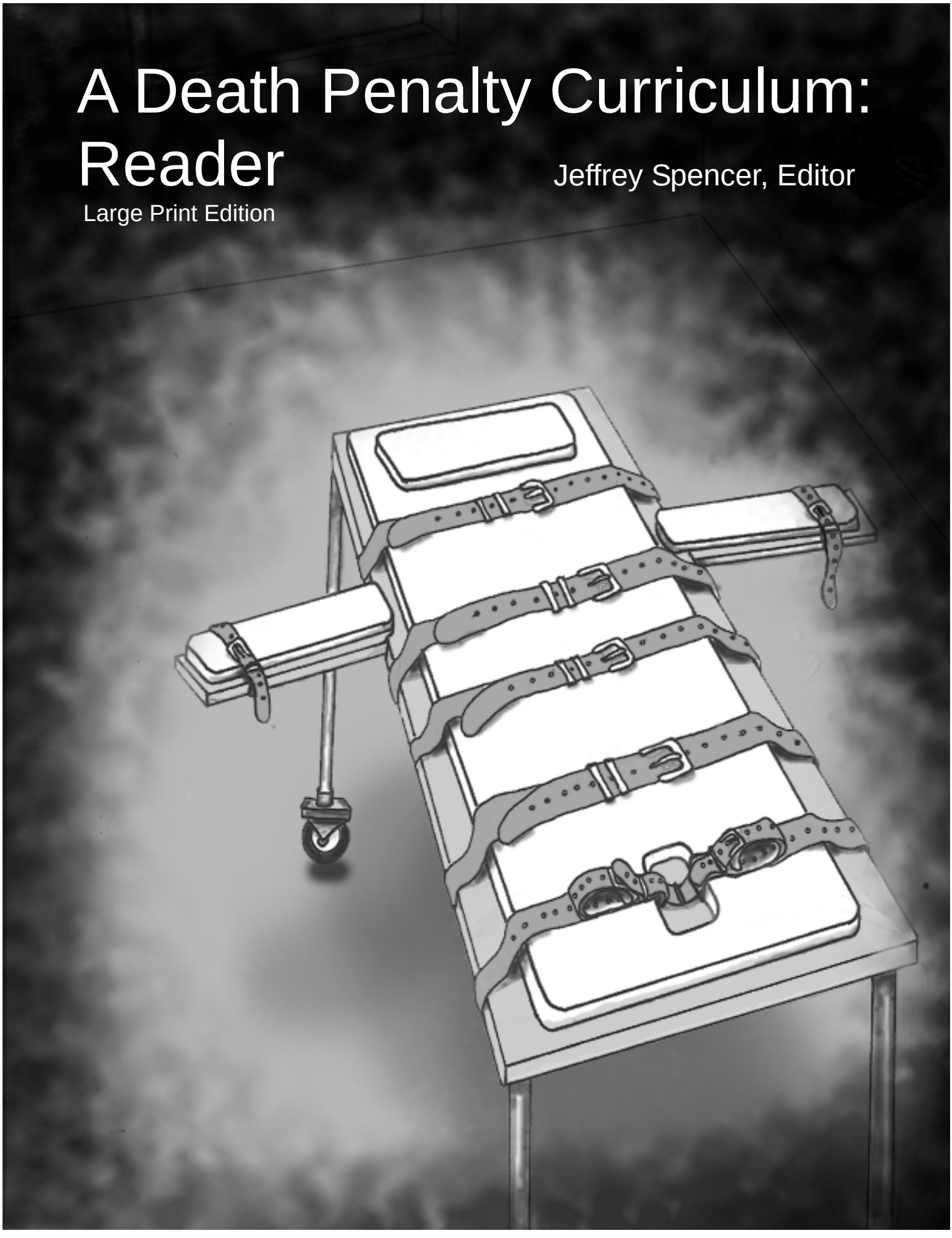
A Death Penalty Curriculum: Reader

Large Print Edition

Jeffrey Spencer, Editor



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A Quick History of the Death Penalty in the United States

By Jeffrey Spencer[1]

The death penalty has been in practice in what is now the United States since colonial times. In colonial times, as in England, there were dozens of capital offenses, from theft to murder. The first recorded execution in the new colonies was that of Captain George Kendall in the Jamestown colony of Virginia in 1608. Kendall was executed for being a spy for Spain.[2] In the Massachusetts Bay Colony, Puritan clergy preached an "execution sermon" before a hanging to reinforce the moral lesson that crime will be punished.[3] When the U.S. Constitution was written, the legitimacy of capital punishment was assumed.

The first attempted reforms of the death penalty in the U.S. occurred when Thomas Jefferson introduced a bill to revise Virginia's death penalty laws. The bill proposed that capital punishment be used only for the crimes of murder and treason. It was defeated by only one vote.[4]

In 1846, Michigan became the first state to abolish capital punishment. Fifteen more states abolished it by World War One; eight of these states reinstated it after the war. The last *public* execution was held in 1936 in Kentucky. During the twentieth century, the great majority of executions were for murder or rape; a few have been for kidnapping, armed robbery, burglary, and aggravated assault.[5]

In 1972, the U.S. Supreme Court, in *Furman v. Georgia*, ruled that the death penalty *as then administered* was "cruel and unusual

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[1] Jeffrey Spencer is the editor of this *Reader* and the author of the curriculum. This essay was originally written in 2003 and updated in 2007.

[2] Death Penalty Information Center (DPIC), "Introduction to the Death Penalty," an article on the Death Penalty Information Center's website, http://www.deathpenaltyinfo.org (29 March 2003).

[3] "A Brief History of the Death Penalty in the USA," a part of the educational material, "The Capital Punishment Debate," published by the Office of Church in Society, The American Lutheran Church [now part of the Evangelical Lutheran Church in America], in 1985.

[4] DPIC, "Introduction to the Death Penalty," *op. cit.*

[5] "A Brief History of the Death Penalty in the USA," The American Lutheran Church, *op. cit.*

punishment in violation of the Eighth and Fourteenth Amendments" to the U.S. Constitution. Every Death Row in the nation was cleared, and it looked as if capital punishment was abolished.

But within months of the *Furman* decision, new death penalty statutes, designed to meet the requirements set forth by the Supreme Court, appeared in several states. In a series of decisions in 1976, the Supreme Court ruled that the penalty of death is not as such unconstitutional, provided its imposition meets clear objective standards.

38 states,[6] the federal government, and the U.S. military currently (as of August 16, 2007) have the death penalty on the books.[7]

For a time in 2002, Illinois Governor George Ryan declared a moratorium on carrying out death sentences following the exoneration of 13 death row inmates, innocent people who were scheduled to be put to death. The commission he established to review the death penalty in Illinois completed what is probably the most comprehensive review of the death penalty in any state. They suggested sweeping changes were needed in order to protect the innocent and ensure fairness. Governor Ryan commuted all the death sentences in Illinois as he left office in January 2003. However, since then, additional people have been sentenced to death in Illinois and, as of August 22, 2007, there were 11 people on the Illinois Death Row.[8]

Between 1976 and 1999, the number of executions carried out each year in the United States rose steadily, to a height of 98 people

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[6] The thirty-eight states with the death penalty are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas*, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire*, New Jersey*, New Mexico, New York* (and in 2004, the Death Penalty in New York was declared unconstitutional, even though there is still one man on Death Row in that state), North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming; plus the U.S. Government and the U.S. Military*. (Asterisks indicate no executions since 1976.) That leaves Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin, and the District of Columbia as not having the death penalty. (DPIC, "Facts About the Death Penalty," http://www.deathpenaltyinfo.org/FactSheet.pdf (22 August 2007).)

[7] "Facts About the Death Penalty," *op. cit.*

[8] DPIC, http://www.deathpenaltyinfo.org/state/ (22 August 2007).

put to death in 1999. Since then, both the numbers of people executed and the numbers of people sentenced to death have fallen. Go to http://www.deathpenaltyinfo.org/FactSheet.pdf for up-to-date information.

On June 20, 2002, the United States Supreme Court ruled that executions of people who are mentally retarded are unconstitutional.

On March 1, 2005, the United States Supreme Court ruled in *Roper v. Simmons* that it is unconstitutional to execute a person for a crime committed when that person was under the age of 18. The decisions affected 72 people in 12 states who were juveniles at the time the crime was committed. Prior to this decision, 22 juvenile offenders had been executed since 1976.

As of August 16, 2007, 1090 people have been executed in the United States since 1976.[9] 36.67% of these have taken place in Texas.[10]

You can find more information about Capital Punishment in the United States from many sites on the web. Here are a few that might be of interest:
http://www.deathpenaltyinfo.org/article.php?scid=15&did=410#IntroductionoftheDeathPenalty
http://www.clarkprosecutor.org/html/death/timeline.htm
http://justice.uaa.alaska.edu/death/history.html

[9] "Facts About the Death Penalty," *op. cit.*
[10] DPIC, http://www.deathpenaltyinfo.org/state/ (22 August 2007).

Death Penalty Law Primer

By Jeffrey Spencer & Dorothy Streutker[11]

Background

We may talk about "the criminal justice system," but in reality we have many criminal justice systems. Each state has a criminal justice system; there is a federal criminal justice system; and the military has its own criminal justice system.[12] The basis of the federal legal system in the United States is our federal Constitution and federal laws passed by Congress. The Constitution authorizes the federal court system. Its provisions, including amendments, guarantee various rights. The first ten amendments are known as the Bill of Rights, and most of the legal rights with which we are familiar – the right to silence, limitations on search and seizure, the right to counsel – arise from these amendments. Each state has its own constitution and sets of laws that create the state courts and guarantee rights within that state. Federally protected rights are applied to the states through the Fourteenth Amendment.

In addition to the rights mentioned above, the federal Constitution (as interpreted by the courts) also preserves an individual's right to confront witnesses against him or her, to be tried before an impartial jury representing a cross-section of citizens, and to protection against government imposed "cruel and unusual punishment" (found in the Eighth Amendment).

Before 1972, 40 states plus the federal government had death penalty laws. In that year, the United States Supreme Court ruled that these laws were unconstitutional (in a case known as *Furman v. Georgia*). The Supreme Court did not decide that the death penalty itself was "cruel and unusual"; rather, the Court found that the existing laws provided so little guidance to the juries regarding appropriate punishment that death sentences were like lightning strikes – imposition of the death penalty was arbitrary and capricious – and therefore capital punishment *as applied* was cruel and unusual, in violation of the Eighth Amendment. The existing laws provided no

[11] The Rev. Jeffrey Spencer is the author of this curriculum and the editor of this reader. Dorothy Streutker is an attorney in California who represents death row inmates in post-conviction proceedings and is preparing for ordained ministry in the United Church of Christ. This essay was originally written in 2003 and updated in 2007.

[12] And within each system there are many criminal justice organizations: courts, prisons, jails, police departments, prosecutors, defense attorneys, parole departments, etc.

clear standards by which judges and/or juries could distinguish those murders warranting the ultimate punishment, from the many murders that did not.

The Supreme Court declared that the Georgia and Texas laws under review in *Furman* (and all other state death penalty laws with similar shortcomings) did not give adequate guidance to juries making life and death decisions. Because the Court declined to declare the practice of capital punishment itself unconstitutional, *Furman* left the door open for states and the federal government to write new death penalty laws designed to meet the Supreme Court's newly formulated standards of fairness.

There was a rush to pass new death penalty legislation drafted to meet the Court's narrowing criteria. In 1976, the Supreme Court reviewed a new Georgia death penalty law and, in a plurality opinion (meaning that the majority agreed only on the conclusion, not on the reasoning used to reach it), declared that state's new death penalty scheme constitutional.[13] The Georgia law became the pattern for new laws in all other states that sought to institute capital punishment. There are variations, but the central feature of these new laws is the inclusion of defined "special circumstances" (sometimes called "aggravating factors," "aggravating circumstances," and several other names), decided by each state's legislators, that gave a rationale for setting some first degree murders[14] apart from others, making them death-eligible. Some common special circumstances are murder for monetary gain and torture-murder. The most commonly charged special circumstance, however, is felony-murder, a murder occurring in the course of committing certain specified felonies.[15]

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[13] *Gregg v. Georgia*

[14] Some states simply call the crime "aggravated murder" or "capital murder" or even "first degree murder," but in these states other types of murder cannot be punished with death. The point is that states had to pass laws that clearly defined the certain murders that could be punished with death.

[15] "Felony murder" is a strange concept since murder is, after all, a felony. But someone can be charged with felony murder even if they didn't personally kill someone. Consider this scenario: Two guys go into a liquor store to rob it. Only one of the two has a gun and at some point, the gunman fires his weapon, killing the store clerk. In jurisdictions where there is a felony murder law, both men can be charged with first degree murder, and if convicted, each man could face the death penalty. You might think it unfair that the guy who didn't shoot anyone could face the death penalty – sure, he was guilty of robbery, but he didn't intend to kill anyone; he didn't even have a gun; he was just a tag-

Thirty-eight[16] of the 50 states plus the federal government and the U.S. military currently (as of August 2007) have the death penalty. The procedures under which a death penalty is imposed vary from state to state (38 different states, 38 different state constitutions, 38 different sets of rules for those state courts), as do the procedures for federal and military courts. What follows is a general description of the sequence of events in most jurisdictions.

