

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9565 SENATE JUDICIARY

200

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB60

Revision Date _____	Dept. Affected _____	Office of the Governor _____
Title <u>Advisory Vote on Capital Punishment</u>	BRU _____	Elective Operations _____
	Component _____	General and Primary Elections _____
Sponsor <u>Senator Taylor</u>		
Requester <u>Senate Judiciary</u>	Component Serial No. _____	<u>#22</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time		0				
Part-time		0				
Temporary		0				

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

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

Prepared by	Dana LaTour <i>Dana LaTour</i>	Phone	465-5347
Division	Division of Elections	Date	3/7/97
Approved by Co Agency	Lt. Governor Fran Ulmer <i>Fran Ulmer</i> Office of the Lieutenant Governor	Date	3/7/97

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CAPITAL PUNISHMENT: Retribution or Deterrence?

Excerpts from an article written by: Kenneth L. Gentry, Jr.

We must remember that when we advocate the abolition of capital punishment we have all murderers on our side and the Bible on the other.

The July 28th conclusion of the Susan Smith trial in Union City, South Carolina, we began anew the debate over capital punishment, and as we re-engage this debate, we are inescapably confronted with religious values. By the very nature of the case, all law is intrinsically religious since law is rooted in morality; morality is based on ideas of ultimacy and value; and ultimate and value are fundamentally religious conceptions. Religious conceptions are of a transcendental nature and are not reducible to laboratory testing or mathematical analysis.

Recent local and national news coverage and radio talk show programs have frequently highlighted the religious overtones in the debate over the Susan Smith judgment. Even in the case itself the closing statement by defense attorney David Bruck, a Jew, cited the New Testament words of Jesus: "He among you who is without sin first cast the stone." (John 8:11). Page one of the July 30, 1995, Greenville News published an article titled: "Sin, salvation in a small town: Religious notes echoed throughout Susan Smith case." This reflection on religious values is, as it should be, due to the nature of law.

To Deter or Not to Deter

Unfortunately, many proponents of the death penalty argue for its use solely on the grounds of deterrence. But deterrence cannot morally be the sole reason for the death penalty:

First, historically, the statistical data render any argument pro or con impossible. The 1995 World Almanac (215) shows that from 1977 (the year the Supreme Court re-instituted capital punishment as constitutional) through 1992 there were 338,780 murders in America, an average of over 21,000 annually. In the same period there were only 188 executions, or an execution rate of only .00055.

In 1992 alone there were 23,760 murders, but only 31 executions. The murder to execution ratio is so disparate as to nullify any deterrent effect. To make matters worse, the average prison sentence for murder in America in 1991 was under nineteen years, with the average actual incarceration being only 8 years and one month (World Almanac, 218). Today's murderers realize the disparity and take full advantage of it.

Second, and more importantly, if deterrence were morally sufficient to justify capital punishment, then why would it not also justify more likely deterrents? Deterrents such as slow, public torture of murderers? Or the capital punishment of the families of murderers? To consider the question of deterrence in this light quickly exposes the moral inadequacy of the argument. On the other hand, if life in prison is a worst punishment than execution, why not then torture them while in prison and make it worse? The issue before us is not merely the deterrents of it, but what is the just thing to do?

The Justification of Capital Punishment

Both the heritage of Western culture and the teaching of Scripture offer a morally superior principle for execution: retribution. "Retribution" means "to pay back." and it is an important element in law. In a contract law and in cases of theft retribution demands a repayment commensurate with the monetary loss. Civil justice must exact a repayment commensurate with criminal wrongdoing if it is to promote true justice. In the case of murder we have, in effect, the robbery of an innocent life. On the basis of the retribution principle, the murderer must make payment for the value of the life criminally destroyed. But what is the value of human life? Man's life is of the highest value in that he is the only creature created in God's image (Gen. 2:26-27).

Retribution is an important element in law. In a contract law we sue for damages based on the value of our loss. In cases of theft retribution demands a repayment commensurate with the monetary loss. Even in casual conversation we recognize the retribution principle: We often say a man must "pay" for his crime. Or that a punished offender has "paid his debt to society." Civil justice must exact a repayment commensurate with criminal wrongdoing if it is to promote true justice.

In the case of murder we have, in effect, the robbery of an innocent life. On the basis of the retribution principle, the murderer must make payment for the value of the life criminally destroyed. But what is the value of human life?

Man's life is of the highest value in that he is the only creature created in God's image (Gen. 2:26-27). Thus, the murderer must forfeit his own life, in that no monetary exactment or imprisonment is sufficient to pay the price. The biblical judicial principle known as *lex talionis* (the law of retaliation) demands "eye for eye . . . life for life: (Ex. 21:23-24; Deut. 19:21).

According to news reports, many have sought to use Christian principles to decry capital punishment. But the Bible, the foundational document of Christianity, in both its Old and New Testaments is clear: capital punishment (after proper charges, evidence, trial, conviction, and appeal) is the appropriate judicial response to murder. Genesis 9:6 in the Noachic Covenant ties the image of God in man to the demand for the execution of murderers: "Whoever sheds man's blood shall be shed; for in the image of God He made man." Exodus 21:212 stipulates the absolute necessity of capital punishment for murder: "He who strikes a man so that he dies shall surely be put to death." God's law expressly forbids appeals to pity in capital cases: "Your eye shall not pity" (Deut. 19:13).

Jesus expressly confirms the continuing applicability of God's law when He states that He has come not to destroy the law (Matt. 5:17-19). Paul does the same, tying the continuance of the law to the renewed principle of true faith: "Do we then make void the law through faith? Certainly not! On the contrary, we establish the law" (Rom. 3:31).

Paul also refers to the law's goodness endorsed by the gospel: "But we know that the law is good if one uses it lawfully, knowing this: that the law is not made for a righteous person, but for the lawless and insubordinate, for the ungodly and for sinners, for the unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for fornicators, for sodomites, for kidnappers, for liars, for perjurers, and if there is any other thing that is contrary to sound doctrine, according to the glorious gospel of the blessed God which was committed to my trust: (I Tim. 1:8-11). This is as expected, in that man continues in the New Testament era to possess the image of God (James 3:9).

In Acts 25:11 Paul even offers himself for capital punishment, if it can be proved that he deserves it. In Hebrews 2:2 the writer gives a New Covenant evaluation of the criminal sanctions of the Old Testament: They represent a "just reward." This also should be expected in that the law is "holy, just, and good" (Rom. 7:12). Consequently, Paul defines the civil magistrate as the "minister of God" who has the God-given right to wield the sword of execution (Rom.13:4 as a temporal indicator of the wrath of God (Rom. 12:19-13:4).

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- right to wield the sword of execution (Rom. 13:4 as a temporal indicator of the wrath of God.
- John 8:1-11 - First, the woman was allegedly "caught" (8:4). But where was the man? This has the appearance of false accusation (which does not deserve capital punishment). When Jesus demanded "he who is w/o sin..let him throw the first stone" (8:7)
 - See Deut.19:13

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Capital Punishment, Justice Served

Matthew D. Bartlett - Corporate Vice-Chairman
Students for a Better America - Corporate Column

A battle rages between Americans who are fighting for a safe and just world and those who want to abolish the death penalty weakening our already struggling legal system. Capital punishment may not be a pretty subject, but it is one that is necessary in today's violent society. Our nation's cities have become plagued with crime and violence with the encouragement of a soft legal system. Capital Punishment provides the necessary penalty and deterrent for criminals in America. Those who oppose capital punishment in America try to brainwash the American people into believing that capital punishment is either unconstitutional or ineffective.

The opposition's challenges of capital punishment's legality come short of either being supported or even being seriously questioned. There have been claims of its violation of the Eighth Amendment of the Constitution in constituting the use of cruel and unusual punishment. This argument was unquestionably defeated by the Supreme Court case of 1976: *Greg v. Georgia*, *Proffitt v. Florida*, *Jurek v. Texas*. The court held that death, as a punishment for first degree murder was not cruel and unusual punishment. The cruel part of this sentence is the false hope and confusion that the opposition instills in the minds of the accused by forcing endless appeals and stays of execution only delaying the inevitable. There have been numerous cases where the condemned have been prepared to die and even welcome it when people still continue to fight against their wishes to have their death delayed. The best thing that people could do to make it easier on the condemned would be just to let their sentence be carried out quickly and peacefully.

Another issue that always arises when debating the use of capital punishment is its alleged ineffectiveness and high price tag. Many opponents refer to numbers and statistics comparing states that have the death penalty versus those without. The thing that they inevitably forget is that you cannot blindly look at statistics without considering what effects them. They fail to acknowledge that most of the problems with capital punishment today are a result of their own activities. As a result of anti-death penalty/pro-criminal protests, many of the states that do have capital punishment fail to ever implement it, and therefore, cause it to lose all meaning and effect.

Comparing a state that does not allow the death penalty to one that does, but never implements it, is not much of a comparison.

The true measurement of the effectiveness of capital punishment is the effect that it has on the future action of the accused and in deterring others in society. Many debate whether it is an effective weapon against violent crime.

In at least one sense, it unquestionably is: It simply cannot be questioned that a killer, once executed, is forever deterred from ever killing again. The effect on others may very well be due to the swiftness of the application of the penalty, but the effect on the murderer will not. There is no way that the prisoner will escape or kill again once he has been executed. A simple life sentence gives a prisoner an entire lifetime to escape and repeat his heinous crime.

One of the only points that the opposition has is that the average cost of execution of a criminal is greater than imprisoning them for life. This is true, however, they usually neglect to tell you why that is true. The truth is that their efforts directly cause executions to be so costly. Endless appeals and delays tie up the courts for years. There have been many instances when cases have tied up the legal system for more than fourteen years. If appeals were limited, the costs would decrease significantly. When you look at it realistically, the cost of the execution itself could be as little as fifty cents, the price of a single bullet.

In the world of today, capital punishment isn't an option, it is a necessity.

Difficult times call for tough measures. Capital punishment has been a necessary feature of the justice system throughout both this nation's history as well as that of the world. The death penalty has been used

continuously since the beginning of recorded history, often for far lesser crimes. The question today shouldn't be whether or not to have capital punishment, but instead why do we fail to carry out the law as it is intended. Before you start attacking the effects of a law, you should try enforcing it. Implementing all of our Capital Punishment laws to their fullest extent will be a important first step towards returning our justice system to one that protects the innocent and punishes the guilty.

*ADN 4/16/97

STOP CODDLING CRIMINALS

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

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

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

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

-- Rocky Latta
Anchorage

STOP CRIMINALS PERMANENTLY

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

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

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

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

-- Michael Toundas

Valdez civil case, the fishermen and other plaintiffs would have received only \$900 million in punitive damages, said Sen. Georgianna Lincoln, D-Rampart. That's less than one-fifth of what the jury decided the case was worth.

The bill's supporters disagreed with her analysis.

Although proponents of the bill say they don't want the limits applied to the \$5 billion Exxon Valdez punitive damages verdict, Lincoln and other Democrats warned that it just might come to that. They said they expect Exxon's lawyers will point to Alaska's tort-reform law when they try to persuade an appeals court to decrease the verdict.

"That's the very best thing that could ever happen to Exxon and their attorneys," Lincoln said.

Sen. Sean Parnell, R-Anchorage, said the appeals court would only have to look at the language of the tort-reform bill, which says the Legislature doesn't intend for it to apply to the Exxon Valdez case, or any other federal admiralty lawsuit.

Duncan was not persuaded that the statement would be enough to keep Exxon from using the law to its advantage.

"It's a \$4 billion risk," he said. "It's a heck of a gamble."

With a veto looming, Porter said Thursday evening he was considering changes to the bill that might satisfy Knowles.

"We're continuing to talk," he said.

The bill might be amended on the Senate floor today, Porter said, "if we reach an agreement and I can sell it to the Senate, and to my supporters ... but that's a lot of ifs."

JUSTICE NOT ALWAYS FOOLPROOF

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

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

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

-- Michael Baum
Anchorage

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DEATH PENALTY AND SENTENCING INFORMATION

In the United States

3/97

The death penalty debate in the U.S. is dominated by the fraudulent voice of the anti-death penalty movement. The culture of lies and deceit so dominates that movement that many of the falsehoods are now wrongly accepted as fact, even by some of those who support capital punishment. The following report presents the true facts of the death penalty in America. If you are even casually aware of this public debate, you will note that every category contradicts the well worn frauds presented by the anti-death penalty movement. The anti-death penalty movement specializes in the abolition of truth.

- 1) Imposition of the death penalty is extraordinarily rare. Since 1967, there has been one execution for every 1600 murders, or 0.06%. There have been approximately 560,000 murders and 350 executions from 1967-1996 (FBI's *Uniform Crime Report(UCR)* & Bureau of Justice Statistics(*BJS*)).
- 2) Approximately 5900 persons have been sentenced to death and 358 executed (from 1973-96). An average of 0.2% of those were executed every year during that time. 56 murderers were executed in 1995, a record number for the modern death penalty. This represented 1.8% of those on death row. The average time on death row for those 56 executed - 11 years, 2 months ("*Capital Punishment 1995*", BJS, 1996), an all time record of longevity, breaking the 1994 record of 10 years, 2 months.
- 3) Death penalty opponents ("opponents") state that "*Those who support the death penalty see it as a solution to violent crime.*" Opponents, hereby, present one of many fabrications. In reality, executions are seen as the appropriate punishment for certain criminals committing specific crimes. So says the U.S. Supreme Court and so say most death penalty supporters ("advocates").
- 4) Many opponents say that execution is the same as murder because both end a human life. Opponents have reached the bizarre conclusion that if two acts have the same ending or result, i.e. execution and murder, then those two acts are morally equivalent. How absurd. Is the legal taking of property to satisfy a debt the same as auto theft? Are kidnaping and legal incarceration the same because both involve imprisonment against one's will? Truly, "any culture that fails to distinguish between the criminal (act) and the punitive act is a culture that cannot survive."(D.6.) Is killing in self defense the same as capital murder because both end in taking human life? Are rape and making love the same because both may result in sexual intercourse? Opponents' logic often mirrors opponents' "factual" arguments - there is, often, an absence of reality.

