paper is also shown to be reasonably stable over time.

From the specification search, it was found that the proportion of the population that belongs to a religion has a negative and significant effect on the homicide rate in most specifications. Two variables often used by researchers in estimating homicide functions—the unemployment rate and the proportion of the population that is nonwhite—were found to have inconsistent and generally insignificant effects on the homicide rate depending on the choice of explanatory variables. The labor force participation rate has a negative and significant effect on the homicide rate in most specifications. Permanent income per

capita and the proportion of the population between 21 and 29 years of age have positive effects on the homicide rate in most specifications.

The econometric evidence presented in this paper provides solid support for the deterrence hypothesis. The deterrence findings reported in this paper are not fragile. Different sets of explanatory variables have been used, alternative functional forms for the homicide function have been used and the homicide function has been estimated over different time periods. The regression results consistently support the deterrence hypothesis that increases in the probabilities of arrest, conviction, and execution reduce the homicide rate. Even murderers appear to obey the law of demand.

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Steve suggests when we can these guys, explain that we contacted the University of Alaska for someone to speak to the deterrent effects capital punishment has (be specific as to purpose of testimony so they know points to make). An economist suggested we contact them because of their work on this issue.

Dr. Gary Becker
312-962-8168 (office)
312-241-6828 (home)

462 Bryan Bldg
UNC-G
27412

His writes for Business Week and is a "biggie" in the field

Dr. Steve Layson
University of North Carolina
~~919-379-5463 (office)~~
~~919-272-6872 (home)~~ downracted

(919) 334-5463
~~334 53114~~

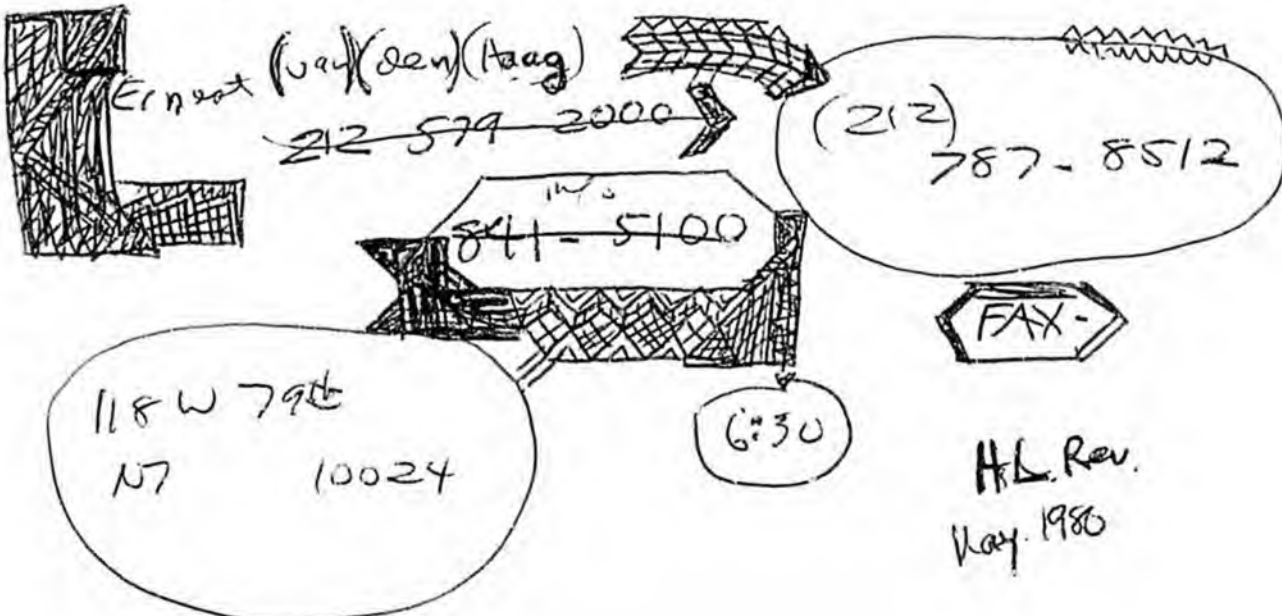
334-5463 econ dept

His study appeared in the 1985 Southern Economist Journal (or something like that). He has done the most recent published research on this.

There's one more, Issac Erlic of the University of Chicago. He may be dead but Steve is checking for certain.

Haag

Tuesday 2:30 6:30



Alaska State Legislature

Senator Paul Fischer
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State Senate

While in Juneau
P.O. Box V
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(907) 465-3791

MEMORANDUM

TO: Senator Jan Faiks, Chairman
Senate Judiciary Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 17
(relating to capital punishment)

DATE: January 16, 1989

Per your staff's instruction, please find attached a sectional analysis on the above referenced bill, as well as the most recent bulletin I've run across from the Bureau of Justice Statistics entitled "Capital Punishment 1987. It is my hope that before your scheduled hearing on January 24, I will also be able to provide the committee with the requested fiscal note from the Alaska Court System.