Pre-Trial

First, a crime is committed. For our purposes, we are interested in crimes punishable by death. In the 38 states that have the death penalty, murder is the primary crime punishable by death. However, several states allow the death penalty for crimes other than murder.[17] For instance, in the federal system (in addition to murder

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a-long. Nonsense, the prosecutors would reply. If someone was killed during the commission of a felony, all who had participated in the felony were equally guilty. It was the felony itself that had put the victim's life at risk. In some jurisdictions, theoretically all it takes is for someone to die – from a heart attack, for instance – during the commission of a felony for a defendant to be charged with felony murder. Felony murder is a capital offense in 22 of the 38 death penalty states.

[16] The thirty-eight states with the death penalty are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas*, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire*, New Jersey*, New Mexico, New York* (and in 2004, the Death Penalty in New York was declared unconstitutional, even though there is still one man on Death Row in that state), North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming; plus the U.S. Government and the U.S. Military*. (Asterisks indicate no executions since 1976.) That leaves Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin, and the District of Columbia as not having the death penalty. (DPIC, "Facts About the Death Penalty," http://www.deathpenaltyinfo.org/FactSheet.pdf (22 August 2007).

[17] A number of states have authorized the death penalty for crimes in which the victim is not killed. Some of these crimes (of course varying from state to state) are: treason; kidnapping where victim is harmed; drug trafficking; aircraft hijacking; rape of child under twelve; placing bombs near bus terminals; aggravated assault or kidnapping while incarcerated in state prison for murder or persistent felonies; aggravated kidnapping; rape by a repeat offender causing serious bodily injury; and espionage. As of August 2007, only one person, Patrick Kennedy, is on death row in the United States (in Louisiana) for a non-homicide offense: rape of his eight-year-old stepdaughter. Kennedy is seeking review by the U.S. Supreme Court, asking whether capital punishment for child-rape is permissible under the Constitution.

occurring under a number of circumstances), espionage, treason, trafficking in large quantities of drugs, and "attempting, authorizing or advising the killing of any officer, juror, or witness in cases involving a continuing criminal enterprise, regardless of whether such killing actually occurs" (18 U.S.C. 3591(b)(2)) are all potentially capital offenses. In the military, the Uniform Code of Military Justice defines 15 offenses as punishable by death. Many of these crimes – such as desertion or disobeying a superior commissioned officer's orders – carry the death penalty only in time of war. Far and away, the most frequent crime committed in which a death penalty is sought is murder, so the rest of this essay assumes that underlying crime.

The crime is investigated by the police (or a federal or military law enforcement agency). Evidence – fingerprints, possible weapons, blood and other fluid and tissue samples, etc. – is gathered at the scene of the crime, photos are taken of the crime scene, and the body is examined and removed for an autopsy. The depiction of crime scene investigation and forensic examination on television and in movies gives some idea of how important this stage is as a foundation of the murder investigation; however, popular fiction rarely depicts how the investigation can go wrong at this stage. If there is DNA evidence (blood, saliva, semen, skin fragments, etc.), it must be carefully collected and stored to avoid contamination.[18] A murder scene may yield many fingerprints, some of which may never be identified. Photos of the scene may not accurately depict particulars such as blood spatter, or the investigator may not take a photo of a part of the scene that would have answered questions that arise later, after the scene has been altered.

As the investigation turns to searching for a suspect or suspects, interviews and interrogations begin. The police will interview witnesses and other people who may have information. They need to have "reasonable suspicion" to interview individuals they think may be involved in the crime, and "probable cause" to arrest someone. Which facts are enough for reasonable suspicion and probable cause, as well as when an individual is under arrest, are the subject of many, many court opinions. Procedural rules are

[18] A popular misconception is that DNA testing will conclusively prove whether a defendant committed the crime. In fact, only a minority of cases yield DNA evidence, and fewer have properly collected and stored samples. Moreover, DNA matches are not infallible: As with fingerprint matching, there are several stages at which human error may taint the results.

designed to prevent coercion in police interrogations, but interview techniques taught in law enforcement departments are designed to exert as much pressure as possible without violating the rules, and interrogations can (and do) result in false confessions.[19] Another phenomenon sometimes contributing to a wrongful conviction is premature focus on one suspect, which can result in law enforcement pursuing evidence that will bolster the case against that person, while ignoring evidence that points to a different suspect or would otherwise tend to exonerate the suspect favored by the police. When police fail to interview important witnesses, or fail to report their interviews to the suspect's lawyers, appellate courts have sometimes reversed convictions or sentences.

Soon after the arrest, the suspect (who can also now be called a defendant) appears before a judge for "arraignment." This is when the charges against the defendant are officially read and the defendant enters a plea (either "guilty" or "not guilty"). Often a bail hearing is combined with the arraignment, though they can be held separately. It is not unusual in capital cases for bail to be denied, or to be set impossibly high.

If the defendant is financially unable to hire a lawyer, the government appoints one to assist during the arraignment and at trial. This lawyer is supposed to help protect the defendant's rights and zealously defend him/her through the court process. Some court appointed attorneys are public defenders, part of a publicly funded office devoted to nothing but the criminal defense of those who cannot afford to hire their own attorney(s). Some are private practitioners whose practices may be devoted to criminal law, but sometimes their practices are a mix of other areas of law as well. As with any area of public service, some appointed counsel are better than others and, in capital cases especially, funding for the costs of investigation and pretrial preparation is almost always an issue. Many defendants and their families are convinced that a court-appointed counsel is not as capable as retained counsel, and families will incur significant debts to hire counsel, but there is no guarantee that privately retained counsel will be more effective.

[19]For example, all five of the young black men arrested and convicted of the infamous 1989 Central Park jogger rape confessed to the crime; in 2002, all five were freed based on newly tested DNA evidence.

The prosecutor's office must have enough evidence to convince a court that the defendant probably committed the crime (known as a *prima facie* case) in order to proceed toward trial. In some state and federal cases, this may include presenting the evidence to a Grand Jury[20] to get an indictment. In other states, the prosecutor has the discretion to proceed when he/she thinks there is enough evidence and then must present a preliminary case to a judge to test the prosecutor's case. This "preliminary hearing" is usually conducted early in the process, soon after arrest, especially if the defendant is being held in jail. The defense and the prosecution may also present pre-trial motions at this hearing to exclude or include evidence, and to set up special rules for how the case will be tried, or these motions may be made closer to the beginning of trial.

If, prior to trial, the court rules that significant evidence must be suppressed – for instance, that a confession must be suppressed because the police coerced the defendant into confessing – the prosecution's case may be so weakened that the case will be dismissed at this stage, or the charges will be reduced.

Also before trial, the defense may make a pre-trial motion regarding the defendant's competency to stand trial, or may enter a "not guilty by reason of insanity" (or equivalent) plea. And, since the US Supreme Court's 2002 decision in *Atkins v. Virginia* in which the Court declared unconstitutional executing the mentally retarded, some capitally-charged defendants will move for a determination that he/she is mentally retarded. In these cases special proceedings are held, according to the procedural rules of the state. Many states will not hold an *Atkins* hearing until the jury has already found the defendant guilty of the charged murder and special circumstances.

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[20] The Grand Jury is distinguished from the trial jury (officially know as the *petit jury*). Those who serve on Grand Juries are chosen from the same population as the petit jury, but they serve for a period of time, reviewing a number of cases. As compared to the trial, the Grand Jury's proceedings are secret. The American Bar Association website includes the following commentary on the Grand Jury: "The original purpose of the grand jury was to act as a buffer between the king (and his prosecutors) and the citizens. Critics argue that this safeguarding role has been erased, and the grand jury simply acts as a rubber stamp for the prosecutor.

"Since the role of the grand jury is only to determine probable cause, there is no need for the jury to hear all the evidence, or even conflicting evidence. It is left to the good faith of the prosecutor to present conflicting evidence." More information may be found at http://www.abanet.org/media/faqjury.html.

As the case develops, the prosecution must decide whether to seek the death penalty. Most murders do not qualify legally for the death penalty; among those that do, it is up to the prosecutor to choose which ones deserve a possible death sentence. This "prosecutorial discretion" accounts for wide disparities in seeking death within a state, from county to county, and even within counties. If the prosecution decides they will seek the death penalty, they need to officially notify the court and the defendant (and his/her lawyers) in a timely manner. Exactly what a "timely manner" is varies from state to state, and state laws vary in how detailed the notice must be, giving more or less information to the defendant, which in turn will influence trial preparation.

There is also a process known as "discovery" (the process varies from state to state) in which information (evidence) that the prosecution knows is shared with the defense (and sometimes the other way around). The prosecution is required to disclose all *exculpatory* evidence (evidence that tends to support the defendant's innocence) to the defense. Failure to disclose discovery is one of the most frequently cited causes for reversal by appellate courts, whether the failure to disclose was intentional *or* inadvertent.

Finally, during the pretrial period (which, in death penalty cases, can be many months or even several years), the defense counsel needs to prepare for trial. In other words, the defense must conduct its own investigation of the crime. This investigation is more complicated than for a non-capital trial both because the stakes are higher and because in death penalty cases there end up being two trials (which will be described in greater detail below): the *guilt phase* to determine if the defendant is guilty, and the *penalty phase* to determine if the death penalty should be imposed. Defense lawyers have a constitutional duty to investigate the possible defenses they could use in both of these trials, so to prepare for the guilt phase, defense counsel may end up conducting independent tests of evidence gathered by the prosecution at the crime scene, interviewing witnesses, scrutinizing police records and the discovery produced by the prosecution, locating and preparing expert witnesses, and so on. And to prepare for the penalty phase the defense needs to find ways to present the defendant to the jury as an individual, to help the jury understand why the crime happened, and/or convince the jury that the defendant should not be put to death.

Jury Selection

Once all this takes place, the case is ready to go to trial. Trial begins with selecting a jury, a complicated and sometimes lengthy process in capital cases. Prospective jurors are randomly chosen (usually from voter registration lists), and are often asked to complete a multi-page questionnaire intended to uncover reasons the person might not be able to sit as an impartial judge of the facts of the case. This is usually followed by extensive questioning by the trial judge and attorneys from both sides, in an attempt to empanel a jury (and a number of alternates) who can fairly judge the case.

Generally speaking, the jury is supposed to represent a fair cross-section of the community, including (or at least not specifically excluding) both men and women of the various races present in the community. In capital cases, however, the jury must also be "death qualified." This means that the jurors must express their willingness to consider voting for death if the jury later finds that the defendant is guilty of capital murder. In other words, they must also be willing to recommend the death penalty if they deem it appropriate during the penalty phase of the trial (more on that later). Anyone who declares that he or she cannot impose the death penalty, and even people who express sufficient reluctance to do so, will be dismissed "for cause" from the jury in a capital case. The Supreme Court has reasoned that a juror must be able to follow the law; capital punishment is the law in 38 states; and if a juror reveals that he or she will be very reluctant to vote for the death penalty, he or she is unable to follow the law.

In addition to "for cause" challenges, both the prosecutor and defense counsel have a number of "peremptory challenges," which can be used to exclude jurors either side feels will not be sympathetic to his or her client (the People or the defendant). These generally need not be explained, unless a pattern appears causing the other side to believe that the opposing counsel is trying to exclude a particular group from the jury.[21] For example, prosecutors have tended to believe that African-American jurors are more likely to favor the defendant, and have sometimes used peremptory challenges to

[21] Challenges based on improper use of peremptory challenges can be raised against either the prosecution or the defense; the vast majority however are raised by defendants against the prosecution.

remove blacks from the jury. When such a pattern appears, defense counsel may ask the trial judge to require the prosecutor to explain why he or she dismissed the black jurors. If the prosecutor cannot provide believable reasons other than the race of the juror, the trial court (or appellate court) must fashion a remedy, perhaps starting jury selection over. Prosecutors often point to one or more of the juror's answers that suggest ambivalence toward the death penalty, or some other non-racial characteristic that the prosecutor argues indicates "softness" toward conviction and/or capital punishment. These are acceptable reasons for excusing a juror. The result of death qualification and dismissals through exercise of peremptory challenges is that death penalty opponents and even those who merely express reluctance to impose the ultimate punishment are usually dismissed from juries in capital cases. The resulting jury is, some argue, not only willing to impose the death penalty, but more likely to convict the defendant of a capital offense. Others have argued (unsuccessfully) that the resulting jury no longer represents a cross-section of the community.

Guilt Phase of the Trial

Once the jury is selected, the first evidentiary portion of the trial takes place, the "guilt/innocence phase." As this phase begins, there is a "presumption of innocence," that is, the defendant is presumed to be innocent of the crime(s) charged and it is the prosecution's job to prove "beyond reasonable doubt" that the defendant is guilty of a crime charged. The jury is instructed that this presumption is to be maintained until all of the evidence has been received.