A. THE RISK OF EXECUTING THE INNOCENT

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<u>A. THE RISK OF EXECUTING THE INNOCENT</u>	

Great effort has been made in pretrial, trial, appeals, writ and clemency procedures to minimize the chance of an innocent being convicted, sentenced to death or executed. Indeed, since 1973, the due process protections in capital cases have been so extraordinary that 37% of all death row cases, or 2046, have been overturned for due process reasons or commuted. ("*Capital Punishment 1995*", BJS, 1996). Many of those cases were overturned based on post conviction new laws, established by legislative or judicial decisions in other cases. Possibly as many as 15-30 of post Furman cases (0.25-0.51%) were overturned or commuted based on credible claims of innocence. This means that from 99.49%-99.75% of all capital convictions resulted in the guilty being convicted. Predictably, opponents falsely claim that 65 death row inmates have been released since 1973, after having been proven innocent. There is no evidence to support that claim. Also, contrary to the false claims of opponents, clemency is used generously to grant mercy to death row murderers and to spare inmates whose guilt has come into question. In fact, 135 death row inmates have been spared by clemency or commutation from 1973-1995(ibid). This represents 43% of the total of those executed during that time - a remarkable record of consideration and mercy.

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

suspect, given this study's poor level of accuracy. Calling their work misleading hardly does this "academic" study justice. Had any high school student presented such an inaccurate and misleading report, a grade of F would be a likely result.

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

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

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

B. THE INCAPACITATION AND THE DETERRENT EFFECTS

- 1) The argument that murderers are the least likely of all criminals to repeat their crimes is not only irrelevant, but also increasingly false. 6% of young adults paroled in 1978 after having been convicted of murder were arrested for murder again within 6 years of release. ("Recidivism of Young Parolees", 4, 1987, BJS). Murderers have so violated the human rights of their victims and of society that it should be a moral

imperative that they never again have that opportunity.

- 2) Obviously, those executed can't murder again. "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. **Executing each of these inmates would have saved 821 lives.**" (41, 1 Stanford Law Review, 11/88, pg. 153) Using a 75% murder clearance rate, it is most probable that **the actual number of lives saved would have been 1026, or fifty times the number legally executed that year.** This would suggest that some 5000 persons have been murdered, since 1971, by those who had previously committed additional murders (JFA). See B.5.
- 3) FBI crime reports reveal that in 1993, 7,700 persons were murdered by criminals released on parole, probation or pretrial release. (*The American Enterprise*, May/June 1995.) Death penalty opponents spend millions of dollars and countless man hours fighting the legal execution of, at most, 56 murderers per year, when they do nothing to fight for the end of those inhumane release policies which, every year, result in 7,000-10,000 additional murders and 3 million additional violent crime victims. (*The State of Violent Crime in America*, 1/96, i, ii & *Criminal Victimization 1993*, BJS 1995 & JFA). Incredibly, this *does not* include those violent crimes committed by repeat offenders who are released and not on "supervision". Where is the compassion in honoring the previous victim's suffering and in protecting the human rights of future victims? Opponents' actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder our loved ones.
- 4) 9-15% of those on death row committed, at least, one additional murder, prior to that murder (or those murders) which has currently put them on death row; 67% had a prior felony conviction; 42% had an active criminal justice status when they committed their capital offense; 14% of those sentenced to death from 1988-94, had received two or more death sentences ("*Capital Punishment 1994*", BJS 1995 & JFA). Should we err on the side of caution and protect the innocent and honor the memories of those murdered or should we give murderers the opportunity to harm again? Should we put prison personnel and other prisoners at *any* additional risk from known murderers? Prisoners on death row are 250% more likely to murder, in prison, than are prisoners in the general population. Lester, D., "Suicide and Homicide on Death Row", *American Journal of Psychiatry*, 143, 559, 1986.
- 5) Murderers released in 1992 had "served" an average of 5.9 years in prison (*The State Of Violent Crime in America*, 1/96). Taking into account those murderers that were never caught, those that were not sentenced to prison and "good time" and other "credits" counted as "time served", the average time served for all murders is closer to 3 years (JFA). See B.2. Why have we chosen to be so generous to murderers and so contemptuous of the human rights and suffering of the victims?
- 6) For a criminal justice system to have credibility and deterrent value, two factors are required: (1) a high rate of arrest and (2) punishment which reflects the severity of the crime, the criminal's record and the demand for justice. The U.S. system has neither. Of the 10.3 million violent crimes in 1993, only 100,000 of those victimizations, or

- 1% resulted in an actual jail sentence. Only 6.2% of all violent crimes result in arrest. (Prof. John J. DiIulio, Jr., Princeton Univ. 1995, The State of Violent Crime in America, 1/96 and Criminal Victimization 1993, BJS, 1995.) The human rights of victims and future victims are consistently ignored.
- 7) With no death penalty and only life without parole (LWOP), there is no deterrent for LWOP inmates killing others while in prison or after escape. Indeed, there is actually a positive incentive to murder if a criminal has committed a LWOP offense and had not yet been captured. Currently, there are a number of inmates who have killed numerous people in prison or after escape. Their punishment could not be increased because there is no death penalty in those states. Therefore, they will never be punished for those crimes. Never. Not surprisingly, death penalty opponents believe that LWOP is more severe than the death penalty. Hamilton, V., & Rakin, L.: "Interpreting the 8th Amendment", Bedau, H., & Pierce, C., ed., Capital Punishment in the United States, New York, AMS, 1976. This absurd belief, which has now become the newest mantra of opponents, is contradicted by all other surveyed groups, including prisoners (B.12 & 15).
- 8) Death Penalty opponents claim that there is a "brutalization effect" with executions, meaning, that executions show a low regard for human life and do, thereby, cause an increase in the murder rate. If the brutalization effect is real, it would be the only known legal sanction to *cause* an increase in wrongful behavior. Why would criminals become more likely to engage in illegal activities because the punishments for those activities become more severe? How absurd. Have dramatic increases in the rates of incarceration resulted in dramatic increases in kidnappings? Just the opposite. Further denouncing the brutalization effect is the fact that many respected studies show that executions do produce an individual and a general deterrent effect. (B.13 & 15)
- 9) Assume all murderers would instantly die upon murdering. Murderers would then kill only if they wished to die themselves. Murder/suicide is an extremely small component of all murders. Therefore, if a swift and sure death penalty was universally applied to our worst criminals, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved. In fact, swift and sure executions do result in deterrence: (A) The greater the publicity surrounding executions, the greater the deterrent effect. Phillips, D. "The Deterrent Effect of Capital Punishment". *American Journal of Sociology*, 86:139-158, 1980; Philipps, D. & Hensley, J., "When Violence is Rewarded or Punished". *J. Commun.*, 34(3); 101-116, 1984; and the various studies by Prof. Steven Stack, Wayne St. U.(1988-1995) and (B) The higher the rate of execution, the greater the deterrent effect. Lester, D. "Executions As A Deterrent To Homicide", 44:562, 1979a and "Detering Effect of Executions on Murder as a Function of Number and Proportion of Executions", 45:598, 1979b, both from *Psychol. Rep.* and Wasserman, L.: "Non-deterrent Effect of Executions on Homicide Rates", *Psychol. Rep.*, 58:137-138, 1981. The State of Delaware has the highest execution rate per capita and the lowest homicide rates. See B. 13, 15 and 17.
- 10) There are two rational conclusions one can make regarding deterrence. One, if

the death penalty is not a deterrent then we are executing our worst human rights violators. Two, if the death penalty is a deterrent, then we are executing those criminals and saving innocent lives. Regarding deterrence, it is necessary to err on the side of saving innocent life.

- 11) There are two mistakes we can make with those convicted of violent crimes. First, we can misjudge their character and keep them incarcerated too long, when they could have become constructive free persons, repaying even more their debt to society and to their victim(s). Secondly, we can misjudge their character and release them too soon, so that they further destroy the lives of our children, our brothers and sisters, our spouses and our parents, creating additional economic, physical, emotional and spiritual loss. For far too long, the U.S. has chosen to err on the side of those who have violated our human rights and has, thereby, expanded the river of blood and tears for victims and their survivors (See B.3). No more. Not in our name. We demand that the memories and suffering of crime victims be honored by justice - that is by a just punishment which reflects the severity of the crime. And, we must always err on the side of caution and compassion for those not yet harmed.
- 12) Opponents proclaim that the death penalty is a cruel and medieval policy, reflecting horrors that conflict with human dignity - a barbaric act so dreadful in its implications that we can hardly bear to contemplate its terrible character. On the other hand, they also assert that potential murderers, when confronted with the horrors of execution, will not be deterred by its infliction upon them. That proposition is, of course, absurd on the face of it. Revised from M. Stanton Evans, *Clear and Present Danger*. Indeed, prisoners rate the death penalty as the most feared punishment, much more so than life without parole. Sehba, L. & Nathan, G., "Further Explorations in the Scale of Penalties", *British Journal of Criminology*, 24:221-249, 1984. See B.15.
- 13) 30 years of studies suggest that the death penalty is a general, or systemic, deterrent. (See works by Profs. D. Cloninger, S. Cameron, I. Ehrlich, W. Bailey, D. Lester, S. Layson, K. I. Wolpin, L. Phillips, S. C. Ray, S. Stack, etc.) Examples: a) A 1967-68 study revealed 27 states showed a deterrent effect (Bailey, W., 1974); b) The 1960's showed a rapid rise in all crimes, including murder, while both prison terms and executions declined (Passell, P. & Taylor, T., 1977; Bowers, W. & Pierce, G., 1975); c) Murder increased 100% during the U.S.'s moratorium on executions (Carrington, F., *Neither Cruel Nor Unusual*); d) 14 nations that abolished the death penalty showed that murder rates increased 7% from the 5 year pre-abolition period to the 5 year post abolition period (Archer, et al, 1977); e) A 37 state study showed that 24 states showed a deterrent effect, 8 states showed a brutalization effect and 5 states showed no effect (Bailey, W., 1979-80); and f) econometric studies indicate that each execution may deter 8 or more murders (Cameron, S., 1994). Although these studies have been produced by respected social scientists, there are also studies which show no general deterrent effect. Indeed, with the complexity of these studies and the number of variables required to accurately measure the absolute general effect of executions on murder rates, it is arguable if there ever will be a consensus on a cause and effect connection. Furthermore, with so few executions and so many murders, the general deterrent effect will likely remain statistically elusive. However, since the

general deterrent effect is inconclusive, we must choose to use executions because they may save innocent life. Whereas, if we choose not to use executions we may be sacrificing innocent lives.

- 14) Regarding the deterrent affect of the death penalty, poet Hyam Barshay made the following observation, "The death penalty is a warning, just like a lighthouse throwing beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down." Prof. Ernest van den Haag, "On Deterrence and The Death Penalty", Journal of Criminal Law, Criminology and Police Science, vol. 60, no.2 (1969).
- 15) The individual deterrent effect is proven by hundreds, if not many thousands, of individual, fully documented cases where criminals have admitted that the death penalty was the specific threat which deterred them and/or others from committing murder. Indeed, one study showed that criminals, by a 5:1 ratio, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims(People vs Love, 56 Cal 2d 720 (1961), McComb, J. dissenting. see also: (A) "Controversy Over Capital Punishment", Congressional Digest, Jan., '73, p. 13; (B) L.A.P.D. study within Aikens vs Ca., No. 68-5027, Oct. Term, 1971, U.S. Supreme Court; (C) Carol Vance, "The Death Penalty After Furman", The Prosecutor, vol. 9, no. 4 (1973), p. 703; (D) Carrington, F., Neither Cruel Nor Unusual, Pgs. 92-100(1978); (E) Don Hooloschultz, "Gunman Slain, Hostages O.K.", Washington Star News, 8/23/73, p.A-1; (F) Jim Landers, "4 Guilty in Holdup Sentence", Washington Post, 12/8/73,p.B-1; (G) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", Police Digest, Spring/Summer 1973, p.27, col.2. ; (H) "Langley says Texas death penalty affected his actions during escape", by Stephen Martin, The Daily Democrat (Ft. Madison, Iowa), 1/8/97, pg 1. Indeed, prisoners rate the death penalty as a much more severe penalty than they do life without parole (B.12). While it is difficult to prove a negative, i.e. "How many murders does the death penalty *cause not to occur*?", there is absolute evidence that the individual deterrent effect of executions saves innocent lives. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant systemic deterrence. See B.9
- 16) Opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Delaware, which executes more murderers per capita than any other state in the U.S.A., also has the lowest homicide rates. Furthermore, general or systemic deterrence is not necessarily measured by low or reduced homicide rates, but by rates that are lower than they otherwise would be if the death penalty was not present. Additionally, some countries, such as Saudi Arabia, have swift and sure executions and very low violent crime rates. It is not surprising that the U.S., which executes only 0.06% of its murderers, does not overtly show a general deterrent effect. While most in the U.S. would not advocate criminal justice systems like that of Saudi Arabia, it is also very clear that our criminal justice system fosters the additional slaughter of its own innocent citizens.
- 17) The highest murder rate in Houston (Harris County), Texas occurred in 1981,

with 701 murders. Texas reinstated the death penalty in 1982. Since that time, Houston (Harris County) has executed more murderers than any other city *or* state **AND** has seen the greatest reduction in murder, 701 in 1981 down to 261 in 1996 - a 63% reduction, representing a 270% differential! (FBI, UCR, 1982 & Houston Chronicle, 2/1/97, pg. 31A).