Chris, of your staff, also inquired if I had any witnesses that I would like to appear during this hearing. Might I suggest you contact Jan Lienhart and allow her to testify from Anchorage by telephone? You may also have other proponents in mind that may wish to testify in this manner.

I appreciate your scheduling this bill in such a timely manner.

PAF/sgn

Attachments

JAN 23 1989

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1989

SUBJECT: Senate Bill 17: Capital punishment --
comparative aspects

TO: Senator Paul Fischer

FROM: Jack Chenoweth
Legislative Counsel 

You have asked for brief memo comparing the punishment provisions of existing law and the change proposed by this legislation, with particular emphasis on the "aggravators."

Senate Bill 17 authorizes capital punishment for certain first degree murders. Under current law, murder in the first degree is punishable by imprisonment for a term of not less than 20 or more than 99 years. AS 12.55.125(a). Section 8 of this bill adds to the existing punishment the alternative of imposition of a death sentence.

The death sentence may be imposed only if

(1) the sentencing jury determines that at least one of the eight aggravating factors identified in AS 12.55.179, added by section 9 of the bill, is present, and that the aggravating factor(s) is not outweighed by one of the four mitigating factors identified in AS 12.55.180, also added by the bill section;

(2) the sentencing jury recommends imposition of the death sentence; and

(3) the court affirms the jury's findings.

If the court cannot affirm the jury's determination, then the death sentence may not be imposed and the court must determine a range of jail sentence between the 20 and 99 year parameters of existing law.

The aggravating factors of AS 12.55.179, applicable to deliberations concerning imposition of the death penalty, are unrelated to the aggravating factors applicable to presumptive sentencing under current law. The aggravating factors identified for purposes relating to imposition of the death penalty apply only to consideration of those sentences, and are based essentially on elements of comparable capital punishment laws of other jurisdictions (notably, Florida and Georgia) that have been reviewed and sustained on appeal by the United States Supreme Court.

In contrast, some of the aggravating factors identified for presumptive sentencing (AS 12.55.155(c)) were identified early in the course of development of the Criminal Code revision in 1977, while others were added in the course of committee deliberations on various drafts of that legislation. The state, of course, has more flexibility as to the definition and applicability of aggravating factors to sentences in contexts other than those involving capital punishment.

There is, admittedly, some similarity between the two sets of factors:

<u>Capital punishment aggravator proposed in SB 17</u>	<u>Presumptive senten- cing aggravator under current law</u>
Defendant's conduct manifested deliberate cruelty to another in the commission of certain crimes (AS 12.55.179(1))	Defendant's conduct manifested deliberate cruelty to another (AS 12.55.155(c)(2))
Defendant's conduct caused the death of at least two persons, not accomplices (AS 12.55.-179(2))	No exactly comparable provision
Defendant's conduct created a risk of imminent physical injury to at least three persons, not accomplices (AS 12.55.179(3))	Exactly comparable provision (AS 12.55.-155(c)(6))
Defendant has a prior conviction for a felony involving use of violence against a	Defendant's prior criminal history includes conduct involving

Senator Paul Fischer
Page 3
January 23, 1989

person (AS 12.55.179(4))

aggravated or repeated instances of assaultive behavior (AS 12.55.-155(c)(8))

Defendant knowingly directed the conduct against the president or governor (AS 12.55.-179(5))

No comparable provision

Defendant knowingly directed the conduct against other designated state or municipal officials (AS 12.55.-179(6))

Comparable provision -- AS 12.55.155(c)(13) -- includes additional officials performing emergency health related functions

Defendant committed offense under reimbursement agreement or expectation of payment (AS 12.55.179(7))

Roughly analogous provision (AS 12.55.-155(c)(11))

Defendant committed offense while on release for another felony charge or conviction having assault as a necessary element (AS 12.55.-179(8))

Comparable provision, AS 12.55.155(c)(12), adds "release on a misdemeanor charge . . . "

Finally, I want to note that, under current law, murder in the first degree is not made subject to presumptive sentencing requirements and, when imposing sentence, the court is not bound to analyze and consider the applicability of the aggravating factors in AS 12.55.155(c) in determining whether to impose a shorter or longer sentence within the 20 - 99 year range now authorized.

I trust this is sufficient for the purposes intended. Please contact me if it is not.

JC:gc
WKG6/021

Alaska State Legislature

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State Senate

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SUMMARY OF SENATE BILL 17 (AUTHORIZING CAPITAL PUNISHMENT)

Enactment of Senate Bill 17 would make first degree murder a capital felony and a person convicted of the crime could be sentenced to death under certain circumstances. Under current law, first degree murder is considered an unclassified felony and carries a definite term of imprisonment of at least 20 years, but not more than 99 years.....the death penalty is not an option.