The prosecution and the defense make opening statements, present evidence (and attempt to discredit the opposition's evidence) by questioning witnesses and presenting experts and physical evidence. Counsel get to make closing arguments, and in most jurisdictions the prosecution is permitted to give both a closing argument *and then* a rebuttal following defense counsel's closing argument.[22]

[22] Theoretically the prosecution has the more difficult task, to prove guilt beyond a reasonable doubt, so they are given the final word before the jury goes off to deliberate. In some jurisdictions, for the same reasons, the prosecution simply gets to offer their closing argument last.

After closing arguments are completed, the judge instructs the jury, reading carefully crafted (but often archaic and impenetrable) statements of applicable law. These explain what it means, according to the local laws, to be guilty of the specific crime charged. The instructions are also an attempt to define difficult legal terms and concepts such as "reasonable doubt" and "intent to kill." Once the judge gives the instructions, the jury retires to deliberate.

The first question the jury decides is, "Has the prosecution proven, beyond reasonable doubt, that the defendant is guilty of a charged crime?" If they unanimously vote "no," the defendant is found not guilty and is freed.

Sometimes the prosecution will charge the defendant with (or the defendant will request instructions on) more than one crime (for instance, both first and second degree murder). The lower degree of crime is a "lesser included" crime: A lesser included crime has all but one or more of the same elements as the higher degree of crime.[23] The jury must decide if the defendant is guilty of each of the charged crimes. If, in this example, the jury unanimously finds the defendant guilty of second degree murder but not of first degree murder, the judge will sentence the defendant according to the law in that jurisdiction with regard to second degree murder.

Sometimes, the jury cannot unanimously agree on the defendant's guilt or on the degree of crime; this is what is commonly known as a "hung jury." If a jury cannot decide, it is then up to the prosecutor to decide whether to proceed with a new trial against the defendant.

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[23] For instance, a jury may find that a defendant killed the victim, but the jury may *not* be able to find that the defendant intended to kill (required for first degree murder) and instead find that the defendant acted recklessly (which would mean the defendant is guilty of a lesser degree of murder).

In some states, the jury[24] must not only find defendant guilty of the underlying charge, but must then also decide if "special circumstances" (in some states called "aggravating circumstances" and in others called "aggravating factors") exist in order for that crime to be eligible for the death penalty. In these cases, if the jury decides that special circumstances do not exist, then the judge sentences the defendant according to the state's laws for that underlying crime (in the earlier example, for non-capital first degree murder). This usually means a sentence of "life" or many years in prison. "Life" may or may not mean that the defendant is eligible for parole at some point in the future; again, it depends on the laws of that jurisdiction and the defendant's criminal record.

If, however, the jury finds that the defendant is guilty of a crime for which , in that jurisdiction, the death penalty could be imposed (in some jurisdictions, this includes finding that "special circumstances" do exist), the defendant must face the penalty phase of the trial, where the jury will decide whether he or she will be sentenced to death or a lesser sentence.[25]

Penalty Phase of the Trial

The penalty phase is essentially a second trial presented to the jury,[26] only instead of arguing guilt or innocence, the prosecution is arguing that the defendant is deserving of death and the defense is arguing that a lesser sentence in prison is a sufficient punishment. As in the guilt/innocence phase, the prosecution and defense make

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[24] In June 2002, the Supreme Court decided a very important case, *Ring v. Arizona*. In its decision, the Court held that any fact that could increase the sentence for which the defendant may be subjected must be found by a jury. In capital trials, this means that any fact necessary to make the defendant eligible for the death penalty, including aggravators or special circumstances, must be found by a jury, not by a judge or judges (unless the defendant waives the right). However, in June 2004, in *Schriro v. Summerlin*, the Court ruled that *Ring* was not retroactive, thereby denying new sentencing hearings for dozens of death row inmates in Arizona, Idaho, Montana and Nebraska whose sentences were originally handed down by judges. (DPIC, http://www.deathpenaltyinfo.org/article.php?scid=38&did=247 (22 August 2007).)

[25] In some jurisdictions, the jury only recommends the sentence to the judge; judges rarely, however, deviate from the jury's recommendation. In most jurisdictions, only two penalties are available to the jury at the penalty phase: life without parole or death.

[26] Here, again, *Ring v. Arizona* has impacted how this part of the case is carried out. The decision requires that the jury (not a judge alone) decides if the death penalty should be imposed.

their opening statements and then present their evidence. The prosecution will present "aggravating factors," that is, reasons they think the defendant is deserving of death. These are quite strictly limited by the laws of the particular jurisdiction, and may include the defendant's prior convictions (past criminal history), other prior "bad acts" (attempting to show that the defendant is violent and dangerous), and "victim impact evidence" (how the crime has impacted individuals who had a relationship with the victim).[27] These "aggravating factors" should not be confused with the "special circumstances" or "aggravating circumstances" or "aggravating factors" previously discussed that in some jurisdiction are necessary to make a crime eligible for the death penalty. The confusion of wording is the result of having multiple jurisdictions with their own laws.

The defense then presents "mitigating factors," or reasons why the defendant should not receive the death penalty. Mitigation is evidence that does not attempt to excuse the defendant's conduct, but rather explains it when innocence is no longer the issue. The defendant's claims of innocence are not presented as evidence in mitigation, but defendants often argue that death should not be imposed if the jury has *any* lingering doubt about the conviction, even though the degree of doubt was not sufficient to be considered "a reasonable doubt" (that would have required a not guilty vote) during the guilt/innocence phase of the trial. Other mitigating evidence that the defense might present includes: social history (childhood and family issues), evidence of psychological or neuropsychological impairments, defendant's lack of criminal history, remorse, the defendant's age, the effects of alcohol and/or other drugs taken at the time the crime was committed, and any other reasons the defendant should not receive the death penalty. In comparison to aggravating factors, there are fewer limits on the defense presentation of mitigation evidence.

Expert witnesses such as psychologists and psychiatrists are often called upon to examine the defendant and testify regarding their findings. Family members will be called to describe the conditions

[27] It should be noted that, in most states, while juries are instructed not to consider sympathy for the victims as evidence in aggravation, prosecutors are permitted to present the testimony of family members and sometimes friends as "circumstances of the crime." The jury is unlikely to forget the pain and suffering of the victim's family when they consider whether the defendant should be sentenced to death. You can't unring a bell.

under which the defendant grew up, what he or she was like before the crime, before some particular event changed the defendant's life (e.g., a tour in Vietnam, a head injury, introduction to drugs, etc.). Neighbors and friends may be called to testify to good deeds the defendant performed, or to confirm the family's stories about the family's conditions when the defendant was a child.

Again, at the end of this phase of the trial the defense and the prosecution make their closing arguments. The judge gives the jury another set of instructions, specifically for the penalty phase of the trial. The jury retires to consider the aggravating and mitigating circumstances surrounding the crime and the defendant and returns with a decision (or in some jurisdictions a recommendation to the judge) about whether or not to impose death. In some states, the jury may have to decide what the penalty will be if it is not death; in some states the only alternative to death is automatic (e.g., life in prison or life without the possibility of parole); in other states the judge decides the penalty if the jury votes against death. There are other variations as well.

Following the jury's presentation of its recommended sentence, the judge formally pronounces sentence – sometimes months later. Motions for a new trial and to modify the sentence are also heard at this time. The judge will often review a report prepared by the probation department about the defendant and his/her amenability to rehabilitation. The judge also hears (or receives) victim statements at this time.

Finally, the judge pronounces judgment and the sentence is officially entered. As stated earlier, some states require that the judge follow the jury's recommendation regardless of what it is. However, in other states, the judge may impose a lesser sentence than death and in these states there is a theoretical possibility that a probation report or victim's family statement may sway the judge in a merciful direction – but this rarely happens.

Appeals

Once someone is convicted of a crime, the presumption of innocence no longer applies. In post-conviction proceedings, the defendant must show that there is a reason for the conviction to be overturned. Generally, these reasons have to do with procedure: improper jury selection, jury misconduct, ineffective assistance of trial counsel, prosecutorial misconduct, errors in legal decisions the trial

judge made, etc. The defense may argue that there was insufficient evidence for a jury to find the defendant guilty in the first place or that there is new evidence that should be considered. However, most states have time limits (some as short as three weeks) to bring some of these issues forward, and there are numerous procedural rules for filing appeals which, if not followed *exactly*, can cause the issue to be lost forever in the appeals process.

The laws governing the appeals process vary widely from state to state. Some require that appeals to higher courts wait until motions for new trial and/or modification of the sentence are heard in the trial court. The defendant will then seek a hearing in a higher state court. Some states have appellate courts devoted exclusively to criminal cases; in others, death penalty appeals are heard by the same appellate courts that hear contract, business, and dissolution (divorce) cases. In many states, the post-conviction proceedings are separated into two parts: an appeal, in which errors which are apparent from the record of the trial (the briefs filed by the parties, written rulings by the trial court, physical evidence, and the transcripts of oral proceedings at trial) may be raised, and a "petition for writ of habeas corpus," in which evidence discovered after the trial concluded may be presented to support claims that the conviction or sentence are improper.

When the state courts have had an opportunity to rule on a defendant's claims, a defendant may move to the federal courts, by filing a new petition for habeas corpus. In this pleading, the defendant, called a "petitioner" at this stage, presents claims that the state court procedures violated the federal Constitution in some manner. Amazingly, in *Re Herrera* (1993), the Supreme Court ruled that a petitioner's claim of actual innocence was not sufficient to win a new trial. The Court announced that if the state court procedure by which the petitioner was convicted and sentenced was "fair," as defined by the Supreme Court, the federal courts may not reverse the conviction, even if the petitioner makes a claim that he or she is actually innocent, unless the petitioner's proof of actual innocence is extremely convincing.

Laws governing federal habeas corpus proceedings have become very complicated since the passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which went into effect in 1996. A petitioner begins by filing a petition in a federal district court. If that court rejects the petition, the petitioner must obtain permission

to appeal to the federal circuit court from either the judge who just denied the petition or from the circuit court. If the circuit court hears the appeal, but denies the petition, the petitioner may file a "petition for writ of certiorari" in the US Supreme Court; very few of these petitions are even accepted for consideration by the Supreme Court, and even fewer win relief from that Court. (Petitioners may also file a petition for writ of certiorari directly to the US Supreme Court after their state court appeals have come to an end, prior to seeking relief in the lower federal courts.)

The AEDPA was enacted by Congress for the stated purpose of limiting the number of trips through the federal system a single petitioner may make. The most significant change caused by the AEDPA was, however, imposing on the federal courts a narrow "standard of review" (the grounds on which a federal court may grant a petition for relief). Prior to the AEDPA, federal courts could review state court determinations of law[28] *de novo* (as though no state court ruling had been made). If the federal court concluded the state court's determination of law was incorrect, it could reverse and order the case back to state court for correction, usually by holding a new trial. Now, the AEDPA's standard of review requires the federal courts to *defer* to the state court's determinations, and in *Williams v. Taylor*, the US Supreme Court ruled that this deference standard means that the federal court cannot order a new trial unless the state court errors were "contrary to or an unreasonable application of clearly established federal law." Thus, it is not enough that the federal court concludes that the state court ruling was wrong; it must find that the state court acted *unreasonably* or *disregarded* federal law. In later decisions, the US Supreme Court has issued opinions that demonstrate what constitutes an unreasonable application and that define "clearly established federal law" to be only pronouncements of the Supreme Court; federal circuit court decisions do not constitute "clearly established federal law."

Another goal of the AEDPA was to shorten the amount of time for federal review. This was accomplished by shortening the statute of limitations, the period within which the defendant must file a substantive pleading at the next court level. The AEDPA also

[28] Even before the AEDPA, federal courts deferred to state court findings of *fact*. Reversals for factual errors were (and are) available only if a defendant can show that the state court's findings were unreasonable.

contained a provision by which an individual state could seek to "opt in" to even shorter time limits; no state actually "opted in" to these provisions.

In an effort to make the "opt in" provisions more available, the 2006 reauthorization of the USA Patriot Act included a provision that gives the U.S. Attorney General the power (taking it away from the federal courts) to decide whether individual states qualify to "opt in" by providing adequate counsel for defendants in death penalty cases. If promulgated, the regulations that remained open to public comment in August 2007 (when this essay was last updated) will further shorten the time death row inmates have to appeal convictions to the federal courts. They will allow states to request "fast track" procedures that would shorten the appeals process and effectively speed up executions.

Clemency

If the death sentence is not overturned during post-conviction proceedings, the last hope for the condemned is executive clemency, a reduction of sentence (or freedom) given by the governor[29] or the President of the United States (though, again, restrictions exist and procedures vary from jurisdiction to jurisdiction). In the case of the federal death penalty (civil and military), only the President has the authority to grant clemency or give a pardon. Clemency petitions present reasons this defendant should not be killed, either appealing for mercy or arguing (again) that the conviction and/or sentence were incorrect, and in the interests of justice, this person must be spared. Grants of clemency always have been rare, but in the past few decades (with a significant exception in 2003[30]) have become virtually unknown.