CONCLUSION

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

At worst, **the general deterrent effect** is inconclusive (B. 9, 13 & 16). There are 30 years of respected academic studies which reveal a **general deterrent effect**. However, such general deterrence is inconclusive because there are also studies that find no general deterrent effect. Because this matter is inconclusive, we must choose the option that may save innocent lives. For, if there is a general deterrent effect and we don't execute murderers, we are sacrificing innocent lives. If there is not a general deterrent effect, and we continue to execute, then we are executing our worst human rights violators. If our judgement is in error regarding general deterrence, then such error must be made on the side of saving innocent lives and not on the side of sacrificing innocent lives. This is a moral imperative. Therefore, regarding general deterrence, we must execute.

Additionally, there is no contradicting that **the incapacitation effect** saves lives - that is, that by executing murderers you prevent them from murdering again and, thereby, save innocent life. The evidence of this is conclusive and incontrovertible (B.1-4 & 7).

Additionally, **the individual deterrent effect** absolutely saves innocent life (B. 9, 12 & 15). The individual effect represents those potential murderers, and/or their accomplices in crime, who state that they, and/or others, did not murder under specific circumstances because of their fear of execution. There are hundreds, if not thousands, of such documented cases, representing many innocent lives saved by the fear of execution. Circumstances dictate that the majority of these cases will never be documented and that the number of innocent lives saved by individual deterrence will be, and has been, much greater than we will ever be able to calculate.

C. RACE, SENTENCING AND THE DEATH PENALTY

- 1) One of opponents' most popular false claims is that it is the race of the victim which determines who is on death row. 82% of the murder victims in death penalty cases are white, 13% are black, or a 6:1 ratio (NAACP Legal Defense Fund (LDF), 1996). Opponents, such as Kica Matos, NAACP LDF, Steven Hawkins, Executive Director, National Coalition to Abolish the Death Penalty (NCADP) and Sr. Helen Prejean, longtime Chairperson of the NCADP and author (*Dead Man Walking*), present this fact as evidence that the "system" values white lives more than black lives. If true, then we must wonder why whites represent 56% of those executed, and blacks 38% (NAACP LDF, *Summer 1996*) when blacks have committed 47% of all murders, and whites 38% (Special run of 1980-1984 BJS data, 1/13/97, for non Hispanic whites and non Hispanic blacks. JFA calculations for known race/ethnicity.). From 1991-94, 34% of murderers have been white, 54% black (ibid).

Should we conclude that the "system" focuses its benevolence toward black murderers, but it's racism against black victims? How absurd. Such false conclusions, by opponents, are expected and serve only to further undermine their quickly eroding credibility. Successful capital prosecutions have nothing to do with the race of the victim and everything to do with the nature of the crimes. The most thorough evaluation of this subject was presented in *McClesky vs Georgia* (Zant/Kemp), wherein Federal District Judge Owen Forester accurately found that "the best models which (McClesky expert) Baldus was able to devise...produce no statistically significant evidence that race (of the victim or of the defendant) plays a part in either (the prosecution's or the jury's capital decisions)." (580 Federal Supplement 338, p 368, 2/1/84).

Could it be that whites are, overwhelmingly, the victims in death row cases because whites are, overwhelmingly, the victims in capital crimes? The 8 most common capital crimes, by statute and by occurrence, are (1) murder of a police officer; (2) multiple victim murders; and murder combined with (3) rape; (4) sexual assault; (5) robbery; (6) burglary; (7) auto theft/car jacking; and (8) kidnaping. (BJS, 1996). What is the ratio of white to black victims under the relevant, but non-homicide circumstances, which, when combined with homicide, become capital crimes? (A) The most relevant economic violent crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.4.); (B) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-1984); (C) For all property crimes (theft, burglary, auto theft), there is a 7:1 ratio of white to black victims (*Sourcebook, 1994*, BJS 1995, tables 3.21,3.25); (D) White victims make up 5 times the number of violent crime victims as black victims, or 5:1 (C.2); and, for homicides, which by themselves, qualify for the death penalty: (E) In death penalty states, police victim murders are capital crimes. From 1985-1994, 87% of murdered officers were white, 12% black, or 7:1 (*Law Enforcement Officers Killed and Assaulted*, FBI:UCR, 1994); (F) Whites make up a dominant percentage of multiple/serial murderers, whose victims are overwhelmingly white, thereby disproportionately and correctly raising the number of white victims in execution

cases. In such death row cases, 87% of the victims are white, 13% black, or 7:1 (NAACP LDF data, 1996); (G) Many death row cases involve stranger murders. Whites make up 74% of all strangers, blacks 12%, or 6:1 (US Census); and (H) Research and appellate courts have confirmed that white victim murders are the most aggravated, thus, by statute, enhancing the likelihood of a death sentence in those cases (C.13, 15, & 17). These factors, and those below, within this paragraph 1, appear to be entirely consistent with the 6:1 ratio of white to black victims in capital cases.

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

Should we balance the scales of justice by changing the statutes so that we can execute equally the killers of blacks and whites? Only if you wish to dramatically increase the number of black murderers executed. 93% of all black murder victims are killed by blacks. On a case by case basis, black on black murders show significant enough mitigating factors, that, by current statutes, this *reduces* the numbers of blacks who might otherwise be executed (BJS, 1976-94, McCleskey vs. Georgia (Zant/Kemp), Dr. Joseph Katz (Georgia State U.), etc.).

- 2) A comparison of only black or white perpetrators and victims reveals that whites are 5 times more likely to be the victims of a violent crime than are blacks, or 7.5 million vs 1.5 million ("*Criminal Victimization, 1993*", BJS, 1995.).
- 3) In 1994, death row inmates median level of education was the 12th grade. Of the 87 executed in 1994 and 1995, 50(57%) were white and 33(38%) were black. ("*Cap. Pun. '94 & '95*", BJS. '95-'96).
- 4) From 1976-1995, 5 white murderers have been put to death for the murder of black persons and 101 black murderers have been put to death for the murder of white persons (NAACP LDF, 1996). Of course, opponents contend that this is evidence of racism in the "system". Equally predictable, that contention appears to be entirely false. That 101:5 ratio, or 20:1, is consistent with statistics that show aggravated crimes (those crimes committed prior to a murder which may make a crime eligible for the death penalty) are committed by blacks against whites in far greater numbers than by whites against blacks. For all violent crimes, there are ten times as many black offenders (2,016,939) involved in white victim violent crimes as there are white offenders (210,869) involved in black victim violent crimes, or a 10:1 ratio. (The State of Violent Crime in America, pg. 12, 1/96, data derived from Criminal Victimization in the U.S., 1993, BJS forthcoming, tables 42 and 48. JFA has assumed multiple

offenders to be two offenders for calculation purposes.) In addition, blacks are nearly three times as likely to murder whites (849), as whites are to murder blacks (304), or 3:1 (*Sourcebook 1994*, BJS 1995, table 3.123). *IF* murder rates are statistically consistent within the violent crime category, as McClesky et al indicate, then blacks are, statistically, by a 30:1 (10:1 X 3:1) ratio, more likely to murder whites, than whites are to murder blacks, in those circumstances where an additional aggravating factor is present (see C.1.). These are those crimes most eligible for the death penalty. That statistically projected ratio of 30:1 is hardly inconsistent with the 20:1 ratio for black offender(s)/white victim vs white offender(s)/black victim executions. The most relevant aggravated crime is robbery with injury. Black offenders are 21 times more likely to be involved in such crimes as white offenders. This 21:1 ratio represents 1.4 million black offender(s)/white victim vs. 68,000 white offender(s)/black victim for robbery with injury crimes (JFA, using BJS, 1977-84 data). *IF* overall murder statistics are consistent, within this crime category, as McClesky et al suggests, then there is a 30-60:1 ratio of black on white vs white on black murders within this robbery/murder category. (From 1977-1984). **A thorough evaluation of the data, in death penalty states, from 1973-84, of the 8 most prevalent capital crimes and statutes, the aggravated nature of those murders, and the criminal background of those murderers (as per Katz's evaluation in McClesky vs Georgia and as per C.1.) is needed to present the most relevant and the most accurate analysis. Crimes committed in 1973-1984 are the most relevant to those executed from 1977-1995. Non-Hispanic whites and non-Hispanic blacks are the requested categories of offender/victim. See C.1, 13, 15 and 17.**

- 5) 75% of blacks and 35% of whites believe that blacks are treated more harshly than whites by the criminal justice system. This is a deserved reputation, particularly in the South. Blacks have suffered some 400 years of slavery and blatantly racist criminal justice practices. From the practices of punishing blacks, who rape whites, with death and whites, who rape blacks, with a slap on the wrist, to the three trials needed to convict Byron de la Beckwith for the murder of civil rights leader Medgar Evers, generations of black Americans cannot and must not forget.
- 6) In 1994, in northeastern states, 36% of those on death row were white, 59% black. In southern states, 57% were white, 41% black (*Capital Punishment 1994*, BJS, 1995).
- 7) After examining 42,500 criminal files in the nation's 75 largest counties, Patrick Langan (BJS) concluded that there was no evidence "...that, in the places where blacks in the U. S. have most of their contacts with the judicial system, that (the) system treats them more harshly than whites." (John DiIulio, Jr., "White Lies About Black Crime", *The Public Interest*, 1995. See also "Research on Sentencing", National Research Council, 1983.)
- 8) 93% of blacks are murdered by blacks; 83% of whites are murdered by whites "Sbk. '94", BJS, 1995.
- 9) No evidence of *system wide* discrimination in the imposition of the death penalty exists beyond the 1950's. From 1929-66, white murderers were more likely to be executed than black murderers (10.4 vs 9.7/1000). This trend continues today.(C.1.) (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of

the Evidence with Additional Evidence on the Death Penalty", American Sociological Review, 12/81.)

- 10) A study of the death penalty, as imposed by Harris County (Houston, Texas, USA) juries, since 1982, found that the death penalty was imposed on white and black murderers in proportion to the capital offenses committed by those race classifications(*The Houston Post*, 10/16/94).
- 11) Although blacks make up 12% of the US population, they comprise 44% of the prison population. (BJS, *Prisoners in 1994*). Researchers find a close relationship between the racial distribution in arrest and prison statistics and the race of offenders as described by crime victims. In other words, according to the reports from victims, racial groups are represented in prison according to their involvement in criminal activity. Although sentencing studies show that the offenders prior criminal record and the aggravated nature of the crime are the key factors in making imprisonment decisions, the racial aspects of crime and punishment should be continuously scrutinized. For example, Langan finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively. (Patrick Langan, *Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S.* (1985). Also see Texas Crim. Jus. Policy Council, *A Source Book of Arrest and Sentencing By Race*, 1994; Al Blumstein, *On The Racial Disproportionality of U.S. Prison Populations*, (1982); M. Hindelang, *Crime Victimization* (1976) and *Race and Involvement* (1978);); U.S. General Accounting Office, *Racial Differences in Arrests*, 1/20/94.)
- 12) Whites are executed 15 months quicker than blacks. ("*Capital Punishment, 1995*", BJS, 1996)
- 13) Legal variables, such as prior criminal history and the aggravated nature of the murder, are the proven basis for imposition of the death penalty. The black/white variation in sentencing has generally been reduced to zero when such legal variables are introduced as controls. ("*Execution by Quota?*", The Public Interest, Sum. 1994; Also see Dr. Katz, "Statement to the Senate Subcommittee on the *Judiciary Concerning the Relationship Between Race and the Death Penalty*" 10/2/89).
- 14) In *McCleskey vs Georgia*, McCleskey's attorneys argued that the death penalty was racist in its application. The basis for that view was a study conducted by Profs. Baldus, Woodward and Pulaski. In August, 1983 Fed. District Court Judge J. Owen Forester found that the study's conclusions of racial bias were without merit. In 1985, the 11th Circuit Court of Appeals, by a 9-3 vote, stated "Viewed broadly, it would seem that the statistical evidence presented here, assuming its validity, confirms rather than condemns the (death penalty) system." In April 1987, the U.S. Supreme Court upheld that decision in a 5-4 vote, stating that the referenced study did not establish that capital punishment discriminates against black defendants or killers of white victims. The courts concluded that statistical evidence could not be used to determine prejudice. Each individual case must be judged on its own case facts. A thorough critique of the Baldus study was conclusive--the death penalty was not racist in application and that, for whatever reasons, white victim cases presented the most

- aggravating murders thus, by statute, increasing the likelihood of a death sentence(McCleskey vs Georgia (Zant/Kemp) & Dr. Joseph Katz, Georgia State U.).
- 15) The single, most vile strategy of death penalty opponents is their use of propaganda to nurture hatreds and mistrust between race and class. Bryan Stevenson, a well known opposition attorney with Equal Justice Initiative(Montgomery, Alabama) gives us an example of that strategy. He finds that the death penalty reflects the middle class' desire to strike out at the poor and racial minorities ("*A Matter of Life and Death*", *Christianity Today*, 8/14/95). Sister Helen Prejean joins this hideous chorus, proclaiming that "(m)iddle-class and upper middle-class white people...are so much for the death penalty (to) 'Keep those dangerous people (the poor and minorities) in their place.' " ("Opposing the Death Penalty", *AMERICA*, 11/9/96. pg.12.) Clearly, these vile statements reveal only their prejudice. Prejean continues "It didn't take long to see that for poor people, especially poor black people, there was a greased track to prison and death row." (*The Progressive*, 1/96, p. 32(4) vol. 60, no. 1). These statements are grossly insulting to both the poor and to minorities. They are also completely false. Indeed, Sister Prejean is really saying that the poor, especially poor black people, can't help themselves from committing capital murder! What a grotesque conclusion. Based on their active involvement in the death penalty debate, both Stevenson and Prejean should (must?) be aware that (1) the majority of those executed are white (C.1.); (2) Whites are executed in a disproportionately high number and blacks in a disproportionately low number, in relation to their perpetrating murder (C.1.); (3) since 1929, white murderers have been more likely to have been executed than black murderers(C.9.); (4) the majority of those on death row are white (NAACP LDF, 1996); (5) A study of the economic status of death row inmates showed that only 38% of those on Georgia's death row were poor (C.17).; (6) there is no evidence that capital murderers of different economic classes are over or under represented on death row (C.17); (7) whites are executed 15 months quicker than blacks. (C.12.); and (8) There appears to be no "race of the victim" effect. Capital murderers are executed primarily because of the aggravated nature of the crime(s). Period. (C.1. & C.4.) Both Stevenson and Prejean do hereby reflect either their unbelievable ignorance or their willful and foul deception. The reality is that over 99% of all persons, including poor minorities, do not commit capital crimes. And, there is, of course, no excuse for anyone that does.
- 16) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon the death penalty statutes, the aggravated nature of the crime, the criminal background of the murderer and the other specific factors mandated by the Furman and Gregg vs. Georgia cases, and by subsequent Supreme Court decisions. Since 1973, there is absolutely no credible evidence to support any other conclusion.
- 17) **THE WEALTHY AND DEATH ROW** - Contrary to opponents claims, there is no systemic evidence that wealthy capital murderers are less likely that their poorer ilk to receive the death penalty. Drawing only on personal knowledge, we found that since 1973, in Texas, alone, at least seven middle class to wealthy

murderers have been put on death row. Four, Markum Duff Smith, George Lott, Robert Black, Jr., and Ronald O'Bryan have been executed. Three additional await execution. Don't forget John Wayne Gacy and Ted Bundy. Extensive, objective research would, undoubtedly, reveal many more. Furthermore, Dr. Joseph Katz found that, while 74% of all Georgia murder defendants were poor, only 38% of those on death row were poor (McCleskey vs. Georgia). **Speculation:** 10% of the U.S. population (23 million) can afford to pay the \$400,000* cost for their capital trial and appeals. Because financial need can be excluded, the category of wealthy capital murderer can be assumed to murder at a rate 10 times less than their poorer ilk. **Fact:** 0.20% of the U.S. population commits murder. 1.3% of those are sentenced to death. Only 5.9% of those have been executed. Therefore, the projected number of wealthy executed from 1976-1996 is 4, or 23 million x .1 x .0020 x .013 x .059. Using 1973-1996 data. Must see C. 1, 4, 13, 14 and 16.