This legislation stipulates that, when a person is convicted of a capital felony and sentenced to death, the sentence must automatically be reviewed by the state supreme court within 60 days from the time the sentence is imposed. The court may extend the time limit, however, for good cause. A sentence review of this nature has priority over all other cases. The court must determine whether the sentence was imposed under the influence of passion, prejudice, or other arbitrary factors; whether the evidence supports the finding of an aggravating factor and whether the court has properly considered mitigating factors; whether the sentence is excessive or disproportionate to the penalty imposed in similar cases (considering both the crime and the defendant); and any other issue that the defendant may raise as a point on appeal. If the court upholds the death sentence it has to issue a death warrant that specifies a date of execution not less than 30 days nor more than 60 days after the date of the warrant.

Senate Bill 17 outlines sentencing procedures that must be followed for a capital felony. The recommended sentences have to include written findings of whether aggravating factors exist to justify the death sentence; mitigating factors existing that outweigh the aggravating factors; and whether the defendant should be sentenced to death. The court cannot impose the death sentence unless the sentencing jury finds at least one aggravating factor that is not outweighed by the mitigating factors; and recommends the defendant be sentenced to death. Senate Bill 17 also outlines aggravating and mitigating factors that may be considered in determining whether to impose the death penalty.

The original legislation allows the person sentenced to death the opportunity to choose the manner of execution - either by lethal injection or by a firing squad. If the person does not make a choice, the Commissioner of Corrections must determine the manner of execution. The bill also stipulates who may be invited to witness the execution, including prosecuting and defense attorneys, relatives and friends, religious representatives, and the news media.

Under this legislation, if the Commissioner of Corrections has reason to believe a person sentenced to death is incompetent to proceed with the execution, or is pregnant, the Commissioner must immediately give written notice to the court in which the death sentence was imposed, and the sentence will be stayed pending further order of the court. It also allows for examination into competency. When a defendant is no longer pregnant or if found competent, the court has to issue another death warrant specifying a date of execution not less than 30 days nor more than 60 days after the date of the warrant. The court of appeals would not have appellate jurisdiction in actions and proceedings for a capital felony.

The original legislation authorizes an advisory vote to be put before the qualified voters of the state asking: Shall capital punishment for murder in the first degree as now authorized by law go into effect on August 15, 1991?

Except for the advisory vote effective date clause, all other sections of the bill take effect immediately after the bill is signed into law.

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Prepared by Senator Paul A. Fischer
January 23, 1989

STATE OF ALASKA
THE LEGISLATURE

STATE OF ALASKA
LEGISLATIVE AGENCY
1989

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 16, 1989

SUBJECT: Senate Bill 17 - sectional analysis
TO: Senator Paul Fischer
FROM: Jack Chenoweth
Legislative Counsel

Critical to an appreciation of Senate Bill 17 and this sectional analysis is an understanding of what constitutes a "capital felony." As defined in bill section 3, the crime of murder in the first degree is a capital felony. Under current law, "murder in the first degree" is defined as follows:

A person commits the crime of murder in the first degree if

- (1) with intent to cause the death of another person, the person
 - (A) causes the death of any person;
 - or
 - (B) compels or induces any person to commit suicide through duress or deception;
- (2) the person knowingly engages, under circumstances manifesting extreme indifference to the value of human life, in a pattern or practice of assault or torture of a child under the age of 16, and one of the acts of assault or torture results in the death of the child; for purposes of this paragraph, a person "engages in a pattern or practice of assault or torture" if the person inflicts serious physical injury to the child by at least two separate acts, and one of the acts results in the death of the child.

AS 11.41.100(a).

Murder in the first degree is currently defined as an "unclassified felony." AS 11.41.100(b). In this proposed

measure, it is given separate status as a "capital felony" in order to permit more stringent penalties to attach.

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The legislation contains the following provisions:

Bill section 1 addresses attempted capital felonies. It amends AS 11.31.100(d) to shift an attempted murder in the first degree from its status as a "class A felony" to the more serious status as an "unclassified felony."

Bill section 2 amends the definition of the penalty for the crime of solicitation, AS 11.31.110(c). This section makes the penalty for the solicitation of a capital felony itself a "class A felony."

AS 12.30.020, amended by bill section 4, addresses the subject of the right of a prisoner to release before trial. The amendment adds "capital felony" to the category of serious crimes for which release before trial on personal recognizance or bond is not authorized.

AS 12.30.040, amended by bill section 5, addresses the subject of a convicted person's right to release after trial and before sentencing and pending appeal. The amendment adds "capital felony" to the category of serious crimes for which release after trial and before sentencing and pending appeal is not authorized.

AS 12.47.110(b), amended by bill section 6, addresses the subject of trial of an incompetent person. Under certain circumstances, the trial of an incompetent may be deferred, the criminal proceedings dismissed, and civil commitment proceedings initiated. If the person adjudicated incompetent remains incompetent for a period of five years after the criminal charges are dropped, those criminal charges may not thereafter be reinstated, except that the charges may be reinstated for serious felonies. The amendment made in this bill section adds "capital felony" to the list of serious felonies for which reinstatement of criminal charges may be made without regard to the five year limitation.

Bill section 7 adds a new section, AS 12.55.117, authorizing automatic review by the state supreme court of convictions for capital felonies in which the trial court imposes the