Executions

Prior to an execution, in addition to filing the clemency petition with the Governor or President, defense attorneys continue to file last minute appeals to persuade the courts to "stay" the execution. During this intense period where a life hangs in the balance, courts

[29] The exact rules around the granting of clemency also vary from state to state. Sometimes the governor decides. Sometimes a pardons/parole board must recommend it. Sometimes the governor and such a board work together.

[30] This significant exception was the 2003 commutation of the death sentences of all 153 inmates on the Illinois Death Row by outgoing Governor Ryan.

sometimes, even within minutes of a scheduled execution, stop the process in order to review documents or issues developed during the clemency investigation or by defense attorneys who have been able to discover new information. When an execution is "stayed," the court usually holds a hearing to determine why the death sentence should not be carried out. Most often, these stays merely postpone the execution for a period of time. Eventually, the legal challenges come to an end, and the execution is carried out.

The capital punishment process takes years to reach an execution. Many people are needed in this process, becoming involved at various stages from the beginning to the end. As the execution nears, the involvement becomes very intense, and often includes spiritual advisors who spend time with the condemned in the weeks, days and hours before execution. Some also witness the execution.

Currently in the United States legal means of execution are "lethal injection," electrocution (the "electric chair"), cyanide gas poisoning (the "gas chamber"), hanging, and firing squad. In recent years, lethal injection and electrocution have been the only methods actually employed. Lethal injection is the default method; other means are possible in some jurisdictions, but (in some cases) only if lethal injection were declared unconstitutional or (in some cases) when chosen by the defendant.

Why the Death Penalty is More Expensive than Life Imprisonment

By Richard C. Dieter[31]

Introduction

Beyond the fiscal considerations, costs are central to the debate on the death penalty for two reasons:

First, when we discuss the death penalty, what we are really talking about is the safety of the community. There are many ways to make the community safer, and most of these have costs associated with them. There is no bottomless pot of government money to be spent on things that might help the community. The more we spend on one project, the less there is available for other worthwhile endeavors.

So, if it turns out that the death penalty costs more than life imprisonment then it must be paid for at the expense of other projects. Or to put it another way, the extra money spent on the death penalty could be spent on other means of making the community safer: better lighting in crime areas, more police on the streets, perhaps longer periods of incarceration for some offenders, or on projects to reduce unemployment.

Second, the costs of the death penalty are central because they play the key role in how the death penalty is implemented. Supporters and opponents of the death penalty agree that a system of capital punishment should not take unnecessary risks with innocent lives and should be applied with a strict sense of fairness. In releasing its report on the death penalty in Illinois in April 2002, Gov. Ryan's blue ribbon commission stressed that many of their recommendations for implementing the death penalty would require increased state expenditures.[32] As with many things, the death penalty on the cheap is really no bargain. There is no abstract dollar figure for the cost of the death penalty – it depends on what kind of death penalty you want.

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[32] Report of the Governor's Commission on Capital Punishment (Illinois, released April 15, 2002).

Cost Studies

Figuring out how much the death penalty costs turns out to be a deceptively complex subject: it's like trying to put a dollar figure on heart disease – it's easy to state the question, but complicated to answer. Nevertheless, there have been some studies by government agencies, by the media, and by independent researchers that create a clearer picture.

The studies differ widely in the states they cover, in their level of sophistication, and in the assumptions they make. The surprising result, however, is that they have all come to the same conclusion, and their estimates of the costs are fairly close to each other. In fact, I am aware of no careful study that contradicts the conclusion that a death penalty system is considerably more expensive than a system in which life imprisonment is the most severe punishment.

Common Parameters of the Studies

Before I discuss the actual estimates for the costs of the death penalty, I think it would be helpful to point out some commonalties in these studies. Typically, cost studies state their conclusions in terms of the net cost **per execution**. None of these studies focus on the costs of the actual execution, which represents a negligible amount compared to the costs of getting to that point. The cost per execution is merely a convenient way of expressing the total expense in a rate that is comparable from state to state.

Most of these studies do not simply look at the costs of an isolated case. Rather the best analysis compares a system in which the death penalty is employed to a system dealing with similar crimes in which a life sentence is the most severe punishment allowed. At every step of the analysis, the question is asked: how much more, or less, does the system with the death penalty cost compared to the other system?

There is no doubt that the death penalty costs more in all the steps leading up to an execution. Everything that is needed for an ordinary trial is needed for a death penalty case, only more so:

- more pre-trial time will be needed to prepare: cases typically take a year to come to trial
- more pre-trial motions will be filed and answered
- more experts will be hired

- probably two attorneys will be appointed for the defense, and a comparable team for the prosecution, compared to one in a non-death penalty case
- jurors will have to be individually quizzed on their views about the death penalty
- they are more likely to be sequestered
- two trials instead of one will be conducted: one for guilt and one for punishment
- the trial will be longer: the cost study at Duke University estimated that death penalty trials take 3 to 5 times longer than typical murder trials
- and then will come a series of appeals during which the inmates are held in the high security of death row.

It is only **after an execution** that the death penalty might actually cost less than a non-death penalty system. However, few cases result in execution, so the savings are relatively small.

The bulk of the costs of the death penalty come **not** from the cases that end in executions, but rather from the many cases which end shy of the death penalty being carried out. The death penalty is only imposed in a fraction of the cases in which it is sought. Death penalty cases may end in a plea bargain with a lesser sentence, they may end in a trial with a verdict of acquittal or of guilt to a lesser offense, or they may end with a life sentence even when death was an option. But because they began as death penalty cases, the meter of higher expense is running all the time.

Even more importantly, if the record for the past 25 years is any gauge, then very few of the death sentences that are handed down will ever be carried out. Roughly speaking, there have been about 7,000 death sentences since the death penalty was reinstated, and a little over 700 executions carried out.[33]

The recent study by Professor James Liebman of Columbia Law School found that over 2/3 of death penalty cases are overturned on appeal.[34] And when these cases are retried, over 80% of the defendants receive a sentence of less than death. Only about 5% of the sentences resulted in executions. The excellent cost study

[33] See "Capital Punishment 2000," Bureau of Justice Statistics (Dec. 2001), at p.15.
[34] James S. Liebman, "A Broken System: Error Rates in Capital Cases," (Columbia Univ. June, 2000) (Executive Summary).

conducted at Duke University similarly applied an execution rate of 10% in calculating the costs in North Carolina.[35]

What this means is that the cost of the death penalty is so high because it is an incredibly inefficient system. The only possible financial saving occurs after there is an execution. From that point on, the state does not have to pay the costs of housing and caring for the inmate, while in the non-death penalty jurisdiction, the costs continue as the life sentence is served.

But in the majority of cases, the state pays both ways: it pays the extra expense of seeking the death penalty, and then, because the death penalty is carried out in only about 10% of the cases, it also pays the costs of imprisonment. This explains why the death penalty, as a system, costs so much.

One final important point about the better cost studies: many of the costs of the death penalty do not appear as line items in the budget. It is not accurate to say that the time spent by the prosecution, by the judges, and even in some instances by the defense, could be calculated as no expense because, if these participants weren't doing death penalty cases, they would still have to be paid the same. This ignores what the studies call "opportunity costs." Time is money. If a prosecutor or judge works longer on a case because it is a death penalty case, then those hours are not available for other work. The same is true for the judge's staff, and even for the square feet of the courtroom used for the trial. If death penalty cases take more time, then that time difference is a net cost measured in the hours of all the participants.

How Much Does the Death Penalty Cost?

The major cost studies on the death penalty all indicate that it is much more expensive than a system where the most severe sentence is life in prison:

- The most comprehensive study conducted in this country found that the death penalty costs North Carolina $2.16 million per execution over the costs of a non-death penalty system imposing a maximum sentence of imprisonment for life.[36] As I mentioned

[35] P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University (May 1993), at p.98.

[36] P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University (May 1993).

earlier, these findings are sensitive to the number of executions the state carries out. However, the authors noted that even if the death penalty was 100% efficient, i.e., if every death sentence resulted in an execution, the **extra** costs to the taxpayers would still be $216,000 per execution.

- Some years ago, the *Miami Herald* estimated that the costs of the death penalty in Florida were $3.2 million per execution, based on the rate of executions at that time.[37] Florida's death penalty system has bogged down for a number of reasons, including a controversy over the electric chair. As a result, a more recent estimate of the costs in Florida by the *Palm Beach Post* found a much higher cost per execution: Florida spends $51 million a year above and beyond what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out from 1976 to 2000, that amounts to a cost of $24 million for each execution.[38]
- In Texas, the *Dallas Morning News* concluded that a death penalty case costs an average of $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.[39]
- The *Sacramento Bee* found that death penalty costs California $90 million annually beyond the ordinary costs of the justice system – $78 million of that total is incurred at the trial level. Since California has averaged much less than one execution per year, the costs per execution are astronomical.[40]

A variety of other studies in New York, Kansas, Nebraska and on the federal level also found high expenses associated with the death penalty, though none of these calculated the costs throughout the whole process. In a report from the Judicial Conference of the United States on the costs of the **federal death penalty**, it was reported that defense costs were about 4 times higher in cases where death was sought than in comparable cases where death was not sought. Moreover, the **prosecution** costs in death cases were 67%

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[37] D. Von Drehle, "Bottom Line: Life in Prison One-sixth as Expensive," The Miami Herald, July 10, 1988, at 12A.
[38] S. V. Date, "The High Price of Killing Killers," Palm Beach Post, Jan. 4, 2000, at 1A.
[39] C. Hoppe, "Executions Cost Texas Millions," Dallas Morning News, March 8, 1992, at 1A.
[40] S. Maganini, "Closing Death Row Would Save State $90 Million a Year," Sacramento Bee, March 28, 1988, at 1.

higher than the defense costs, even before including the investigative costs of law enforcement agencies.[41]

An article published in the *Wall Street Journal* in 2002 noted that in states where counties are chiefly responsible for prosecuting capital cases, the expenses can put an extraordinary burden on local budgets, comparable to that caused by a natural disaster.[42] Katherine Baicker at Dartmouth published a study concerning the "Budgetary Repercussions of Capital Convictions" and concluded that the capital cases have a "large negative shock" on county budgets, often requiring an increase in taxes. She estimated the extra expenses to be $1.6 billion over a 15-year period.[43]

The net effect of this burden on counties is a widely disparate and somewhat arbitrary use of the death penalty. "Rich" counties that can afford the high costs of the death penalty may seek this punishment often, while poorer counties may never seek it at all, settling for life sentences instead. In some areas, this geographical disparity can have racial effects, as well, depending on the geographical location of racial minorities within the state.

Even counties that do pursue capital cases have found that they have had to cut back on other services such as libraries, ambulances, or even patrol cars for the police. Some counties have approached the brink of bankruptcy because of one death penalty case that has to be done over a second or third time.[44]

Many of the costs of the death penalty are inescapable and are likely to increase in the near future, as the demands for a more reliable and fairer system are heard. The majority of the costs occur at the trial level, and cannot easily be streamlined or reduced. The Illinois Commission on Capital Punishment suggested one significant way to radically **reduce** the cost of the death penalty: don't make mistakes during the trial. The greatest waste and inefficiency of the

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[41] See, "Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation," Judicial Conference of the United States (May 1998).

[42] R. Gold, "Counties Struggle with High Cost of Prosecuting Death-Penalty Cases," Wall St. Journal, Jan. 9, 2002.

[43] K. Baicker, "The Budgetary Repercussions of Capital Convictions," National Bureau of Economic Research, Working Paper 8382, July 2001.

[44] See generally, R. Dieter, "Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty," (revised edit., 1994) (available from the Death Penalty Information Center).

death penalty occurs when cases are not done correctly during the "main event" – the trial. And states and counties that tend to use the death penalty disproportionately more often than other places, tend to have the most errors – and hence the most added costs.

[Editor's note: For more articles on the costs associated with the death penalty and life imprisonment without parole, see http://justice.uaa.alaska.edu/death/issues.html, a University of Alaska Anchorage website, and scroll down to "Cost of the Death Penalty."]

Is the Death Penalty a Deterrent?

by Lloyd Steffen[45]

Pro-Deterrence

Does the death penalty actually save lives and prevent murder? A major argument in support of the death penalty is that it does affect a life-enhancing value for society because it stands as a deterrent to murder and thus saves lives. The reason is simple: fear of death. Whatever is most feared will most effectively deter, and the prospect of having one's own life taken for the crime of taking a life will, the argument goes, prevent the unlawful taking of life.

The deterrence argument rests on the valid idea that society has the highest interest in preserving life and preventing the unlawful taking of life. Preventing murder can be accomplished by threatening a societal response to murder with the strongest punishment it has available, death. The psychological arousal created as potential murderers contemplate their own deaths by the legal authorities can, the argument goes, actually prevent a potentially murderous act from proceeding, and in that is the deterrent effect. And in the deterrent effect is the true value of the death penalty punishment – that it can actually effect prevention of murder.