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

- 18) **SEXISM AND THE DEATH PENALTY** - Some claim that the death penalty is sexist. The ratio of men to women on death row (and executed) is 68:1, or 3400:50 (NAACP LDF, Spring 1996). Men committed 476,937 rapes, robberies and burglaries, women 47,357 or a 10:1 ratio. From 1976-94, men committed 7 times as many murders as women, or 7:1. (*Sourcebook '94*, BJS '95, tb.4.9 and 3.22). Therefore, it may be statistically predictable that men are, by a 70:1 ratio (10:1 X 7:1), more likely to be on death row than are women. Women appear to be on death row in numbers that would be expected. However, one would expect that 5 women would have been executed since 1976, when only 1 has been executed. Must see C. 1, 4, 13, 14 and 16.

D. **CHRISTIANITY AND THE DEATH PENALTY**

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

- 1) Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder. (Dr. Charles Ryrie, *Biblical Answers to Contemporary Issues & The Ryrie Study Bible*, Exodus 20:13).
- 2) As the Hebrew Bible was consistent in prescribing death as a proper punishment for certain crimes, so too is the New Testament consistent with these earlier

pronouncements. As Jesus described in the Sermon on the Mount, obedience to the law *will* be rewarded with life, disobedience with destruction. A God who rewards with life and punishes with death is One whose laws provide for death as a judicial punishment. Prof. Baruch Levine, "*Capital Punishment*", p31, What the Bible Really Says, ed. Smith & Hoffman, 1993.

- 3) "If no crime deserves the death penalty, then it is hard to see why it was fitting that Christ be put to death for our sins and crucified among thieves. St. Thomas Aquinas quotes a gloss of St. Jerome on Matthew 27: 'As Christ became accursed of the cross for us, for our salvation He was crucified as a guilty one among the guilty.' That Christ be put to death as a guilty person, presupposes that death is a fitting punishment for those who are guilty." Prof. Michael Pakaluk, The Death Penalty: An Opposing Viewpoints Series Book, 1991.
- 4) "The same divine law which forbids the killing of a human being allows certain exceptions. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment "Thou shalt not kill," for the representative of the State's authority to put criminals to death, according to the Law or the rule of rational justice." St. Augustine, *The City of God*, Book 1, Chapter 21.
- 5) "Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative." Prof. Carl F. H. Henry, *Twilight Of A Great Civilization*, 1988.
- 6) "It is because humans are created in the image of God that capital punishment for premeditated murder was a *perpetual* obligation. The full range of biblical data weighs in its favor. This is the *one* crime in the Bible for which no restitution was possible (Numbers 35:31,33). The Noachic covenant recorded in Genesis 9 antedates Israel and the Mosaic code; it transcends Old Testament Law, per se, and mirrors ethical legislation that is binding for *all cultures and eras*. The sanctity of human life is rooted in the universal creation ethic and thus retains its force in society. The Christian community is called upon to articulate standards of biblical justice, even when this may be unpopular. Capital justice is part of that non-negotiable standard. Society should execute capital offenders to balance the scales of moral judgement." From "Capital Punishment: A Personal Statement", by Charles W. Colson., a former opponent, who is the Founder of Prison Fellowship, the largest Christian ministry serving incarcerated prisoners. Ph. 703-478-0100.
- 7) St. Thomas Aquinas finds all biblical interpretations against executions "frivolous", citing Exodus 22:18, "wrongdoers thou *shalt* not suffer to live". Unequivocally, he states, "The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the peace of the state." (Summa Contra Gentiles, III, 146.)
- 8) "God, Himself, instituted the death penalty(Genesis 9:6) and Christ regarded capital punishment as a just penalty for murder(Matthew 26:52). God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law

which recognizes the dignity of human life as a product of God's creation. Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live." Protestant scholar Rev. Reuben Hahn (Mt. Prospect, Ill.), *Human Events*, 3/2/85.

- 9) "The fact that the evil, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement. They also have at that critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgement that they would never come away from evil to the right use of their powers." St. Thomas Aquinas, *Summa Contra Gentiles*, Book III, 146.
- 10) The movie *Dead Man Walking* reveals a perfect example of how just punishment and redemption can work together. Had rapist/murderer Matthew Poncelet not been properly sentenced to death by the civil authority, he would not have met Sister Prejean, he would not have received spiritual instruction, he would not have taken responsibility for his crimes and he would not have reconciled with God. Had Poncelet never been caught or had he only been given a prison sentence, his character makes it *VERY* clear that those elements would not have come together. Indeed, for the entire film and up until those last moments, prior to his execution, Poncelet was not fully truthful with Sister Prejean. His lying and manipulative nature was fully exposed at that crucial time. It was not at all surprising, then, that it was just prior to his execution that all of the spiritual elements may have come together for his salvation. It was now, or never. Truly, just as St. Aquinas predicted (D.9.), it was his pending execution which finally led to his repentance. For Christians, the most crucial concerns of *Dead Man Walking* must be and are redemption and eternal salvation. And, for that reason, it may well be, for Christians, the most important pro-death penalty movie ever made.

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

- 11) In his 1995 encyclical, *The Gospel of Life (Evangelium Vitae)*, Pope John Paul II finds that the only time executions can be justified is when it is required "to defend society" and that such instances are "very rare, if not practically nonexistent". The Pope is in error. Such instances are neither non-existent nor rare. In this context, "to defend society" means that the execution of the murderer must save future lives. In other words, both the incapacitation (execution) of that specific murderer and the deterrent effect on potential future murderers must be shown "to defend society". It is already well known that murderers murder again, often time and time again - in prison, after escape, after release and, of course, after being caught, but not

incarcerated. Unequivocally, incapacitation saves lives (see B. 1-4, 7, & 11). Individual deterrence (as opposed to general, or systemic, deterrence) is confirmed and cannot be contradicted (see B. 8-10 & 12-17). Therefore, executing murderers does "defend society". Furthermore, although the general, or systemic, deterrent effect is challenged, we must choose to execute because of the requirement to save innocent life. (B. 10). This encyclical is curious in additional areas, as well. Overwhelmingly, God mandates capital punishment for premeditated murder, not as a deterrent, but as the required expiation for the sin of murder. Two thousand years of tradition and instruction by the Catholic Church supports that interpretation. Additionally, Catholic biblical interpretation, tradition and natural law all seem to concur on this point, generally, and specifically through the writings of Saint Thomas Aquinas. Although Romans 13:4 and some respected Catholic writings reveal the deterrence consideration, such references pale in comparison to the mandate that execution is the required punishment for murder, regardless of any consideration "to defend society".

- 12) Christians who speak out against capital punishment in deserving cases "tend to subordinate the justice of God to the love of God." It is established that Peter, by cutting off Malchu's ear, was most likely trying to kill the soldier (John 18:10), prompting Christ's statement that those who kill by the sword *shall* die by the sword (Matthew 26:51-52). This implicitly recognizes the government's right to exercise the death penalty. Dr. Carl Henry, *Christianity Today*, 8/4/95. See Rev. 13:10 (ANS).
- 13) "When it is a question of the execution of a man condemned to death it is then reserved to the public power to deprive the condemned of the benefit of life, in expiation of his fault, when already, by his fault, he has dispossessed himself of the right to live." Pope Pius XII.
- 14) Some speculate that God's mandate for capital punishment is weak, because the requirement for two witnesses in such cases (Numbers 35:30; Deuteronomy 17:6) drastically reduces the application of that sanction. Such speculation is unwarranted. By wrongly isolating the Hebrew 'ed, "witness", from its broad biblical context, some interpreters have falsely concluded that two or more "eye" witnesses are required in capital cases and in all criminal cases subject to court judgement (Deuteronomy 19:5). Did God want nearly all criminals, including murderers, to get off, scot-free, if "... (they) had not taken the prudent measure of committing (their) crime where two people did not happen to be watching him."? The biblical record rejects any such absurd conclusion.

The word "witness", 'ed, has broad meaning, including, anyone with (1) "...pertinent knowledge concerning the crime, even though he had not actually seen it." (Leviticus 5:1), such as character witnesses, witnesses who had overheard confessions, etc.; (2) physical evidence can also bear witness, also 'ed (Exodus 22:13), such as bloody clothing, murder weapon, etc.; (3) written documents may serve as evidence and witness ('ed or 'edah, Joshua 25:25-27), such as a confession, documents showing motive or implication, etc.; (4) monuments and memorial stones, such as *gal-*'ed in Genesis 31:46-49, can also bear witness. Indeed, "there is no contravention of biblical principles in allowing such testimony, even though only one

actual witness may be found, or none at all." There is no biblical requirement for two, or any, "eye" witnesses in criminal cases. (Prof. Gleason L. Archer, Encyclopedia of Biblical Difficulties, Zondervan Publishing, 143-145, 1982, also see the exceptional writings on John 8:11, 371-373, therein.) Indeed, according to actual biblical usage, the witness and evidence requirements in capital cases in the U.S. meet or exceed all biblical standards.

- 15) Paul, in his hearing before Festus, states that "if then I am a wrongdoer, and have committed anything worthy of death, I do not refuse to die." Acts 25:11. "Very clearly this constitutes an acknowledgment on the part of the inspired apostle that the state continued to have the power of life and death in the administration of justice, just as it did from the days of Noah (Genesis 9:6)". *ibid*, D.14., p. 342.
- 16) "If you do what is evil, be afraid; for [the civil government] does not bear the sword for nothing; for it is the minister of God, an avenger who brings wrath upon those who practice evil." Romans 13:4. " God has given the state the power of life and death over its subjects in order to maintain order." Dr. Charles Ryrie, *The Ryrie Study Bible* (NAS), 1978. "Since the word sword (*machaira*) has occurred earlier in the letter to indicate death (Romans 8:35) and since it was used of execution (Acts 12:2; Revelation 13:10), it seems clear that Paul means it here as a symbol of capital punishment." Stott, John, ROMANS, InterVarsity Press, 342, 1994.
- 17) It is not uncommon for persons of faith to create a god in their own image, to give to that god their values, instead of accepting those values which are inherent to the deity. For example, celebrated opponent Sister Helen Prejean (*Dead Man Walking*) states, in reference to the death penalty, that "*I* couldn't worship a god who is less compassionate than *I* am." (*Progressive*, 1/96; bold "*I*", JFA). She has, thereby, established *her* standard of compassion as the basis for God's being deserving of *her* devotion. If God's level of compassion does not rise to the level of *her* own, God couldn't receive *her* worship. Director Tim Robbins (*Death Man Walking*) follows that same path: "(I) don't believe in that kind of (g)od (that would support capital punishment and, therefore, would be the kind of god who tortures people into their redemption)." ("*Opposing The Death Penalty*", AMERICA, 11/9/96, p 12). Robbins, hereby, establishes *his* standard for *his* god's deserving of *his* belief. God's standards do not seem to be relevant. His sophomoric comparison of capital punishment and torture is typical of the ignorance (dishonesty?) in this debate and such comments reflect no biblical relevancy. Perhaps they should review Matthew 5:17-22 and 15:1-9. Be cautious, for as the ancient rabbis warned, "Do not seek to be more righteous than your creator." (Ecclesiastes Rabbah 7.33)
- 18) "The just use of (executions), far from involving the crime of murder, is an act of paramount obedience to this (Fifth/Sixth) Commandment which prohibits murder." Pope (and Saint) Pius V, "The Roman Catechism of the Council of Trent" (1566).
- 19) "You have heard the ancients were told, 'YOU SHALL NOT COMMIT MURDER' and 'Whoever commits murder shall be liable to the court'. But I say to you that everyone who is angry with his brother *shall* be guilty before the court; and whoever shall say to his brother, 'Raca', *shall* be guilty before the supreme court and whoever *shall* say, 'You fool', *shall* be guilty enough to go into fiery hell." Jesus,