A 1973 study by Isaac Ehrlich claimed that 7 lives were saved by deterrence for every life lost by execution, but while these results are not conclusive and controversy surrounds the deterrent effect, of one deterrent effect there can be no doubt whatsoever: a person executed for the crime of murder will be decisively deterred from ever committing murder again. Those who hold to the deterrent position argue that the benefits to society of a deterrent effect is best produced by swift and certain executions. The slow pace of executions debilitates the deterrent effect, so those who hold to the deterrent argument usually advocate eliminating protracted legal maneuvering and lengthy appeals for persons convicted of capital crimes.

Anti-Deterrence

Those who oppose the deterrent argument as a justification for the death penalty point to several factors. First of all, a burden of

[45] Lloyd Steffen is University Chaplain and Professor of Ethics at Lehigh University. These arguments were written by him for this curriculum in 2003.

proof that there is a deterrent effect falls on those who want to justify state killing through this argument, but no such proof is available. The Ehrlich study has been discredited by criminologists, and some have even pointed out that the brutalizing effect of capital punishment on society actually aggravates murder: murder rates are higher in states that have the death penalty compared to those that do not. Likewise, murder rates in countries like the United States that have the death penalty are much higher than in countries that have abolished it. Canada's murder rate plummeted 23% after it abolished the death penalty in 1976, and its murder rate is three times lower than that of the United States. (See http://www.deathpenaltyinfo.org/article.php?did=167&scid=12).

Most death penalty supporters have abandoned the deterrence argument as an effective and persuasive argument. Furthermore, the psychological arousal that would prevent a potential murder is not effected as proponents argue. Those who commit murder usually do so for one of two reasons: they either proceed oblivious to consequences, overcome by rage and passion; or, in more deliberate cases, individuals believe they will evade legal authorities and get away with their crime, which in fact does happen as cases either lead to no prosecutions due to lack of evidence, or innocent persons are accused, tried and convicted. In neither situation is a deterrent effect detectable.

Supporters of the death penalty have simply failed to produce even anecdotal evidence from someone who has experienced the deterrent effect, and they never seem to offer support from personal experience (e.g., "I would have killed my spouse, but then I contemplated the death penalty and put down the gun"). So saturated with violence is contemporary American society that the idea that a lethal injection, a method of execution that is medicalized and sanitized, could provoke sufficient horror to prevent a murder from taking place, seems ludicrous.

There is no discernible deterrent effect and no case for it can overcome the burden of proof it must meet. No evidence has ever come forward to suggest that execution is a better deterrent than a life sentence, and there are suggestions that the execution practice may even allure and incite unstable persons to murder because of its sensational character.

Innocence and the Death Penalty

By Jeffrey Spencer[46]

There are really two types of innocence and guilt in the United States: legal/criminal and actual/factual. Our legal system assumes that a defendant is innocent of a crime until the state proves beyond a reasonable doubt that the person is guilty. Obviously, in a given trial the state may fail to prove the guilt of someone who is actually, factually guilty, so that person is legally or criminally innocent. Though the reverse is not supposed to happen, it certainly can. People who are actually, factually innocent are found guilty.

It can be argued that no *legally* innocent person has been executed since 1976. Only those who have been found guilty in a court of law are executed. However, a 1987 article in the Stanford Law Review, written by Hugo Bedau (a philosophy professor at Tufts University) and others, claims that 23 innocent people have been executed in the United States in the 1900s. It should be noted that there were only 68 executions in the United States between 1976 and 1986, so it is not too surprising that only one of these 23 was executed since 1976. That one is James Adams, executed by Florida in 1984.

According to an August 2000 *Boston Globe* article, "Adams was arrested shortly after the robbery and murder of a Florida rancher in 1974. Though there are questions about eyewitnesses and physical evidence in the case, Adams was found with the victim's eyeglasses, and with money and clothing stained with the victim's type blood, in his possession. A witness saw Adams's car parked at the victim's house at the time of the crime."[47]

Bedau does not claim that Adams is *actually* innocent, only that there are sufficient questions as to his actual guilt that he probably should have been found *legally* innocent (and therefore not executed).

But what about *actually* innocent people? Have any *actually* innocent people been executed since the death penalty was reinstated?

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[46] This essay was written in 2003 and updated in 2007.

[47] John Aloysius Farrell, "Cry of 'Innocent!' trumps moral claim," *The Boston Sunday Globe*, August 27, 2000, p. F1,3.

We know that *actually* innocent people are sentenced to death. Here are but three examples:

- "Walter McMillian, who had spent nearly six years on death row in Alabama for a murder he did not commit, was released after three witnesses recanted their testimony and prosecutors acknowledged he had been wrongfully convicted."[48]
- "In 1989 Randall Dale Adams escaped execution by only three days when Texas authorities overturned his murder conviction and released him. He had spent 12 years on death row. In the same year, Florida officials released James Richardson, who had spent 21 years in custody for murders he did not commit and had come within 24 hours of execution. Judicial misconduct has been cited in his case. In 1990, after nine years on death row and twice coming within days of execution, Clarence Lee Brandley was freed by the state of Texas. Judge Perry Pickett said, 'The court unequivocally concludes that the color of Clarence Brandley's skin was a substantial factor which pervaded all aspects of the State's capital prosecution of him.'"[49]
- "Kirk Bloodsworth … was convicted of raping and killing a 9-year-old Baltimore girl in 1984. He had been placed at the scene by several eyewitnesses, who picked him out of a police lineup. The jury took just two hours to find him guilty, and he was condemned to death. It was not until 1994 that Edward Blake, a pioneer in the new science of forensic DNA analysis, tested a tiny semen stain on the victim's underwear and proved Bloodsworth innocent."[50]

The Death Penalty Information Center lists the names of 124 condemned people who have been freed from death row between 1976 and May 11, 2007.[51] In 2000, Dudley Sharp of Justice For All, a Texas-based victims' rights group, claimed that only a third of the then approximately 90 exonerated were *actually* innocent; the rest are only *legally* innocent.[52] Even if Sharp's estimates are right, that still means we have almost killed over 80 actually innocent people. But this, of course, is only an estimate.

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[48] Amnesty International USA's website, http://www.aiusa.org/abolish/factsinnocence.html (17 August 2000).
[49] *Ibid.*
[50] Farrell, *op. cit.*
[51] See http://www.deathpenaltyinfo.org/article.php?scid=6&did=110 (22 August 2007).
[52] Farrell, *op. cit.*

While we can clearly show that people who are actually innocent are convicted and *sentenced* to death (over 100 of them have been released from prison), it is very difficult to prove conclusively that a person who is actually innocent has been *executed* since 1976. One of the challenges of proving the actually innocence of someone who has already been executed is the states' opposition to reopening these cases. In a handful of cases DNA evidence still exists that might prove the actual innocence of someone who has been executed, but states regularly fight organizations that seek permission to do DNA tests. Exactly where this resistance comes from is a matter of speculation.

In the spring of 2007, the National Coalition to Abolish the Death Penalty released a report, "Innocent and Executed."[53] It details why they think Carlos DeLuna (executed December 7, 1989), Larry Griffin (executed June 21, 1995), Rugen Cantu (executed August 24, 1993), and Todd Willingham (executed February 17, 2004) are all actually innocent.

There is an old adage in American criminal justice: It is better to let nine guilty people go free than to imprison one innocent person.

[53] https://secure.democracyinaction.org/dia/organizationsORG/ncadp/images/ InnocentAndExecuted.pdf (22 August 2007).

An Eye For An Eye

By Jeffrey Spencer[54]

The old adage, "an eye for an eye" appears only three times in the Torah. Known in academic circles as the *lex talionis*, the first appearance is Exodus 21:23-25. The context is, strangely enough, rather specific – if people, while fighting, injure a pregnant woman causing a miscarriage *and* some other injury, then, in addition to paying a fine for the miscarriage, those who cause the additional injury should suffer similar injury.

The second appearance is Leviticus 24:19-20. The meaning is quite clear. "Anyone who maims another shall suffer the same injury in return: fracture for fracture, eye for eye, tooth for tooth; the injury inflicted is the injury to be suffered."[55] There are three important elements to its context. The first is what we would now call criminal justice – what to do when someone hurts another or another's property. The second is a broader sense of justice – in verse 22 the Israelites are instructed to have one law for both aliens and citizens. The third is the larger and most important (at least to the ancient Israelites) context of honoring God – what to do when a person blasphemes the Name of God. In this largest context, the passage seems to be saying, just as we will have one law that is appropriate and just for both Israelite and alien in personal matters, we will have one law for both Israelite and alien who dishonor God that will be just, appropriate, and proportional.

The third appearance of the *lex talionis* is Deuteronomy 19:21. In this context, the issue seems to be one of courtroom justice and deterrence. Beginning at verse 15, the reading says information from more than one source is needed to convict someone of a crime. Further, false testimony needs to be dealt with just as strictly as would have been the offense the false testimony charges. Verse 20 is perhaps a bit unclear: "The rest [of the community] shall hear and be afraid, and a crime such as this shall never again be committed among you." The crime that will be deterred seems to be the crime of falsely accusing someone of something. To these criminals, to those who falsely accuse, we are to "show no pity: life for life, eye for eye,

[54] This essay was written in 2001.

[55] All scriptures quoted in his essay are from the *New Revised Standard Version* of the Bible.

tooth for tooth, hand for hand, foot for foot." (v 21) Not very surprising when one of the Ten Commandments is a prohibition on "bearing false witness."

It is also important to remember that when these laws were given, there was not a civil institution of law enforcement as we now know it. Nor was the *lex talionis* systematically implemented in the ancient world. According to Professor Lane McGaughy, "The practice of retaliation stems from tribal societies without any system of law enforcement. In such anomic situations, relatives were duty-bound to seek revenge on behalf of injured family members and perpetual blood feuds often resulted. The introduction of law codes in the ancient Near East ca. 2000 BCE served to curb such tribal practices by replacing blood vengeance with a system of fines. The earliest extant usage of the *lex talionis* occurs in the Code of Hammurabi (18th century BCE): of the 283 laws contained in the code, only three reflect the principle of the talion, ##196, 197, and 200. Furthermore, there is no historical evidence that the talion was actually implemented in any legal case in the ancient Near East."[56]

McGaughy goes on to say, "Recent comparative legal studies by J. J. Findelstein and S. Paul have … shown, as a matter of fact, that the purpose of the talion, in a feudal society, was … to protect slaves and members of the lower classes from capricious treatment by their superiors. … In short, the codification of the talion was intended to place limits on capital punishment, rather than to endorse it."[57]

Given this ancient social context, one might wonder what Moses would say about justice and the *lex talionis* in contemporary American culture.

[56] From "Statement on the Principle of the Talion," written by Lane C. McGaughy, Atkinson Professor of Religious & Ethical Studies, Willamette University, on May 16, 1983.
[57] *Ibid.*

Pro and Con on two Christian Scriptures

John 8:1-11[58]

Pro:

This passage could be interpreted to support a pro-death penalty position by noting that Jesus does not address the death penalty explicitly, and Jesus nowhere in the gospels explicitly opposes capital punishment. Furthermore, the argument could be made that as the story concludes Jesus actually allows the idea of the execution by law to stand. This argument would proceed as follows:

This passage in the Gospel of John is obviously not about the death penalty nor Jesus' using the situation as a teaching moment to clarify his position on the execution practice. The story, rather, is about a trap or, as the Scriptures put it, a "test" designed to get Jesus in trouble with either secular or religious legal authorities.

A woman who has been caught in the act of adultery is brought to Jesus. There is no question about her guilt. Jesus would violate the Roman law if he advocated her stoning, because adultery was not a capital offense under Roman law. But in the Mosaic law, adultery was a capital offense: "If a man commits adultery with the wife of his neighbor, both the adulterer and the adulteress shall be put to death" (Lev. 20:10; see also Deut. 22:22). Jesus response, "Let him who is without sin cast the first stone," avoids violating either law, for his response neither advocates her execution nor opposes it; so the story is about Jesus' wisdom and compassion rather than about the death penalty.

However, Jesus could be seen as upholding the Mosaic law in that he does not say to those present that they should repudiate the Mosaic law or the execution practice. In fact, he seems in verse 8 to support the idea of throwing a stone but only if a certain condition is met, namely, that those who would throw the stone be without sin. Jesus, then, does not repudiate the law and appears even to support the Mosaic teaching, even if his teaching is designed to move beyond legal matters toward forgiveness and non-condemnation.

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[58] The arguments published here, Pro and Con on John 8:1-11, were written by Lloyd Steffen in 2003 for this *Reader* and are used by permission of the author. To read an interpretation of this passage of scripture written by a proponent of the death penalty, see the Probe Ministries article "Capital Punishment" by Kerby Anderson, as posted at http://www.leaderu.com/orgs/probe/docs/cap-pun.html.

Con:

We should not focus simply on what Jesus said in response to the test with which he was confronted. We should focus on what he did, how he acted, and what the outcome of his words and actions were. As a general rule, people reveal their beliefs and attitudes by what they do and how they act, and we must connect Jesus' words and teachings to what actually happens in the story.