Matthew 5:17-22. Should any explanation be necessary, Jesus is saying that even as execution is the required punishment for murderers, as per the Old Testament, He tells us that those who speak ill of others and have hatred in their heart shall suffer in hell. Not only does Jesus never speak out against the civil authorities just use of execution for murder, He prescribes a much more serious, eternal punishment for those who hate and speak ill of others. And what price does God exact for any and all sin? Death. (Romans 5:12-14)

- 20) "It is abundantly clear that the Bible depicts murder as a capital crime for which death is considered the appropriate punishment, and one is hard pressed to find a biblical 'proof text' in either the Hebrew Testament or the New Testament which unequivocally refutes this. Even Jesus' admonition 'Let him without sin cast the first stone,' when He was asked the appropriate punishment for an adulteress (John 8:7) - the Mosaic Law prescribed death - should be read in its proper context. This passage is an 'entrapment' story, which sought to show Jesus' wisdom in besting His adversaries. It is not an ethical pronouncement about capital punishment." Sister Helen Prejean, *Dead Man Walking*. From here, the sister states that "... more and more I find myself steering away from such futile discussions (of Biblical text). Instead, I try to articulate what I personally believe..." As the long term Chairperson of the National Coalition to Abolish the Death Penalty, the sister has never shied away from any argument, futile or otherwise, which opposed the death penalty. She has abandoned Biblical text for only one reason: the text conflicts with her personal beliefs. It is common for persons to take biblical text out of context and to, thereby, pervert its meaning. Indeed, Sister Prejean rightly cautions: "Many people sift through the Scriptures and select truth according to their own templates." (Progressive, 1/96). Sadly, Sister Prejean does even worse. The sister now uses that very same biblical text "Let the one who is without sin cast the first stone" as proof of Jesus' "unequivocal" rejection of capital punishment as "revenge and unholy retribution"! How easily she changes her interpretation of biblical text! (see Sister Prejean's 12/12/96 fundraising letter on behalf of the *Saga Of Shame* book project for Quixote Center/Equal Justice USA).
- 21) Pontius Pilate said to Jesus, "You do not speak to me? Do You not know that I have authority to release You, and I have authority to crucify You?" Jesus answered, "You would have no authority over Me, unless it had been given you from above." (John 19:10-11). "Jesus reminds Pilate that the implementation of the death penalty is a divinely entrusted responsibility that is to be justly implemented." Prof. Carl F.H. Henry, 45th Annual N.A.E. Convention, "Capital Punishment and The Bible". Jesus confirms that the civil authority has the lawful right to execute Jesus, and others, and that this right has been given to that authority by God.
- 22) Some churches are now espousing a pro-life continuum, a philosophy whereby the taking of any life, under any circumstances, must be condemned. This belief equates the taking of lives through war, self defense, suicide, abortion and the death penalty. This is an interesting social philosophy which directly conflicts with the Word of the God. Catholic biblical scholar Father James Reilly, S.J. of Marquette University argues that it is *not* a contradiction for religious people to oppose abortion

and...to support capital punishment. "Abortion is absolutely prohibited. It is always evil. No one can ever abort a "guilty" baby, so the act can never be right. This is not the case, however, with either capital punishment or a just and defensive war. It is only murder, along with its subdivisions suicide and abortion, which God's law absolutely prohibits. The upshot of all this is that trying to put abortion, capital punishment and war in one package makes chaos of Catholic morals and can lead one to misinterpret God's Law...." (Haven Bradford Gow, "Religious Views Support The Death Penalty", The Death Penalty: Opposing Viewpoints, Greenhaven Press, 1986).

- 23) "If a man is a danger to the community, threatening it with disintegration by some wrongdoing of his, then his execution for the healing and preservation of the common good is to be commended. Only the public authority, not private persons, may licitly execute malefactors by public judgement. Men *shall* be sentenced to death for crimes of irreparable harm or which are particularly perverted." St. Thomas Aquinas, *Summa Theologica*, 11; 65-2; 66-6.
- 24) "If by arming the magistrate, the Lord has also committed him the use of the sword, then, whenever he punishes the guilty by death, he is obeying God's commands by exercising His vengeance. Those, therefore, who consider it is wrong to shed the blood of the guilty are contending against God." John Calvin, "*The Epistle of Paul the Apostle to the Romans and to the Thessalonians*", in Calvin's commentaries, trans. Ross McKenzie (Grand Rapids: Eerdmans, 1960) p. 283.
- 25) The leadership councils of some Christian denominations in the U.S. have released statements in opposition to the death penalty. These statements reflect social positions that have questionable biblical foundation and, often, they reflect positions which selectively only discuss the mercy of God and improperly avoid the justice of God. For example, some believe that it would be hypocritical for Christians to support capital punishment, because that would suggest that some peoples' sins are not forgivable. They argue that capital punishment conflicts with Jesus' teachings - that, if we are not willing to forgive, then we place ourselves outside of God's forgiveness. Such pronouncements are hardly convincing and are biblically inaccurate. All death row inmates, no matter how vile and numerous their misdeeds, are subject to the forgiveness of men and of God and, more importantly, they are subject to redemption and eternal salvation. Indeed, God compels us, individually, to forgive those who have harmed us. This, in no way, conflicts with the civil government's imposition of the death penalty in deserving cases. Social positions cannot and do not replace biblical instruction.
- 26) "While the thief on the cross found pardon in the sight of God - 'Today you will be with Me in Paradise' - that pardon did not extend to eliminating the consequences of his crime - 'We are being justly punished, for we are receiving what we deserve for our deeds.' (Luke 23:39-43)". Neither God nor Jesus nor the Prophets nor the Apostles ever spoke out against the civil authorities use of executions in deserving cases - not even at the very time of Jesus' own execution when He pardoned the sins of the thief, who was being crucified along side Him. Indeed, quite the opposite. Their biblical support for capital punishment is consistent and overwhelming. Furthermore, Jesus never confuses the requirements of civil justice with those of either eternal

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

- 27) God, through the power and justice of the Holy Spirit, executed both Ananias and his wife, Saphira. Their crime? Lying to the Holy Spirit - to God - through Peter. Acts 5:1-11. By executing two such devoted Christians for lying to Him, does the Holy Spirit show confirmation of His support for His divinely instituted civil punishment of execution for premeditated murder or does it show His rejection of capital punishment?
- 28) There are two passages in Luke which speak directly to Jesus' position on capital punishment. In 20:14-16, Jesus states: "He will come and kill those tenants and give the vineyard to others". Jesus was speaking to the proper punishment for murder. In 19:27, "Christ pronounced this judgement on those who rebelled against their king: 'But these enemies of mine, who did not want me to reign over them, bring them here, and slay them in my presence' (NASB). Thus, it is very clear that neither Christ nor His apostles intended to abrogate the God-given responsibility of the government (under Old Testament law) to protect its citizens and enforce justice by capital punishment." *ibid*, D.14., pg. 342. In the 19:27 parable "their king" is Jesus.
- 29) The Bible clearly asserts, from beginning to end, without any reservation, that righteous judgement includes the execution of a murderer. In the case of murder, the biblical materials offer the clearest and most sustained justification for the death penalty. The purpose of capital punishment is justice - deterrence is irrelevant. A person who takes a human life, without proper sanction, forfeits any right to life - no alternative is allowed and the community must not be swayed by values to the contrary.

Listen carefully to the Bible as the Word of God rather than seek to improve upon it by means of human values. However meritorious mercy may be, however abundantly evident it may be in God's own dealings, murder was an offense for which mercy and pity were not allowed and for which monetary compensation was strictly

forbidden. The sentence is set by God's torah and a judge cannot have discretion in this matter. Murder is something utterly on its own, nothing can be compared to it.

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

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

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

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

**Cost of Life Without Parole: Cases
Equivalent to Death Penalty Cases**

Cost of the Death Penalty

- | | | | | |
|-----|---|------------------|---|--------------------------------------|
| (1) | \$34,200/year(1) for 50 years(2), at
a 2%(3) annual cost increase, plus
\$75,000(4) for trial & appeals | = \$3.01 million | \$60,000/yr(1)
for 6 years(5), at a
2%(3) annual cost
increase, plus
\$1.88 million = | \$1.5 mil.(4) for
trial & appeals |
| (2) | Same, except 3%(3) | = \$4.04 million | \$1.89 million = | Same,
except 3% |
| (3) | Same, except 4%(3) | = \$5.53 million | \$1.91 million = | Same, |

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

- (1) We believe this number to be conservative, if TIME Magazine's (2/7/94) research is accurate. TIME found that, nationwide, the average cell cost is \$24,000/yr. and the cost for maximum security cells is \$75,000/yr. (as of 12/95). Opponents claim that LWOP should replace the DP. Therefore, any cost calculations should be based specifically on cell costs for criminals who have committed the exact same category of offense - in other words, cost comparisons are valid only if you compare the costs of DP equivalent LWOP cases to the cost of DP cases. The \$34,200/yr. cell cost assumes that *only* 20% of DP equivalent LWOP cases would be in maximum security cost cells and that 80% of DP equivalent LWOP cases would be in average cost cells. A very conservative estimate. The \$60,000/yr. for those on death row, assumes that such cells will average a cost equal to 80% of the \$75,000/yr. for the most expensive maximum security cells. Quite possibly a very high estimate. For equivalent crimes we are calculating a 75% greater cell cost for the DP than for LWOP. Even so, equivalent LWOP cases appear to be significantly more expensive than their DP counterparts. For years, opponents have improperly compared the cost of all LWOP cases to DP cases, when only equivalent cases are relevant.
- (2) Justice Department research and the U.S. Vital Statistics Abstract, 1994.
- (3) Annual cost increases are based upon: 1) historical increases in prison costs, including judicial decisions regarding prison conditions, and the national inflation rate; 2) medical costs, including the immense cost of geriatric care, associated with real LWOP sentences; 3) injury or death to the inmate by violence; 4) injury or death to others caused by the inmate (3 and 4 anticipate no DP and that prisoners, not fearing additional punishment, other than loss of privileges, may increase the likelihood of violence. One could make the same assumptions regarding those on death row. The difference is that death row inmates will average 6 years incarceration vs. 50 years projected for LWOP); 5) the risk and the perceived risk of escape; and 6) the justifiable lack of confidence by the populace in our legislators, governors, parole boards and judges, i.e. a violent inmate will be released upon society.
- (4) \$75,000 for trial and appeals cost, for DP equivalent LWOP cases, assumes that the DP is not an option. We have anticipated that DP cases will cost twenty times more, on average, or \$1.5 million. Possibly a high estimate. Meaning, the DP will have twenty times the investigation cost, the defense and prosecution cost, including voir dire and court time and guilt/innocence stage and sentencing stage and appellate review time and cost than DP equivalent LWOP cases.
- (5) 6 years on death row, prior to execution, reflects the new habeas corpus reform laws, at both the state and federal levels. Some anti-death penalty groups believe that 6 years may be generous, speculating that the time may be shortened to an average of 4 years, or even less. If so, then DP cases would cost even that much less than DP equivalent LWOP cases. However, the average time on death row, for

those executed from 1973-1994, was 8 years (*Capital Punishment 1994*, BJS, 1995). Therefore, 6 years seems more likely. Even using the 8 year average, DP *equivalent* LWOP cases are still \$1 million more expensive than their DP counterparts (\$2 million @ 2% annual increase).

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

F. DEATH PENALTY PROCEDURES

There are at least 24 procedures necessary in reaching a death sentence. They are: (1) The crime must be one listed as a capital crime in the penal code; (2) a suspect must be identified and arrested; (3) Beginning with the Bill of Rights, the Miranda warnings and the exclusionary rules, U.S. criminal defendants and those convicted have, by far, the most extensive protections ever devised and implemented; (4) in Harris County (Houston), Texas a panel of district attorneys determines if the case merits the death penalty as prescribed by the Penal Code (See 12-19); (5) a grand jury must indict the suspect for capital murder; (6) the suspect is presumed innocent; (7) the prosecution must prove to the judge that the evidence, upon which the prosecution will rely, is admissible; (8) the defendant is assigned two attorneys. County funds are provided to defense counsel for investigation and trial; (9) it takes 3-12 weeks to select a jury; (10) trial is conducted; (11) burden of proof is on the state; (12) all 12 jury members must find for guilt, beyond a reasonable doubt. In most cases, the jury knows nothing of the defendant's past, at this stage. Then, the punishment phase begins; (13) the prosecution presents additional damning evidence against the murderer, i.e., other crimes, victims, victims testimony, police reports, etc; (14) In order to find for death, the issues to be resolved by the jury are {a}(14) did the defendant not only act willfully in causing the death, but act deliberately, as well, {b}(15) does the evidence show, beyond a reasonable doubt, that there is a likelihood that the defendant will be dangerous in the future, {c}(16) if there was provocation on the part of the victim, were the defendant's actions unreasonable in response to the provocations and {d}(17) is there something about the defendant that diminishes moral responsibility or in some way mitigates against the imposition of death for the defendant in this case, whereby, (18) the defense presents all mitigating circumstances for the murderers actions, i.e., family problems, substance abuse, age, mental disability, parental abuse, poverty, etc. Witnesses are presented to speak on behalf of the defendant; (19) the jury must take into consideration those mitigating circumstances (Penry decision) and, if only 1 juror believes that the perpetrator deserves leniency because of any mitigating circumstances, then the jury cannot impose the death penalty; and (20) when the death sentence is imposed, the perpetrator receives an automatic appeal. (21) the death row inmate is provided an attorney, or attorneys, to handle the direct appeal, at county expense; (22) the state pays attorneys for the inmate's habeas corpus appeals; (23) death row inmates may be granted a hearing, in both state and federal court, to present post conviction claims of innocence. The burden of proof

for these claims of innocence mirrors that used by the Federal courts; and (24) Convictions and sentences are subject to pardon or sentence reduction through the executive branch of government, at both the state level(Governor) and federal level(President).