Jesus is confronted with a "test" where a woman's life is at stake. She is guilty, and the Mosaic teaching, which Jesus as a Jew would have both known and accepted, clearly prescribes the punishment for her offense. Jesus, through his teaching activity, radically transforms the moment by re-presenting the situation, and the effect of this action is to prevent an imminent and legal execution from taking place. The effect of his teaching moment is to inhibit those who would stone a person guilty of violating the law, and thus sinning by acting as if they were themselves free from guilt and somehow superior to the adulteress.

Jesus in this story presents himself as being on the side of preserving life, and he demands that those who would take life do so from a position of moral and spiritual perfection. Obviously, that is a position no human can attain or hold. Jesus' position could endorse the idea that this woman's life could be taken by one who was "without sin," so that if God wanted this woman's life in punishment for her offense, God, being perfect, could justifiably *require* it – but no human being, mired in imperfection and sin, could *take* it. The effect of what Jesus says and thus does prevents an execution. We can infer reasonably and justifiably that this was the outcome Jesus wanted. Jesus acted to prevent the execution, and in that action he exposed his own opposition to the execution laws. This interpretation is further enhanced by the teaching moment he has with the adulteress as the story concludes. Jesus asserts his ethic of compassion, non-condemnation, and forgiveness in order to support the woman as she undertakes to redirect her life. In order for her to change, an end Jesus seems to want, she must be alive. He thus opposed her execution and stood between her and her executioners in order that she might live and find a new life: "… go and do not sin again" (John 8:11b, RSV).

Romans 13:1-7

Pro: [59]

Romans 13:1-7 … teaches that human government is ordained by God and that the civil magistrate is a minister of God. We are to obey government for we are taught that government does not bear the sword in vain. The fact that the Apostle Paul used the image of the sword further supports the idea that capital punishment was to be used by government in the New Testament age as well. Rather than abolish the idea of the death penalty, Paul uses the emblem of the Roman sword to reinforce the idea of capital punishment.

Con: [60]

Various scholars [e.g. Johannes Friedrich, et al, and John Howard Yoder] say that Paul wrote this letter in the context of a tax rebellion. Some had rebelled against a new tax Nero was collecting, resulting in Christians being kicked out of Rome. Paul is urging his readers to pay the Roman taxes and not to participate in another tax rebellion. Further, they suggest that the Greek in Romans 13:4 translated 'sword' (*machairan*) does not name the instrument used in capital punishment. It names the symbol of authority carried by the police who accompanied tax collectors. But even if the specifics of this scholarship is wrong, it seems highly unlikely that Paul, a man under sentence of death who followed a savior who was unjustly executed, would be arguing in favor of the death penalty.

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[59] By Kerby Anderson, Probe Ministries, "Capital Punishment", http://www.leaderu.com/orgs/probe/docs/cap-pun.html (22 August 2007). Used by permission of the author.

[60] By Jeffrey Spencer, written for this *Reader* (based on Glen H. Stassen "Biblical Teaching on Capital Punishment" in *Capital Punishment: A Reader*, edited by Glen H. Stassen (The Pilgrim Press, Cleveland, Ohio, ©1998 by Glen H. Stassen. p 126; and thoughts and writings by Rev. Lloyd Steffen, *Executing Justice: The Moral Meaning of the Death Penalty*, (The Pilgrim Press, Cleveland, Ohio, © 1998 by Lloyd Steffen), p. 151.)

Death Row Biographies

The following biographies were gleaned from information provided by the National Coalition to Abolish the Death Penalty's "Execution Alerts," issued from February to June, 2001. Used by permission of the NCADP; compiled by Jeffrey Spencer. Disposition of the cases was added from information (unless otherwise footnoted) gathered from www.deathpenaltyinfo.org (22 August 2007).

Stanley Lingar – Missouri[61]

Stanley Lingar was executed by lethal injection on February 2, 2001, for the January 5, 1985 murder of Thomas Scott Allen. Lingar, who was 22-years-old at the time of the murder, and friend, 18-year-old David Smith, picked up Allen by the side of the road where he had run out of gas. Lingar did not have a criminal history prior to his arrest for the murder of Allen.

Lingar was also physically abused by his alcoholic father and suffered sexual abuse at the hands of his cousin from the age of five into his teens. He had a history of and received treatment for blackouts, dizziness, and severe headaches since the age of eight.

There is evidence that Lingar had a history of alcohol abuse dating back to age 16. In addition, Lingar had numerous psychological disorders. Prison testing indicated that Lingar suffered from acute paranoid disorder (marked by delusions, hallucinations, and grossly disorganized behavior), anxiety disorder, Dysthymia disorder (chronic depression), and passive/dependent personality disorder (a long-term, chronic condition).

During the penalty phase of his trial, Lingar's attorney argued that his capacity to appreciate the wrongfulness of his conduct was impaired by alcohol, he was young when the murder occurred, and he had been helpful and loving towards his family before the crime. However, Lingar's abusive childhood, mental disabilities, potential to be rehabilitated through treatment, and documented remorse for the crime were never introduced.

Additionally, there are legitimate concerns regarding Lingar's mental capacity because scores on intelligence tests indicate that he was borderline mentally retarded. The state's theory that Lingar masterminded the kidnapping and was the triggerman is undermined by the fact that he was borderline mentally retarded and was

[61] February 2001 Execution Alert

diagnosed with passive/dependent personality disorder. Smith was demonstrably more intelligent, and may have lied about his involvement to save himself.

During the penalty phase, the prosecution attempted to incite the jury, which was drawn from a rural area, by calling Smith to testify about Lingar's homosexual relationship with him. Lingar's attorney asked the court to prohibit the State from introducing any evidence of homosexuality because such evidence is irrelevant, immaterial, highly prejudicial, and inflammatory. In response, the State claimed that this information was relevant because it showed one of the circumstances of the crime, an aspect of Lingar's character, and a motive for the murder. The defense continued to fight for the exclusion of this questionable information because there was absolutely no evidence to indicate that it was a motive. Also, evidence concerning Lingar's homosexuality was not presented during the guilt phase of the trial, despite the fact that it was critical to the State's theory of motive for homicide. Defense argued that admission of testimony regarding Lingar's private, personal sexual preference would serve no purpose, aside from arousing the stereotypical image of the homosexual predator in the minds of the jurors. The court overruled Lingar's objection and he was sentenced to die.

James Malicoat – Oklahoma[62]

James Malicoat was executed by lethal injection on August 31, 2006, for the February 1997 killing of his thirteenth-month old daughter.

Since he was a young child, James Malicoat had been exposed to widespread abuse from his mother and stepfather. At the age of five, James received a "whooping" from his stepfather, Sonny Malicoat, for not weeding the garden correctly. Sonny would frequently throw James in a chicken coop with fighting roosters to teach him not to be afraid of the roosters. James's screaming could be heard from over 100 feet away. Sonny also frequently abused James with wrenches, pitchfork handles, and cattle prods. In addition to the abuse from his stepfather, James's mother Reta McCurley

[62] *Ibid.*

admitted to hitting James at least three times a month, in addition to choking and slapping him for raising his voice.

In addition to the abuse directed at James, Sonny routinely threatened to kill Reta. Reta initially left Sonny following a beating with a 2 x 4 board that James suffered at Sonny's hands, after which she secured an emergency protective order. Reta would repeatedly leave and return to Sonny following further ordeals, only to leave for the last time in June of 1989.

During the trial defense expert Wanda Draper testified that James Malicoat was a product of his own upbringing. The patterns of abuse he witnessed and experienced became ingrained into his basic nature. Concerning the abuse that James's daughter Tessa experienced, Dr. Draper testified that James did not understand why he abused her. She said the acts of abuse towards Tessa were impulsive outbursts he had learned over time, not premeditated acts. Concerning how James perceived his abuse towards Tessa, Dr. Draper remarked, "He didn't understand. He just impulsively acted."

Antonio Richardson – Missouri[63]

Antonio (Tony) Richardson was condemned to death for accessory to murder of Julie Kerry in April of 1991. Richardson was only 16 years old at the time of the murder. At the time, the United States was one of only a few countries that executes juveniles (along with other countries such as Iran and Iraq).

Richardson's upbringing could be labeled as nothing but tragic. Tony's natural father never accepted Tony as a son and refused to be involved with any part of his life. Tony's upbringing was marked by poverty. He spent much of his life living in a one-room apartment with his mother and three other brothers. Throughout his childhood Tony and his brothers were subjected to their mother's drug and alcohol abuse in which their mother would often abandon them for weeks at a time while she co-habited with various boyfriends.

Richardson has a sub-par intelligence level. When tested by The St. Louis Special School District, Richardson had an average IQ of 70 at the age of 13. The cut-off point for mental retardation is 70. Richardson's brain functions at the level of a third grader. Mentally

[63] March 2001 Execution Alert

challenged individuals often confess to crimes they did not commit and are also known to have little will of their own. As a result, they can easily be misled by others. This could explain why Richardson did not object to any of the actions that were committed. Intellectual and neuropsychological testing revealed that Richardson did not know the difference between a lake and an ocean. He could not name the country or even the state that he lived in. Additional tests showed that Richardson's ability to cope with everyday life in the areas of communication and social skills ranked equivalently with someone seven years, nine months in age.

Antonio Richardson's death sentence was commuted to life in prison without parole on October 28, 2003, by the Missouri Supreme Court, and he no longer faces the death penalty. The Court based its ruling on the 2002 US Supreme Court decision in *Ring v. Arizona*.[64]

Robert Clayton – Oklahoma[65]

Robert Clayton was convicted, partly due to ineffective assistance of counsel, for the 1985 murder of Rhonda Timmons. He was executed by lethal injection on March 1, 2001.

Clayton grew up in a poor, alcoholic family. He was one of 9 children and dropped out of school in eighth grade. He was mentally retarded with an IQ of 68.

Clayton's trial was fraught with error. He should have never been convicted because he was not capable of understanding the proceedings. Nonetheless, a retrospective competency hearing was held six years after the trial and he was then found to be competent.

Important evidence including a bloody sock, which now could be tested for DNA, has been lost. In addition, during the sentencing phase of the trial, the prosecution was allowed to present a woman who said that Clayton had raped her. The testimony was meant to support the argument of future dangerousness. Clayton had never been charged or convicted for the alleged rape.

"If he had some kind of defense, he would not have been convicted," wrote one of the jurors to the judge after the trial.

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[64] American Bar Association, http://www.abanet.org/crimjust/juvjus/richardson.html (22 August 2007).

[65] March 2001 Execution Alert.

Clayton's attorney, Ron Wallace, did not want the case and failed to adequately prepare for it. He never called a psychologist, nor did he answer calls from his client.

Robert Clayton's family wanted to bring his body home after the execution but they did not have the money for the transportation and funeral.

Dennis Dowthitt – Texas[66]

Dennis Dowthitt was executed on March 7, 2001 by lethal injection for the June 13, 1990 murder of Gracie Purnhagen, the girlfriend of his son, Delton. Meanwhile, Delton was charged with the murder of Purnhagen's sister, Tiffany. Delton pleaded guilty to the charge and entered into a plea agreement with the State – he was sentenced to 45 years and testified against his father at trial. In addition, the second murder charge for Gracie's death was dropped, even though there is reason to believe that Delton (not Dennis) murdered her. According to a signed declaration by Dowthitt's nephew, Billy Sherman Dowthitt, Delton confessed to killing his Gracie. James Dowthitt also signed an affidavit confirming his son Billy's statements.

Another witness may have come forward if he had not been intimidated. David Tipps, Delton's jailmate, would have testified that Delton confessed to killing both girls; however, after a visit from two State investigators, Tipps refused to testify. Joseph Ward, Dowhitt's state habeas investigator, stated in an affidavit that Tipps would not sign an affidavit out of fear for his life. Tipps never testified, yet during the guilt/innocence phase of the trial, the jury was allowed to hear testimony from Darla Dowthitt. The State failed to disclose that Darla was under felony indictment for indecency with a child when she testified for the prosecution.

During the penalty phase of the trial, Dowthitt's attorney failed to introduce Dowthitt's psychological disorders and mental deficiency as mitigating factors. In his petition for federal habeas relief, Dowthitt revealed records not discovered by trial counsel, which indicate that he suffers from mental illness. A 1964 readmission form from Austin State Hospital shows that a young Dowthitt was diagnosed as having

[66] *Ibid*.

a "schizophrenic reaction" of a "chronic paranoid type". He was temporarily committed. The admission history also states that when Dowthitt was hospitalized due to an automobile accident in August of 1962, tests showed brain damage. Statements made by Sergeant Walter Blakeslee on July 14, 1964 corroborate Dowthitt's limited mental capacity. Blakeslee recommended Dowthitt's discharge from the Air Force, stating "It was evident that Airman Dowthitt was suffering from some mental deficiency."