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

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

Many seem to be unaware of the true meaning of the habeas corpus process. They may not know that the intent of the "Great Writ", established in pre-Magna Carta England, is to *quickly* facilitate the release of the innocent or those otherwise wrongfully held or convicted - a process that will finally be honored with these reforms. This is a very positive development, except for the guilty and for those who wish to abuse the habeas corpus process by delaying justice with frivolous, repetitive and prolonged appeals. It is a bitter irony that it was just such intentional delays of justice that the "Great Writ" was created to abolish. It was just such abuses that caused many of the states and the federal government to enact new habeas corpus reforms. Indeed, it was opponents of the death penalty who finally guaranteed passage of these long delayed reforms. Opponents had begun to challenge the long stays on death row as unconstitutional,

claiming that such delays were, by themselves, "cruel and unusual punishment", a violation of the eighth amendment. Although all such claims were rejected by U.S. courts - there was no evidence that death row inmates had made efforts to hasten their executions - such claims did provide the final push necessary to finally pass these reforms through the U.S. Congress, thus respecting the claims of opponents and inmates through legislation.

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

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

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

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INFORMATION RELATED TO: SB 60

Distributed by Senate Judiciary

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 19, 1997

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
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P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
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OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
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The Honorable Robin Taylor
Alaska State Senator
Capitol Building, Rm. 30
Juneau, Alaska 99801-1182

Re: Senate Bill 60 -- Advisory Vote on Capital Punishment

Dear Senator Taylor:

This is in response to questions you posed during my testimony in the Senate Judiciary Committee on Senate Bill 60, providing for an advisory vote to return capital punishment to Alaska after an absence of some 40 years. In particular, you questioned my statement that the death penalty has a disproportionate impact on minorities, and you referred me to an article that you had just received, published in *Texas Lawyer* magazine. The article was dated March 10, 1997, the date of my testimony.

The article in *Texas Lawyer* pointed out that blacks have constituted 38% of those executed in the last 20 years, or more than three times their percentage in the United States population. This is an obvious over-representation of minorities on death row, although you pointed out during the hearing that you believed this disproportionate impact may be explainable by other statistics.

You asked whether I had any data showing what percentage of murders are committed by blacks, because by knowing that percentage one might better attempt to understand why so many blacks are on death row. You again cited the article in *Texas Lawyer*, indicating that blacks commit a disproportionately high percentage of murders.

I have seen other research indicating that blacks do indeed commit a much higher percentage of murders than the percentage they represent in the general population. Assuming these figures are accurate, it suggests that a black who commits murder is no more likely to receive a death sentence than a white who commits murder. But that, in my opinion, is not the end of the analysis and does not permit us to say there is not a disproportionate impact on minorities.

I do not believe that any of us understand precisely *why* blacks commit such a high percentage of murders. But perhaps we can narrow it down to two primary choices. Either:

(1) blacks are racially, genetically or somehow inherently prone to commit murder – a proposition so preposterous that it is painful to even articulate; or

(2) murders often result from a complex interaction of factors affecting many minority populations in the United States, such as poverty, lack of education, lack of employment opportunities, ease of access to drugs, breakdown of family and community structures, lack of self-esteem and hopelessness.

I believe the same social factors affecting blacks in the rest of the United States also contribute to the over-representation of Native Alaskans in the Alaska prison system and could easily lead to their over-representation on death row in our state.

I do not mean to suggest that persons who commit crimes should not be punished. I believe they should be punished, regardless of social factors that may have disposed a particular individual to commit his or her crime, and I support the tough sentencing structure in Alaska. I am suggesting, however, that no matter what statistics are analyzed, certain minorities are condemned to death at a far greater rate than their percentage in the population. Because I believe that factors within our society contribute to that disparity, until that disparity disappears we cannot claim the moral right to inflict the ultimate punishment that society can impose.

A second, more subtle, form of discrimination is the difference in the way death penalty defendants are treated depending on the race of the *victim*. The

Texas Lawyer article acknowledged that, although whites and blacks comprise an equal percentage of all murder victims, in cases in which the death penalty is imposed the victim is almost always white.

The author of the article explained this significant racial disparity by the rather simplistic argument that "[a] crucial point is that capital murders and non-capital murders are two very distinct categories." The author noted that capital murder cases are more aggravated than other murder cases, and the perpetrator usually has a longer criminal record, and concluded that the race of the victim was therefore irrelevant.

The fact that the victims in death penalty cases are almost always white, however, leads me to one of two possible conclusions. Either:

(1) whites belong to the unluckiest of races to be so often subject to aggravated murders by persons with long criminal records; or

(2) prosecutors, jurors, and judges in other states are more likely to view the murder of a white person as an aggravated offense, compared to the murder of a black person.

If the race of the victim were indeed irrelevant, as the author of the article claims, then whites who murder blacks, and blacks who murder whites, should receive the death penalty at about the same rate. That is not the case, however. A comprehensive study in Georgia in 1991 found that blacks who kill whites are four times more likely to be sentenced to death than whites who kill blacks. This disparity held, even when over 250 other variables were factored in. A study of sentencing patterns in Texas showed that when an African-American or a Mexican-American killed a white, 65% of the defendants faced the death penalty, whereas whites who killed African or Mexican-Americans faced the death penalty only 25% of the time. These data also show that a black who kills a white person is more likely to face the death penalty than a black who kills a black.

As indicated in previous testimony, there is little or no evidence to believe that the threat of the death penalty deters people from committing murders and protects the public. If one believes such a deterrent effect exists, then one could

also reach the conclusion that it only deters those who might murder white victims, and does little to deter those who murder blacks. In other words, assuming the death penalty protects the public, it is not the minority population being protected.

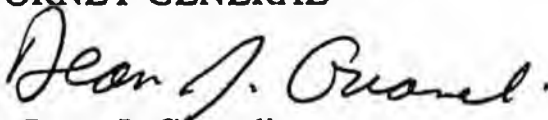
Based on the foregoing, I continue to stand by my testimony that the way in which capital punishment is administered has a disproportionate impact toward minorities -- both defendants and victims. As I indicated during my testimony, however, among the other reasons for opposing capital punishment are that our system is not perfect, thus running the risk of executing innocent people; that capital punishment tends to skew the case law that affects other criminal cases; and that the legal process leading to an execution is a lengthy and expensive one, that does not allow the families of victims to bring the matter to closure for many years. I believe that the present sentencing practices in Alaska, whereby first degree murderers routinely receive lengthy sentences averaging over 70 years, adequately protects the public.

As a final matter, you requested a citation to an article in the Stanford Law Review relating to innocent persons being executed. Charles Campbell tells me that the article is Badeau and Radelet, *Miscarriage of Justice in Potentially Capital Cases*, 40 Stanford Law Review 21 (1987),

Thank you for the opportunity to respond to your questions. As usual, I appreciated your courtesy during the committee hearing.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Dean J. Guaneli
Chief Assistant Attorney General

cc: Members of the Senate Judiciary Committee

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/24/97

FURTHER:

Date of 5-Day Notice: 3/6/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/10/97

Judiciary Committee considered SENATE BILL NO. 60

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

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓	<i>95/10/97</i>		✓	
<i>George</i>	✓				
<i>Sean Parnell</i>	✓				
CHAIR: <i>Chris Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>GOVERNOR/ELECTIONS</i>	<i>3/7/97</i>		✓
<i>CORRECTIONS</i>	<i>3/9/97</i>		✓
<i>LAW/CRIMINAL</i>	<i>3/10/97</i>		✓

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	.	.	.	.	.	.

estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) Should legislation subsequently be enacted, the following fiscal analysis applies. Passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The OPA, as a purely reactive agency, must provide legal representation when appointed by the court. OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

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

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

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Administration

Jason M. Elger
 Date: 3/19/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS: (continued)

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

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

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

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

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

In FY 03, the death penalty defense staff would need to be enlarged by at least one attorney, to complete the formation of two larger teams, together with a paralegal and legal secretary.

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

Finally, even though OPA assumes the addition of only three cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 97 budget of \$7,439.6 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 00

Personal Services - Anchorage

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

Subtotal Personal Services 329.0

Travel

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

Subtotal Travel 178.0

Contractual

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

Subtotal Contractual 844.7

Supplies

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

Subtotal Supplies 20.7

Equipment

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

Subtotal Equipment 32.5

TOTAL FY 00 \$1404.9

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 01

Personal Services - Anchorage

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

Subtotal Personal Services 569.5

Travel

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

Subtotal Travel 187.5

Contractual

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

Subtotal Contractual Services 1038.1

Supplies

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

Subtotal Supplies 31.8

Equipment

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

Subtotal Equipment 26.0

TOTAL FY 01 \$1852.9

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

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

Subtotal Personal Services 654.6

Travel

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

Subtotal Travel 190.0

Contractual

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

Subtotal Contractual Services 1169.6

Supplies

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

Subtotal Supplies 30.3

Equipment

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

Subtotal Equipment 6.5

TOTAL FY 02 \$2051.0

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 03

Personal Services - Anchorage

Salary and Benefits for 10 current positions \$ 654.6

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

Subtotal Personal Services 830.6

Travel

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

Subtotal Travel 201.0

Contractual

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

Subtotal Contractual Services 1333.9

Supplies

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

Subtotal Supplies 40.5

Equipment

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

Subtotal Equipment 19.5

TOTAL FY 03 \$2425.5

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING

CAPITAL EXPENDITURES
----------------------	---	---	---	---	---	---

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	.	.	.	.	.	.
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

See attached.

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

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

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS: (continued)

Introduction

HB 131 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Public Defender Agency.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Legislature.)

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 131. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

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

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

Fiscal Impact

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

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

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the potential for execution.

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

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

(at p. 73; footnotes omitted).

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

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

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

1. Motion to modify the death sentence/reconsider before state trial judge;
2. Mandatory appeal of conviction and sentence to Alaska Supreme Court;
3. Writ of certiorari to the United States Supreme Court;
4. Post-conviction relief proceedings in state court;
5. Appeal of unsuccessful post-conviction relief proceedings to the Court of Appeals;
6. Petition for hearing of post-conviction relief proceeding denial to the Alaska Supreme Court;
7. Petition for writ of habeas corpus in Federal District Court;
8. Appeal to the United States Court of Appeals if writ unsuccessful;
9. Rehearing in the United States Court of Appeals;
10. Writ of certiorari to the United States Supreme Court;
11. Request for clemency/commutation to Executive Branch of government;

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12. Emergency stays to the United States Supreme Court prior to execution.

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

Breakdown of Fiscal Impact

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

Assuming that the Public Defender Agency is appointed to seven capital cases per year, death penalty units will be established in its two largest offices: Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. Even if only 4 cases proceed to trial in that year, preparation must begin immediately. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals). The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

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

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

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

4. Training. Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs which are conducted on a yearly basis related to these kinds of cases on an on-going basis.

Conclusion

Due to the accrual of cases from year to year, once implementation of the death penalty occurs expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. Continued additional staff will have

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

(Analysis continues on next page)

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Fiscal Impact--FY 98

First Year Cost Summary

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

OBJECT	(2) Atty V	(2) Atty IV	(2)Assoc Atty I	(2) Invest	(2) Paralegal	(2) Sec I	Total
100 - Salaries & Benefits	193.4	181.6	117.3	122.8	108.1	76.9	800.1
	<u>193.4</u>	<u>181.6</u>	<u>117.3</u>	<u>122.8</u>	<u>108.1</u>	<u>76.9</u>	<u>800.1</u>
200 - Travel							
Staff Travel & Per Diem	15.0	15.0	10.0	15.0	10.0	6.0	71.0
	<u>15.0</u>	<u>15.0</u>	<u>10.0</u>	<u>15.0</u>	<u>10.0</u>	<u>6.0</u>	<u>71.0</u>
300 - Contractual							
Communications	7.2	7.2	2.4	7.2	2.4	2.4	28.8
Copy & Discovery	11.2	11.2	11.2	11.2	11.2	11.2	67.2
Office Space Leases	10.0	10.0	5.0	5.0	5.0	3.0	38.0
PC Network Maint.	3.0	3.0	3.0	3.0	3.0	3.0	18.0
Westlaw	2.4	2.4	2.4	0.0	2.4	0.0	9.6
	<u>33.8</u>	<u>33.8</u>	<u>24.0</u>	<u>26.4</u>	<u>24.0</u>	<u>19.6</u>	<u>161.6</u>
400 - Supplies							
Office Supplies	3.6	3.6	3.6	3.6	3.6	2.4	20.4
Law Library	2.4	2.4	2.4	1.2	2.4	0.0	10.8
New Position Supplies	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	<u>9.0</u>	<u>9.0</u>	<u>9.0</u>	<u>7.8</u>	<u>9.0</u>	<u>5.4</u>	<u>49.2</u>

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500 - Equipment

New Position Equipment	5.0	5.0	5.0	5.0	5.0	5.0	30.0
Personal Computer	8.0	8.0	8.0	8.0	8.0	8.0	48.0
	13.0	13.0	13.0	13.0	13.0	13.0	78.0

TOTAL	264.2	252.4	173.3	185.0	164.1	120.9	1159.9
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Second Year Cost Summary
Additional Costs

Development of Capital Appellate Team in Anchorage

OBJECT	(1) Atty V	(1) Atty IV	(1) Paralegal	(1) Secretary	Total
100 - Salaries & Benefits	90.6	85.1	53.1	37.8	266.6
	90.6	85.1	53.1	37.8	266.6
200 - Travel					
Staff Travel & Per Diem	3.5	3.5	2.5	0.0	9.5
	3.5	3.5	2.5	0.0	9.5
300 - Contractual					
Communications	4.0	4.0	2.4	2.4	12.8
Copy & Discovery	18.0	18.0	9.0	0.0	45.0
Office Space Leases	5.6	5.6	5.6	5.6	22.4
PC Network Maint.	2.4	2.4	2.4	0.0	7.2
Westlaw	1.5	1.5	1.5	1.5	6.0
	31.5	31.5	20.9	9.5	93.4

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400 - Supplies						
Office Supplies	1.8	1.8	1.8	1.2	6.6	
Law Library	3.6	1.2	1.2	0.0	6.0	
New Position Supplies	1.5	1.5	1.5	1.5	6.0	
	6.9	4.5	4.5	2.7	18.6	
500 - Equipment						
New Position Equipment	2.5	2.5	2.5	2.5	10.0	
Personal Computer	4.0	4.0	4.0	4.0	16.0	
	6.5	6.5	6.5	6.5	26.0	
TOTAL	139.0	131.1	87.5	56.5	414.1	

Third Year Cost Summary
Additional Costs

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

OBJECT	(3) Atty V	(1) Atty IV	(1)Assoc Atty I	(2) Invest	(1) Paralegal	(3) Sec I	Total
100 - Salaries & Benefits	296.2	96.5	54.9	122.8	55.0	116.0	741.4
	296.2	96.5	54.9	122.8	55.0	116.0	741.4
200 - Travel							
Staff Travel & Per Diem	18.5	2.5	5.0	15.0	2.5	6.0	49.5
	18.5	2.5	5.0	15.0	2.5	6.0	49.5

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300 - Contractual							
Communications	11.2	4.0	3.6	7.2	2.4	4.8	33.2
Copy & Discovery	28.0	18.0	5.0	5.0	9.0	3.0	68.0
Office Space Leases	16.8	5.6	5.6	11.2	5.6	16.8	61.6
PC Network Maint.	4.8	2.4	1.2	0.0	2.4	0.0	10.8
Westlaw	4.5	1.5	1.5	1.5	1.5	4.5	15.0
	65.3	31.5	16.9	24.9	20.9	29.1	188.6
400 - Supplies							
Office Supplies	5.4	1.8	1.8	3.6	1.8	3.6	18.0
Law Library	3.6	1.2	1.2	1.2	1.2	0.0	8.4
New Position Supplies	4.5	1.5	1.5	3.0	1.5	4.5	16.5
	13.5	4.5	4.5	7.8	4.5	8.1	42.9
500 - Equipment							
New Position Equipment	7.5	2.5	2.5	5.0	2.5	7.5	27.5
Personal Computer	12.0	4.0	4.0	8.0	4.0	12.0	44.0
	19.5	6.5	6.5	13.0	6.5	19.5	71.5
TOTAL	413.0	141.5	87.8	183.5	89.4	178.7	1093.9

Additional Case Costs

First Year: 4 Trials

Expert Witness Fees
\$60,000 per case x 4 cases = 240.0

Witness travel and per diem
\$50,000 per case x 4 cases = 200.0

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Witness fees		
\$2,500 per case x 4 cases	=	10.0

Deposition/Court Reporter charges		
\$20,000 per case x 4 cases	=	80.0

Training and Consultation	=	50.0
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Second Year: 6 Trials plus 4 Appeals

Expert Witness Fees		
\$60,000 per case x 6 cases	=	360.0

Witness travel and per diem		
\$50,000 per case x 6 cases	=	300.0

Witness fees		
\$2,500 per case x 6 cases	=	15.0

Deposition/Court Reporter charges		
\$20,000 per case x 6 cases	=	120.0
\$30,000 per case x 4 case	=	120.0

Training and Consultation	=	50.0
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Third Year: 7 Trials plus 6 new appeals

Expert Witness Fees		
\$60,000 per case x 7 cases	=	420.0

Witness travel and per diem		
\$50,000 per case x 7 cases	=	350.0

Witness fees		
\$2,500 per case x 7 cases	=	17.5

Deposition/Court Reporter charges		
\$20,000 per case x 7 cases	=	140.0
\$30,000 per case x 6 case	=	180.0

Training and Consultation	=	50.0
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Cumulative Cost Summary

OBJECT	Year 1	Year 2	Year 3	Year 4
100 - Salaries & Benefits	800.1	1066.7	1808.1	1808.1
	800.1	1066.7	1808.1	1808.1
200- Travel				
Staff Travel	71.0	80.5	130.0	130.0
Witness Travel	200.0	300.0	350.0	350.0
	271.0	380.5	480.0	480.0
300 - Contractual				
Staff Contractual	161.6	255.0	443.6	443.6
Outside Services	380.0	665.0	807.5	807.5
	541.6	920.0	1251.1	1251.1
400 - Supplies	49.2	57.2	94.1	53.6
	49.2	57.2	94.1	53.6
500 - Equipment	78.0	26.0	71.5	17.5
	78.0	26.0	71.5	17.5
Total	1739.9	2450.4	3704.8	3610.3
PFT	12.0	16.0	27.0	27.0

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/24/97

FURTHER:

Date of 5-Day Notice: ~~1/24~~ 3/6/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/10/97

Judiciary Committee considered SENATE BILL NO. 60

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

and recommends:

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

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓	<i>[Handwritten Signature]</i>		✗	
<i>George</i>	✓				
<i>Sean Parnell</i>	✓				
CHAIR: <i>Maria T. Tontas</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>GOVERNOR/ELECTIONS</i>	<i>3/7/97</i>		✓
<i>CORRECTIONS</i>	<i>3/9/97</i>		✓
<i>LAW/CRIMINAL</i>	<i>3/10/97</i>		✓

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

**STATE OF ALASKA
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No. 1
Bill Version: SB 100
(S) Publish Date: 3/11/97

Revision Date: _____ Dept. Affected: Department of Law
Title: "An Act providing for an advisory vote on the BRU: Criminal Division
issue of capital punishment." Component: Criminal Division
Sponsor: Senator Taylor
Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			485.0	834.1	1,265.1	1,235.1
TRAVEL			243.5	465.0	590.0	590.0
CONTRACTUAL			416.8	1,023.4	1,446.9	1,336.9
SUPPLIES			32.4	43.8	62.7	52.2
EQUIPMENT			52.0	39.0	45.5	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	1,229.7	2,405.3	3,410.2	3,244.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,229.7	2,405.3	3,410.2	3,244.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	1,229.7	2,405.3	3,410.2	3,244.2

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	8.0	14.0	21.0	21.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 131 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Alaska Legislature.)

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

Phone: 465-5370
Date: 3/10/97
Date: 3/10/97

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ANALYSIS CONTINUATION:

In 1994, the department's criminal division had 17 first degree murder cases in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible.

Overview

Capital felony trials would be bifurcated, that is, held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty, whether mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases, all of which would require trials. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

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

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

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

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding,

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ANALYSIS CONTINUATION:

the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In addition, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for capital murder trials.

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

Implementation

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

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

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ANALYSIS CONTINUATION:

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

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

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

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

- (1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting first degree murder offenses, at a minimum.
- (2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- (3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- (4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- (5) Witness travel and per diem will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of state travel.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

(6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

(7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, the total Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably less than one-half of the \$597,000 cost for the *first Peel* trial.

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

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

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- Standard witness fees paid to others, \$2,500 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (First Year, Capital Trials)

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

OBJECT	(1) <u>Atty V</u>	(2) <u>Atty IV</u>	(2) Assoc <u>Atty I</u>	(1) <u>P/A II</u>	(2) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	166.8	101.1	52.5	75.8	485.0
	<u>88.8</u>	<u>166.8</u>	<u>101.1</u>	<u>52.5</u>	<u>75.8</u>	<u>485.0</u>
200 - Travel						
Staff Travel & Per Diem	7.5	15.0	10.0	5.0	6.0	43.5
	<u>7.5</u>	<u>15.0</u>	<u>10.0</u>	<u>5.0</u>	<u>6.0</u>	<u>43.5</u>
300 - Contractual						
Communications, Copy	3.6	7.2	4.8	2.4	4.8	22.8
Office Space Leases	5.6	11.2	11.2	5.6	11.2	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	3.0	12.0
Westlaw	1.2	2.4	2.4	1.2	0.0	7.2
	<u>11.9</u>	<u>23.8</u>	<u>21.4</u>	<u>10.7</u>	<u>19.0</u>	<u>86.8</u>
400 - Supplies						
Office Consumables	1.8	3.6	3.6	1.8	2.4	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	7.2
New Position Supplies	1.5	3.0	3.0	1.5	3.0	12.0
	<u>4.5</u>	<u>9.0</u>	<u>9.0</u>	<u>4.5</u>	<u>5.4</u>	<u>32.4</u>
500 - Equipment						
New Position Equipment	2.5	5.0	5.0	2.5	5.0	20.0
Personal Computer	4.0	8.0	8.0	4.0	8.0	32.0
	<u>6.5</u>	<u>13.0</u>	<u>13.0</u>	<u>6.5</u>	<u>13.0</u>	<u>52.0</u>
TOTAL	119.2	227.6	154.5	79.2	119.2	699.7

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (Second and Third Year Additions, Capital Trials)

ASSUMPTION:

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

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Atty IV</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(1) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
200 - Travel								
Staff Travel & Per Diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Office Space Leases	5.6	5.6	5.6	16.8	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
Westlaw	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	2.5	2.5	2.5	7.5
Personal Computer	4.0	4.0	4.0	12.0	4.0	4.0	4.0	12.0
	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
TOTAL	113.8	78.5	59.6	251.9	113.8	80.4	59.6	253.8

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 6

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (Second and Third Year Additions, Appellate Review Process)

ASSUMPTION:

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

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Attv V</u>	(1) Assoc <u>Attv I</u>	(1) <u>Sec I</u>	TOTAL	(2) <u>Attv IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
200 - Travel								
Staff Travel & Per Diem	3.5	2.5	0.0	6.0	7.0	2.5		9.5
	3.5	2.5	0.0	6.0	7.0	2.5	0.0	9.5
300 - Contractual								
Communications, Copy, Document Production	22.4	22.4	2.4	47.2	44.8	22.4	2.4	69.6
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	5.6	22.4
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
Westlaw	2.4	2.4	0.0	4.8	4.8	2.4	0.0	7.2
	31.9	31.9	9.5	73.3	63.8	31.9	9.5	105.2
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	1.2	6.6
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
	4.5	4.5	2.7	11.7	9.0	4.5	2.7	16.2
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	5.0	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	12.0	8.0	4.0	4.0	16.0
	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
TOTAL	135.2	96.0	56.6	287.8	259.6	97.9	56.6	414.0

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

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

Year 2: (8 cases underway)

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

Year 3: (10 cases underway)

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 1

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
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Deposition/court reporter charges \$30,000 per case X 4 cases	=	120.0
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Year 3: (8 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
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Deposition/court reporter charges \$30,000 per case X 8 cases	=	240.0
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Year 4: (14 cases underway)

Deposition/court reporter charges \$30,000 per case X 6 cases	=	180.0
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ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cumulative Implementation Cost by Year

OBJECT	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Salaries & Benefits	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
	<u>485.0</u>	<u>656.9</u>	<u>830.6</u>	<u>830.6</u>	<u>0.0</u>	<u>177.3</u>	<u>434.4</u>	<u>434.4</u>
200 - Travel								
Staff Travel & Per Diem	43.5	59.0	74.5	74.5	0.0	6.0	15.5	15.5
Witness Travel	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
	<u>243.5</u>	<u>459.0</u>	<u>574.5</u>	<u>574.5</u>	<u>0.0</u>	<u>6.0</u>	<u>15.5</u>	<u>15.5</u>
300 - Contractual								
Staff Contractual	86.8	120.1	153.4	153.4	0.0	73.3	178.5	178.5
Outside Services	330.0	660.0	825.0	825.0	0.0	170.0	290.0	180.0
	<u>416.8</u>	<u>780.1</u>	<u>978.4</u>	<u>978.4</u>	<u>0.0</u>	<u>243.3</u>	<u>468.5</u>	<u>358.5</u>
400 - Supplies	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
	<u>32.4</u>	<u>32.1</u>	<u>39.3</u>	<u>34.8</u>	<u>0.0</u>	<u>11.7</u>	<u>23.4</u>	<u>17.4</u>
500 - Equipment	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
	<u>52.0</u>	<u>19.5</u>	<u>19.5</u>	<u>0.0</u>	<u>0.0</u>	<u>19.5</u>	<u>26.0</u>	<u>0.0</u>
TOTAL	1,229.7	1,947.6	2,442.3	2,418.3	0.0	457.8	967.8	825.8
PFT	8	11	14	14	0	3	7	7

FISCAL NOTE

No. 2
 Bill Version: SB60
 (S) Publish Date: 3/11/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act providing for an advisory vote on the BRU: Statewide Programs
issue of capital punishment" Component: Spring Creek Correctional Center
 Sponsor: Senator Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. #0772

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			68.4	68.4		
TRAVEL						
CONTRACTUAL			1,665.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				350.0	2,305.4	2,305.4
TOTAL OPERATING	0.0	0.0	1,733.4	418.4	2,305.4	2,305.4

CAPITAL EXPENDITURES				9,435.0	
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CHANGE IN REVENUES ()					
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,733.4	9,853.4	2,305.4	2,305.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	1,733.4	9,853.4	2,305.4	2,305.4

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME			1	31	30	30
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached explanation.

Prepared by: Bruce Richards Phone: 465-3307
 Division: Commissioner's Office Date: 3/9/97
 Approved by Commissioner: Margaret M. Pugh Date: 3/9/97
 Agency: Department of Corrections

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Assumptions

1. This fiscal note is based on the assumption the proposed advisory vote is approved by the residents of Alaska during the next general election. It further contemplates that the Alaska Legislature would enact a capital punishment law following such an advisory vote.
2. The Dept. of Law estimates that six individuals per year would be prosecuted and sentenced to death for first degree murder. Other states who have instituted the death penalty statute indicate that an individual convicted of a capital felony remains on death row for approximately ten years before execution. Using this estimate the Department of Corrections (DOC) would be required to construct a death row facility capable of housing 60 inmates. The death row facility would require construction that is of the highest security standards. The cost of this type of facility is estimated at \$180,000.00 per bed. The DOC does not expect to house prisoners until the year FY02. Engineering and design (E&D) would begin in FY00. The costs for E&D would be transferred to DOT & PF via an RSA. These costs are estimated to be 15% of the total cost of construction.
4. The DOC would be required to construct an execution facility for administration of the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility is estimated to be in excess of \$300,000.00 assuming it would be built in conjunction with the death row facility.
5. The DOC would not house death row inmates until FY02. A Facilities Manager I position is required to manage the DOC responsibilities in the planning and design phase. This position would begin in FY00 and remain in place until completion of the project in FY02. The cost of this position is \$68.4 per year.
6. Actual operation of the death row facility would begin in FY02, with staff hiring and training to begin in FY01. This cost is estimated to be \$350,000.00. Staffing of the new facility would require twenty-five correctional officers, and five administrative support staff. The average daily cost of housing an inmate is \$105.27 and is shown in the miscellaneous line.