Recent examinations of Dowthitt by mental health experts Dr. Paula Lundberg-Love and Dr. Faye E. Sultan provide evidence of Dowthitt's chronic psychological problems. According to Lundberg-Love, Dowthitt's "profile was consistent with paranoid and schizophrenic features" and he suffers from depression. Sultan stated in her affidavit that Dowthitt has "severe mental problems" and that the trial mental health expert's "examination was cursory." She also wrote that Dowthitt "functions quite peacefully and successfully within the prison environment", which contradicts the predictions made at trial about his potential for future dangerousness. Dowthitt's petition on the grounds that information regarding his mental state was not introduced was denied – despite the fact that the jurors knew nothing of Dowthitt's history of mental illness and deficiency. They may have spared his life if they were aware of these mitigating factors. The defense did not introduce any psychological experts during the trial, yet the jury heard the State's expert witness, Dr. Walter Quijano. Another capital case has recently been reversed due to Dr. Quijano's improper testimony.

Dowthitt's attorney also failed to present mitigating evidence via family members during the punishment phase of the trial. The affidavits of Darlene Glover, Dowthitt's sister, Stacey Dowthitt, Dowthitt's step-son, and Danna Taft, Dowthitt's wife demonstrate that they would have testified to Dowthitt's abusive upbringing, his mental difficulties, and his close, loving relationship with some of his children. The jurors did not hear pivotal testimony at various points in the trial. They were not made aware of Delton's confession to several individuals, nor did they hear any of the mitigating factors, which could have spared Dowthitt's life.

Michael Moore – Texas[67]

Michael Moore was executed on January 9, 2002, by lethal injection for the murder of Christa Bentley, which was committed on February 26, 1994.

Moore had a tumultuous, abusive childhood. His father, Michael Francis Moore, was an alcoholic. Moore's mother, Gloria Steele, was just 18 years old when she became pregnant with him. Although she was pregnant, Moore's father continued his pattern of severe beatings. He was also verbally callous, telling his wife that "he was getting dressed … going out … and 'maybe I will get lucky.'" To further add fuel to the fire, Mr. Moore took Ms. Steele far away from her home in Copperas Cove, Texas to upstate New York. Being uprooted like this fueled bitterness in Ms. Steele toward the unborn child.

It was into this atmosphere that Michael Patrick Moore was born on September 16, 1963. He suffered early childhood diseases that caused him to cry "48 hours a day" and constantly vomit. His mother was left to tend to him alone because his father was out drinking and womanizing. The pressure of raising a sick child alone grew too intense for Ms. Steele, and she began to act out violently toward the baby. The abuse culminated in an attempt to end Moore's two-month old life by placing a pillow over his head. After this attempt on his life and as he grew older, Moore grew quiet. During the trial, his mother testified that "He would just sit and stare at the TV; he didn't run and play. He just sits there, he just sits there and stares."

Home life only deteriorated. To evade the constant beatings, and to escape her problems, Moore's mother began to "sleep all the time." During this time, which accounted for most of the day, she padlocked Moore in his room. Since no one ever checked on him, he would soil himself, which resulted in more brutal beatings. Finally, Steele took Moore to live with his maternal grandmother. But, he continued to be the child that no one cared for. He was ultimately rejected by his grandmother, as well as an aunt. Consequently, he was placed in Conner's Children's Home. He once walked twenty miles to see his mother, passing an area infested with drug dealers and prostitutes. Upon his arrival at home, Moore was not greeted by

[67] *Ibid.*

his family; rather, his mother called the Children's Home and told them to come get him.

Finally, at the age of 13, following years of separation, Moore arrived back with his mother because the Children's Home discharged him. According to his mother, "We didn't have a relationship as mother and son. He came home, and I didn't know what to do with him." Since she did not know how to properly care for her child, she resorted to her old habits – slapping, hitting, and constantly fighting with Moore. In school Moore was unable to form any meaningful relationships and was routinely beaten. He quit school at the age of 16.

Moore moved in with his uncle, but this arrangement also failed. He returned to his mother's house, where he was subjected to more verbal abuse. His mother ripped away any shreds of remaining confidence by telling him, "You screwed up again, you can't do anything right. This was the one chance you had to get ahead and you screwed it up, as usual." Shortly thereafter, Moore attempted suicide. After hospitalization, he entered the Navy. He ultimately earned an honorable discharge after nine years of service.

Meanwhile, Ms. Steele had remarried. Her new husband was in poor health, which forced the couple to move back to Copperas Cove, Texas, where Moore also settled after his discharge. During that time, his life seemed to stabilize – he was able to secure employment, as well as a fiancée. Two weeks before he was to be married, however, he found that his fiancée was seeing another man. Moore's mother summed up his life when she testified: "I feel that Michael is sick. He is definitely sick. It is because what I have done to him, and I don't believe that we should kill sick people … I think that we should put him somewhere where he will get some help, and I just don't think he should die for what I did. It's not his fault."

In addition to the testimony concerning his upbringing, Moore presented a number of witnesses who testified he was not violent or aggressive, including a Texas Department of Criminal Justice Employee and Dr. Windel Dickerson, a licensed psychologist and social worker at the Children's Home. He testified that Moore did well in a structured environment and would not be a threat in prison. According to Dickerson, Moore was afraid of other children and was not an aggressive child. Another psychologist also testified that Moore was the type of person who would do well in a prison environment. He stated that Moore would not be a predator while in

prison; rather, he was more likely to be a victim, as he had been throughout his life. Despite the evidence of Moore's horrific childhood and expert testimony that he would not be a danger in prison, the jury concluded there were not sufficient mitigating circumstances to warrant a life sentence.

Jay D. Scott – Ohio[68]

Jay D. Scott was executed on June 14, 2001 by lethal injection for the May 6, 1983 murder of Vinnie Prince.

Scott had a troubled childhood, growing up in an exceedingly violent, poverty-stricken environment. He was the sixth of eleven children whose father and mother were frequently absent and who separated when Scott was 14 years old. He lived in detention homes when he was 13 to 14 years old. His parents and his siblings abused alcohol and other drugs. The family lived in poverty so severe that oftentimes there was no heat. An aunt, neighbor, or governmental agency frequently had to supply the family with food.

Scott's father gambled away the little money the family had. To make matters worse, extreme violence between the parents and against the children was commonplace. Scott's father stabbed his mother. Scott and his siblings were tied to chairs and beaten. Later, Scott's mother's boyfriend also beat the children. One of Scott's brothers tried to intervene in a fight between his mother and her boyfriend and he was killed. One of Scott's sisters was shot to death. Another brother is a quadriplegic from a gunshot wound from his brother-in-law. And, one of Scott's sisters was acquitted of murder in the shooting death of a brother-in-law.

Tragically, violence and hardship were ever-present in Scott's life. Nevertheless, Scott was loyal to his family and tried to help his sisters, who were involved in abusive relationships and using drugs. Scott also tried to reunite estranged family members.

When he was younger, he attempted to protect his mother from his father's physical abuse. As he grew up, he tried to help children in the neighborhood and made efforts to "read books and study the law."

[68] April 2001 Execution Alert

When he able to secure steady employment, he provided for his girlfriend and her children. According to the testimony, he was looking for a job at the time of the offense and was always a good father to his son.

There is no doubt that Scott's life was harrowing and violence was pervasive in his experience. If only the jurors had been able to hear the testimony of Scott's family members and friends, they would have been made aware of the horrors and it is likely that they would have spared Scott's life. But, tragically, none of these voices were heard. His inadequate representation, compounded with the numerous other errors during the trial, including prosecutorial misconduct and misstatements by the judge, makes one wonder if Jay D. Scott ever really stood a chance.

Wayne Tompkins – Florida[69]

Wayne Tompkins is on Death Row[70] for the 1983 murder of Lisa DeCarr. Tompkins was convicted largely on the testimony of jailhouse snitch Kenneth Turco, a cellmate of Tompkins'. Turco testified that Tompkins confessed the murder to him. The jury was not informed of the highly suspicious nature of jailhouse testimony – inmates may be motivated by the belief that they will get reduced sentences in exchange for testifying against others.

According to a report issued by psychologist Dr. Patricia Fleming (which was never presented to the jury), Tompkins lived with a foster family from age 7 to 16. She stated that Tompkins suffered emotional deprivations because he was separated from his natural parents while growing up. To make matters worse, Tompkins suffered physical abuse at the hands of his foster father. For these eight years, Tompkins was regularly whipped and beaten. Although it is questionable whether or not he was ultimately successful, Tompkins' foster father attempted to sexually assault him. Tompkins lived with the daily fear that he would be violated. Dr. Fleming also revealed that Tompkins began drinking at age 17. Over the years, his addiction to alcohol steadily increased. At the time of his arrest,

[69] May 2001 Execution Alert

[70] Florida Department of Corrections, http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (22 August 2007).

he was drinking a half-gallon of whiskey and a half-case of beer every day. As a result, Tompkins suffered blackouts, memory loss, and related problems.

Dr. Fleming found that Tompkins was "in the borderline of mental functioning." She gave Tompkins tests that showed signs of brain damage. From these tests, Dr. Fleming found that Tompkins is "significantly and seriously impaired in higher levels of brain functioning" and "he becomes confused easily." Many other unfortunate events occurred in Tompkins' life, in addition to physical abuse and alcoholism, which could have contributed to his brain damage.

For example, Tompkins was left unsupervised many times during his childhood. On two separate occasions, Tompkins had to have his stomach pumped after he accidentally drank bleach and gasoline. Another time he choked on a marble and turned blue before it was dislodged. At age 17, Tompkins was struck by lightning while using the telephone. As if these instances did not cause enough damage, Tompkins also fell from roofs four times during his career as a roofer.

During the penalty phase of the trial, Tompkins' two older sisters and his brother-in-law, who had known him for fifteen years, testified. According to Tompkins' sisters, he was a very shy person, who never displayed any violent behavior, hurt anyone, or even used obscene language. Tompkins always worked to support himself up until the time of his arrest. He also managed to regularly send money to his mother. Tompkins had worked for his brother-in-law for four years in a roofing and construction business. He was a dependable, hard-working employee, who always arrived at work on time, followed orders, and displayed an eagerness to learn. Tompkins' brother-in-law never received any complaints from customers about him; he never got into any arguments with anyone.

Marilyn K. Plantz – Oklahoma[71]

On May 1, Oklahoma executed a woman for the second time in 2001. Marilyn Kay Plantz had been sentenced to death for the August 26, 1988 murder of her husband, James Plantz.

[71] *Ibid*.

The jurors were never made aware of many mitigating factors, because Plantz was not adequately represented. Evidence of her childhood, psychological profile, and low IQ were not presented during the penalty phase of the trial. Affidavits from Plantz's three sisters describe her childhood growing up in a poor household with six children. The family was without running water and all the children shared one tub of water to bathe. Plantz's father was abusive, domineering, and a strict disciplinarian. He was racist and moved his family to the isolated community of Pink, Oklahoma in order to avoid bussing. His rigid discipline caused his children to leave home as soon as possible.

Plantz married at the age of 16 in order to escape her father. Her situation at home was so dire that she was even willing to marry the man who raped her the previous year. Unfortunately, this is not surprising considering the unspeakable events that occurred in Plantz's childhood – she was forced to masturbate her brother, and on one occasion, she was beaten on the legs by her father with thorn branches, which caused severe bleeding. Plantz's sisters would have recounted this information, but they were not called to testify, and, regrettably, this information was never brought to light.

Additional mitigating circumstances could have also been heard from Dr. Pamela Fischer. Dr. Fischer determined that Plantz had a borderline IQ of 76, was inhibited in personal relationships and social situations, and exhibited signs of insecurity and fear of abandonment. Dr. Fischer concluded that Plantz's personality was not consistent with a criminal personality and her limited intellectual capacity indicated that it was "highly improbable" that she was capable of engineering a plan to murder her husband.

Juan Raul Garza – Federal[72]

Juan Raul Garza was convicted and sentenced to death in 1993 under the federal drug kingpin statute for three murders committed as part of a marijuana smuggling and distribution ring based in Brownsville, Texas. On December 8th 2000, four days from Garza's scheduled execution, President Clinton granted him a reprieve stating that, "Today I have decided to stay the execution of

[72] June 2001 Execution Alert

Juan Raul Garza, an inmate on federal death row, for 6 months, until June, 2001, to allow the Justice Department time to gather and properly analyze more information about racial and geographic disparities in the federal death penalty system."

Garza was executed by lethal injection on June 19, the second federal prisoner (following Timothy McVeigh on June 11) to be put to death by the United States government since 1963.

Garza's sentencing jury was never told that the alternative to a death sentence would be life without parole. Suggestions were made by the prosecution that Garza could potentially be released within 20 years if they did not return a death sentence. All other inmates on federal death row have had this explained to their sentencing juries and it is now mandatory to do so. Also at the sentencing phase of his trial, the government introduced evidence that Garza had committed four additional murders in Mexico, for which he was never arrested, prosecuted or convicted. Although the Mexican authorities were unable to solve any of the murders, the U.S. government sent customs agents to Mexico to re-investigate these closed cases.