Construction Costs

60 bed death row X \$180,000 per bed + \$300,000 execution facility = \$11,100,000.00

.15 X \$11,100,000 = \$1,665,000 for E&D in FY00

\$11,100,000 total cost - \$1,665,000 E&D = \$9,435,000 for facility completion in FY01

Operating Costs

60 beds X \$105.27 per day X 365 days = \$2,305,413 in FY02 and continuing into the future.

FISCAL NOTE

No. 3
 Bill Version: SB 60
 (S) Publish Date: 3/11/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date _____ Dept. Affected Office of the Governor
 Title Advisory Vote on Capital Punishment BRU Elective Operations
 Component General and Primary Elections
 Sponsor Senator Taylor
 Requester Senate Judiciary Component Serial No. #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0			
Part-time		0			
Temporary		0			

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by Dana LaTour Phone 465-5347
 Division Division of Elections Date 3/7/97
 Approved by Co Lt. Governor Fran Ulmer Date 3/7/97
 Agency Office of the Lieutenant Governor

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Chairman,
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Senator Robin L. Taylor

Sponsor Statement

Senate Bill 60

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

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

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

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

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

Sponsor Statement - SB 60
Page Two

There are those who argue that the people of Alaska are somehow unqualified to render advice on this issue. They argue that the ballot question itself is too "simplistic".

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

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

For now, we are talking about placing an advisory vote on the ballot, at a cost of about \$2,500.

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

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

CAPITAL PUNISHMENT: Retribution or Deterrence?

Excerpts from an article written by: Kenneth L. Gentry, Jr.

We must remember that when we advocate the abolition of capital punishment we have all murderers on our side and the Bible on the other.

The July 28th conclusion of the Susan Smith trial in Union City, South Carolina, we began anew the debate over capital punishment, and as we re-engage this debate, we are inescapably confronted with religious values. By the very nature of the case, all law is intrinsically religious since law is rooted in morality; morality is based on ideas of ultimacy and value; and ultimate and value are fundamentally religious conceptions. Religious conceptions are of a transcendental nature and are not reducible to laboratory testing or mathematical analysis.

Recent local and national news coverage and radio talk show programs have frequently highlighted the religious overtones in the debate over the Susan Smith judgment. Even in the case itself the closing statement by defense attorney David Bruck, a Jew, cited the New Testament words of Jesus: "He among you who is without sin first cast the stone." (John 8:11). Page one of the July 30, 1995, Greenville News published an article titled: "Sin, salvation in a small town: Religious notes echoed throughout Susan Smith case." This reflection on religious values is, as it should be, due to the nature of law.

To Deter or Not to Deter

Unfortunately, many proponents of the death penalty argue for its use solely on the grounds of deterrence. But deterrence cannot morally be the sole reason for the death penalty:

First, historically, the statistical data render any argument pro or con impossible. The 1995 World Almanac (215) shows that from 1977 (the year the Supreme Court re-instituted capital punishment as constitutional) through 1992 there were 338,780 murders in America, an average of over 21,000 annually. In the same period there were only 188 executions, or an execution rate of only .00055.

In 1992 alone there were 23,760 murders, but only 31 executions. The murder to execution ratio is so disparate as to nullify any deterrent effect. To make matters worse, the average prison sentence for murder in America in 1991 was under nineteen years, with the average actual incarceration being only 8 years and one month (World Almanac, 218). Today's murderers realize the disparity and take full advantage of it.

Second, and more importantly, if deterrence were morally sufficient to justify capital punishment, then why would it not also justify more likely deterrents? Deterrents such as slow, public torture of murderers? Or the capital punishment of the families of murderers? To consider the question of deterrence in this light quickly exposes the moral inadequacy of the argument. On the other hand, if life in prison is a worst punishment than execution, why not then torture them while in prison and make it worst? The issue before us is not merely the deterrents of it, but what is the just thing to do?

The Justification of Capital Punishment

Both the heritage of Western culture and the teaching of Scripture offer a morally superior principle for execution: retribution. "Retribution" means "to pay back." and it is an important element in law. In a contract law and in cases of theft retribution demands a repayment commensurate with the monetary loss. Civil justice must exact a repayment commensurate with criminal wrongdoing if it is to promote true justice. In the case of murder we have, in effect, the robbery of an innocent life. On the basis of the retribution principle, the murderer must make payment for the value of the life criminally destroyed. But what is the value of human life? Man's life is of the highest value in that he is the only creature created in God's image (Gen. 2:26-27).

Retribution is an important element in law. In a contract law we sue for damages based on the value of our loss. In cases of theft retribution demands a repayment commensurate with the monetary loss. Even in casual conversation we recognize the retribution principle: We often say a man must "pay" for his crime. Or that a punished offender has "paid his debt to society." Civil justice must exact a repayment commensurate with criminal wrongdoing if it is to promote true justice.

In the case of murder we have, in effect, the robbery of an innocent life. On the basis of the retribution principle, the murderer must make payment for the value of the life criminally destroyed. But what is the value of human life?

Man's life is of the highest value in that he is the only creature created in God's image (Gen. 2:26-27). Thus, the murderer must forfeit his own life, in that no monetary exactment or imprisonment is sufficient to pay the price. The biblical judicial principle known as *lex talionis* (the law of retaliation) demands "eye for eye . . . life for life: (Ex. 21:23-24; Deut. 19:21).

According to news reports, many have sought to use Christian principles to decry capital punishment. But the Bible, the foundational document of Christianity, in both its Old and New Testaments is clear: capital punishment (after proper charges, evidence, trial, conviction, and appeal) is the appropriate judicial response to murder. Genesis 9:6 in the Noahic Covenant ties the image of God in man to the demand for the execution of murderers: "Whoever sheds man's blood shall be shed; for in the image of God He made man." Exodus 21:212 stipulates the absolute necessity of capital punishment for murder: "He who strikes a man so that he dies shall surely be put to death." God's law expressly forbids appeals to pity in capital cases: "Your eye shall not pity" (Deut. 19:13).

Jesus expressly confirms the continuing applicability of God's law when He states that He has come not to destroy the law (Matt. 5:17-19). Paul does the same, tying the continuance of the law to the renewed principle of true faith: "Do we then make void the law through faith? Certainly not! On the contrary, we establish the law" (Rom. 3:31).

Paul also refers to the law's goodness endorsed by the gospel: "But we know that the law is good if one uses it lawfully, knowing this: that the law is not made for a righteous person, but for the lawless and insubordinate, for the ungodly and for sinners, for the unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for fornicators, for sodomites, for kidnappers, for liars, for perjurers, and if there is any other thing that is contrary to sound doctrine, according to the glorious gospel of the blessed God which was committed to my trust: (I Tim. 1:8-11). This is as expected, in that man continues in the New Testament era to possess the image of God (James 3:9).

In Acts 25:11 Paul even offers himself for capital punishment, if it can be proved that he deserves it. In Hebrews 2:2 the writer gives a New Covenant evaluation of the criminal sanctions of the Old Testament: They represent a "just reward." This also should be expected in that the law is "holy, just, and good" (Rom. 7:12). Consequently, Paul defines the civil magistrate as the "minister of God" who has the God-given right to wield the sword of execution (Rom. 13:4 as a temporal indicator of the wrath of God (Rom. 12:19-13:4).

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- right to wield the sword of execution (Rom.13:4 as a temporal indicator of the wrath of God.
- John 8:1-11 - First, the woman was allegedly "caught" (8:4). But where was the man? This has the appearance of false accusation (which does not deserve capital punishment). When Jesus demanded "he who is w/o sin..let him throw the first stone" (8:7)
 - See Deut.19:13

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Capital Punishment, Justice Served

Matthew D. Bartlett - Corporate Vice-Chairman
Students for a Better America - Corporate Column

A battle rages between Americans who are fighting for a safe and just world and those who want to abolish the death penalty weakening our already struggling legal system. Capital punishment may not be a pretty subject, but it is one that is necessary in today's violent society. Our nation's cities have become plagued with crime and violence with the encouragement of a soft legal system. Capital Punishment provides the necessary penalty and deterrent for criminals in America. Those who oppose capital punishment in America try to brainwash the American people into believing that capital punishment is either unconstitutional or ineffective.

The opposition's challenges of capital punishment's legality come short of either being supported or even being seriously questioned. There have been claims of its violation of the Eighth Amendment of the Constitution in constituting the use of cruel and unusual punishment. This argument was unquestionably defeated by the Supreme Court case of 1976: *Greg v. Georgia*, *Proffitt v. Florida*, *Juke v. Texas*. The court held that death, as a punishment for first degree murder was not cruel and unusual punishment. The cruel part of this sentence is the false hope and confusion that the opposition instills in the minds of the accused by forcing endless appeals and stays of execution only delaying the inevitable. There have been numerous cases where the condemned have been prepared to die and even welcome it when people still continue to fight against their wishes to have their death delayed. The best thing that people could do to make it easier on the condemned would be just to let their sentence be carried out quickly and peacefully.

Another issue that always arises when debating the use of capital punishment is its alleged ineffectiveness and high price tag. Many opponents refer to numbers and statistics comparing states that have the death penalty verses those without. The thing that they inevitably forget is that you cannot blindly look at statistics without considering what effects them. They fail to acknowledge that most of the problems with capital punishment today are a result of their own activities. As a result of anti-death penalty/pro-criminal protests, many of the states that do have capital punishment fail to ever implement it, and therefore, cause it to lose all meaning and effect.

Comparing a state that does not allow the death penalty to one that does, but never implements it, is not much of a comparison.

The true measurement of the effectiveness of capital punishment is the effect that it has on the future action of the accused and in deterring others in society. Many debate whether it is an effective weapon against violent crime.

In at least one sense, it unquestionably is: It simply cannot be questioned that a killer, once executed, is forever deterred from ever killing again. The effect on others may very well be due to the swiftness of the application of the penalty, but the effect on the murderer will not. There is no way that the prisoner will escape or kill again once he has been executed. A simple life sentence give a prisoner an entire lifetime to escape and repeat his heinous crime.

One of the only points that the opposition has is that the average cost of execution a criminal is greater than imprisoning them for life. This is true, however, they usually neglect to tell you why that is true. The truth is that their efforts directly cause of executions to be so costly. Endless appeals and delays tie up the courts for years. There have been many instances when cases have tied up the legal system for more than fourteen years. If appeals were limited, the costs would decrease significantly. When you look at it realistically, the cost of the execution itself could be as little as fifty cents, the price of a single bullet.

In the world of today, capital punishment isn't an option, it is a necessity.

Difficult times call for tough measures. Capital punishment has been a necessary feature of the justice system throughout both this nation's history as well as that of the world. The death penalty has been used

continuously since the beginning of recorded history, often for far lesser crimes. The question today shouldn't be whether or not to have capital punishment, but instead why do we fail to carry out the law as it is intended. Before you start attacking the effects of a law, you should try enforcing it. Implementing all of our Capital Punishment laws to their fullest extent will be an important first step towards returning our justice system to one that protects the innocent and punishes the guilty.

<http://essential.org/dpic1>



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

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

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

*Indicates jurisdictions with no one on death row.

-New York's law became effective Sept. 1, 1995.

There are currently 12 states without the death penalty:

- Alaska
- Hawaii
- Iowa

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

Plus: the District of Columbia

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

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

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

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

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

THE DEATH ROW CENSUS

As of February 1, 1996, 38 states had the death penalty on the books

STATE	DEATH ROW	EXECUTIONS SINCE 1976
Alabama	135	2
Arizona	119	4
Arkansas	11	1
California	422	2
Colorado	4	0
Connecticut	5	0
Delaware	14	7
Florida	340	36
Georgia	104	20
Idaho	20	1
Illinois	161	1
Indiana	51	3
Kansas	0	0
Kentucky	27	0
Louisiana	44	22
Maryland	13	1
Massachusetts	55	1
Missouri	93	17
Montana	6	2
Nebraska	10	1
Nevada	79	5
New Hampshire	0	0
New Jersey	11	0
New Mexico	3	0
New York	0	0
North Carolina	154	3
Ohio	150	0
Oklahoma	138	6
Oregon	14	0
Pennsylvania	197	2
South Carolina	58	5
South Dakota	2	0
Tennessee	102	0
Texas	399	104
Utah	11	5
Virginia	57	31
Washington	13	0
Wyoming	0	1

Source: Death Penalty Information Center

the death sentence on this ground.

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

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

Schaye, the Arizona defense lawyer, claims that about two-thirds of the death-penalty convictions that courts reverse are overturned on the basis of incompetent trial-court defense. In his view, the solution is higher standards, including better pay for defense lawyers. In Arizona, at the moment, the funding for death-penalty defense is \$50 an hour. "It costs \$40 an hour just to operate a law firm," Schaye complains.

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

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

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

Meanwhile, the two sides continue to battle it out. Not long ago, the Ohio Death Penalty Resource Center won a re-trial for a condemned killer, Carroll Dean Fless, who had originally waived his right to a jury trial. The court found that the way the waiver took place did not meet the letter of the law. "It's a super technicality," Bodiker admits. There isn't much doubt that Fless, who's been on death row since 1992, stalked and killed his victim. On the other hand, there is at least some question whether he would have received the death penalty had he been represented by counsel. And it's only fair, Bodiker argues, that that issue be addressed. Even if it adds several more years to the process. □