At the guilt-finding phase of Garza's trial, the prosecution offered no physical evidence tying the defendant to the crimes. The only evidence linking him to the killings was the testimony of three accomplices, including the triggermen in some cases, who received substantially reduced sentences from the government in exchange for their testimony. "The government made deals with the devil. I think the government wanted to make Juan Raul Garza the poster child of the federal death penalty" says Philip Hilder, Garza's ex-attorney. Mr. Hilder further believes that the government rushed to judgment by not giving him enough time to prepare for Garza's trial.

No state or federal death sentence in the history of the modern era of capital punishment has been based on alleged foreign offenses for which a defendant was never prosecuted or convicted. On appeal, Garza unsuccessfully argued that differences in the laws between Mexico and the United States prevented him from challenging the reliability of the evidence of the four murders in Mexico that ultimately led to his death sentence.

On December 14, 1999, Garza filed a complaint with the Inter-American Commission on Human Rights (IACHR), arguing that his rights under international law were violated by the prosecution introducing the unsolved murders in Mexico at the sentencing phase of his trial. The IACHR ruled in favor of Garza ruling "that the State's

conduct in introducing evidence of unadjudicated foreign crimes during Mr. Garza's capital sentencing hearing was antithetical to the most basic and fundamental judicial guarantees applicable in attributing responsibility and punishment to individuals for crimes."

In addition, the European Parliament adopted a resolution urging the U.S. government to "grant clemency to Juan Garza and to impose an immediate moratorium on federal executions..." A recent study by the Department of Justice shows both racial and geographic disparities in the implementation of the Federal Death Penalty. From 1988 to 1994, the study found that federal prosecutors recommended the death penalty in 52 cases, and that 75 percent involved black defendants, 10 percent involved Hispanics, 2 percent involved Asians or American Indians and only 14 percent involved whites. Of the 19 defendants now awaiting execution under federal law, 15 are minorities. The disturbing results of the study have renewed the demands for a Federal Death Penalty Moratorium.

Jim Lowery – Indiana[73]

Jim Lowery was executed by lethal injection on June 27, 2001. He had been sentenced to death for the murder of Mark and Gertrude Thompson in their home on the night of September 30, 1979.

Lowery's early years were troubled. When he was only fourteen years old, he was punished because he stole a farmer's plow and plowed his field. The juvenile system didn't know what to do with him, so he was placed in a mental institution. He kept running away and going back home, in an attempt to help his younger siblings (his father was a raging alcoholic and was abusive to his mother.) Eventually they transferred him to the Norman Beatty mental hospital, which has long since closed but has a sad history of neglect and abuse of its patients.

Lowery and his wife had been employed by Mark and Gertrude Thompson to take care of them and their property. However, before the murder they were fired. For Lowery this meant the loss of his and his family's livelihood. Since the Thompsons forced them to leave the property, they also lost the rent-free trailer where they had lived. With

[73] *Ibid.*

no place to live and no income, Lowery and his family moved into an old school bus in a nearby campground.

On September 30, Lowery and his friend Jim Bennett drove to the Thompson's home to rob the couple. Lowery shot and killed Mark and Gertrude Thompson. He also shot Janet Brown, the Thompson's new caretaker, but didn't kill her. Lowery was arrested two days later and Bennett the day after that. The prosecution struck a deal with Bennett in exchange for his testimony against Lowery and a plea of guilty. The State also dropped its request for the death penalty against Bennett.

The jury convicted Lowery of the murders of Mark and Gertrude Thompson and the attempted murder of Janet Brown. At the sentencing phase of the trial, the prosecution argued for the death penalty, saying it was justified because the murders were committed during an attempted burglary and because there were multiple murders. Lowery's mother, father and youngest sibling testified on Lowery's behalf, as did a psychiatrist retained by the defense. Lowery also took the stand, admitting to the crimes. Nevertheless, the jury recommended the death penalty and the trial judge sentenced Lowery accordingly.

Lowery's conduct on death row was exemplary. At his post-conviction hearing, a prison official in charge of death row testified that the prison could not exist without inmates like Lowery. Jim Lowery had been on death row for more than twenty years.

Racial Discrimination and the Death Penalty in the United States

From Amnesty international USA's website
http://www.aiusa.org/abolish/racialprejudices.html
(17 August 2000). Used by permission.

[Editor's note: All too often issues of race in the United States are framed as a black/white issue. The racism faced by Latinos, Native Americans, and Asian Americans is often lost in the debate. There are probably many reasons for this, not the least of which are the history of slavery in the United States, the fact that until quite recently African Americans were the largest racial/ethnic minority group in the United States, and the fact that the government does not consider Latinos to be a racial group.[74] This article speaks only to the issue of how the death penalty system in the United States favors whites and discriminates against Blacks.]

Racial discrimination in use of the death penalty was recognized by the United States Supreme Court in 1972, and a Court ruling that year ended executions throughout the country. Four years later the Court upheld a 'guided-discretion' statute, and executions resumed again in 1977. Evidence compiled during recent years clearly shows continued systematic racial bias in states' discretionary use of the death penalty.

By July 1997, more than 3,269 men and women were imprisoned on death rows in the United States. The statistics on race clearly become significant when the race of the offender and that of the victim are considered. Although whites and blacks are victims of murder in approximately equal numbers, since 1977 the overwhelming majority of death row defendants, 80 percent, were executed for killing whites.

Blacks convicted of killing whites are far more likely than any other category of offender to receive a death sentence. Whites have rarely been sentenced to death for killing blacks, and, since the death penalty was reinstated, only 6 white persons have been executed for killing a black person. A study conducted by researchers from Northeastern University and the University of Florida in 1990 found that blacks convicted of killing whites in Florida were five times more

[74] "Race and Hispanic origin are considered two separate concepts and therefore Hispanics may be of any race or races." From the Census Bureau's website, http://eire.census.gov/popest/data/race.php (6 April 2003).

likely to receive death sentences than whites convicted of killing whites. In Texas, blacks found guilty of killing whites were found to be six times more likely to receive the death penalty than whites convicted of killing whites.

A study published in the Stanford Law Review in 1984 found similar disparities based on race in Arkansas, Florida, Georgia, Illinois, Mississippi, North Carolina, Oklahoma, and Virginia. Researchers found that in cases of white homicide victims, the defendant is between 2.3 and 9 times more likely to receive a death sentence than in cases of black victims.

The United States General Accounting Office released a report in early 1990 which found, even under present law, 'a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty.'

In March 1994 the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights issued a report showing that since 1988, in 9 out of 10 of the federal death penalty prosecutions the defendant was black or Hispanic.

The Death Penalty is Arbitrary and Unfair

Dorothy Streutker[75]

Let us consider a fairly typical murder case: The victim is a convenience store clerk. The defendant, John, is charged with first degree murder and a special circumstance (or aggravator) of murder committed during a robbery (felony murder).[76] Now, let us consider how John's fate is affected by adding some details to his case. For the sake of this discussion, let us assume that John is facing trial in one of the thirty-eight death penalty states.[77] Even though the murder was committed in one of these states, whether John will face the death penalty or not depends on many factors totally unrelated to John and to the crime.

Geography makes a big difference. If John is charged in Texas, he faces a strong likelihood of not only being convicted and sentenced to death, but also of being executed. Texas, which some assert has never executed an innocent person, has (as of January 1, 2003) executed 289 people since 1976. That is over 35 percent of all executions in the thirty-eight death penalty states. The next closest state is Virginia, with 87 executions, or 10.6 percent of the total.

Even geography within a death penalty state can make a difference. Consider California: If John faces trial in Riverside County, it is quite likely that he will be charged with a capital crime, convicted, and sentenced to death; this Inland Empire county, near Los Angeles, boasts 48 of the 610 inmates on California's death row (as of March 31, 2002). That is 7.7 percent of the condemned population, while Riverside County is home to only 4.6 percent of the state's population. By contrast, San Francisco County (which includes the City of San Francisco), with 2.3 percent of the state's

[75] This essay was written in 2003.

[76] There are more people on death row for felony murders than for any other single category of first-degree murder. In many jurisdictions, someone can be charged with first degree murder if someone dies during the commission of a felony (such as rape, burglary, and carjacking) even if the person charged did not actually kill this person. See footnote 12 for more information.

[77] Twelve states (plus the District of Columbia) do not have the death penalty. In these jurisdictions, no matter how heinous the crime, the person charged with the crime will not face death (but local laws allow it, may be imprisoned for life without the possibility of parole).

population, has sent only 3 people to death row – a mere 0.5 percent of the condemned.

These disparities in seeking the death penalty can be traced to the general political climate in a county or state, how forceful prosecutor or district attorney is, whether an election is coming up, local press coverage of criminal activity at the time, the influence of the victim's family or friends, economic factors, and other characteristics totally unrelated to the severity of the crime or the culpability of the defendant. Deciding whether to seek the death penalty is within the discretion of the prosecutor, if the facts of the case otherwise fit the state's definition of a capital crime. The murder of a child snatched from a home in an affluent neighborhood is more likely to result in a death penalty trial than the homicide of a prostitute snatched from her apartment on Skid Row.

Race can be another factor in whether the death penalty is sought or imposed. If John is an African-American and he is tried in Philadelphia, he is nearly *four times* more likely to be sentenced to death than if he were of another race. This shocking figure is from a study conducted by law professor David Baldus and statistician George Woodworth, in which they took into account differences such as the severity of the crime and the defendant's background. Though there are many factors contributing to this unfairness (which is not limited to Philadelphia), a study by researchers at St. Mary's University Law School in Texas reveals that only one percent of the chief district attorneys/prosecutors in counties using the death penalty in the United States are black; nearly 98 percent are white.

This is not to suggest, however, that the white prosecutors are all blatantly racist. Old-fashioned (we would like to hope) racial animus may play a part, but there are many more subtle influences that skew the numbers: For example, we know that economic and social circumstances affect a child's health and development. When learning disabilities or mental illness appear in a child in an affluent community, it is likely that tests will be conducted, records kept, and a treatment plan developed. If John was born to a poor African-American family in a disadvantaged neighborhood and school district, when John displayed symptoms of similar disabilities as a child, his deficits would probably go undiagnosed, unrecorded, and untreated.

If the first (richer) child were to be charged with a potentially capital murder as an adult, he or she would be able to present a social history that would tend to dissuade a prosecutor from seeking

death: If the prosecutor sought the death penalty, this defendant would be in a better position to present a convincing case in mitigation at the penalty phase, which might make the prosecutor less inclined to spend the time and effort seeking the death penalty in the first place. John, on the other hand, faces a much more difficult task: In order to present his defense in the penalty phase, his lawyer will have to piece together school records and recollections of teachers and neighbors, and track down friends and family members who may recall events in John's childhood that support the existence of a long-term mental illness or disability that was not diagnosed earlier. There may be family members who have similar mental disabilities, and the argument can be made that these problems run in the family. All these fragments must then be tied together in an untidy package and presented to the jury that just convicted John of first degree murder, in an effort to convince the jurors that he does not deserve death.

As illustrated by the notorious O.J. Simpson case, race may be less significant if you have the economic means to hire a team of highly talented lawyers and experts who can devote an enormous amount of time to your defense, probably outspending the prosecution by a significant amount. If John is like most capital defendants, though, he is destitute or will be soon after his arrest. If his family is supportive, and have any assets, they may try to hire a lawyer. O.J.'s "Dream Team" defense cost millions. John's family will not be able to gather millions, and the number of dedicated, talented attorneys who are available for the amount John's family can scrape together is limited, at best. And most, if not all, capital cases require more than just a single attorney. They require a team of investigators, paralegals, forensic experts, medical tests, support staff, and more.

John would probably be better off being assigned a public defender or appointed private counsel, who will be paid by the government and can usually request additional funds to hire the extra help needed to prepare the case. Courts do not have unlimited access to funds, though. Public defenders and appointed counsel are often under heavy caseloads that make it impossible to give a capital case the attention it needs. And, some are simply not good lawyers, whether due to lack of experience, lack of training, lack of talent, or lack of dedication.

In virtually every case, the prosecution outspends the defense, especially when the costs of law enforcement are included. Sheriff's

deputies and police officers are part of the prosecution team, but the coroner is also a government employee, forensic testing is often conducted in government laboratories, criminal records are obtained through the FBI and other government sources, and so on. The prosecution is under certain duties to disclose information to the defense, but not everything. What must be disclosed is often a matter of interpretation, and prosecutors, who are sometimes more interested in winning the case than in obtaining justice (or have gotten these two distinct goals hopelessly confused), will interpret their duty to disclose very narrowly.

John's tale and its variations could go on and on. If genetic material is gathered as a part of the investigation, DNA testing could exonerate John. But in many cases, no testable material is recovered. If it is, whether there is enough, and/or whether the prosecutor will turn it over for testing, and/or whether the state has laws requiring that it be independently tested, are variables that will affect John's fate. The rules of evidence and procedure leave much to the discretion of the trial judge, who can have an enormous influence on the result in John's case, and mistakes are not always correctable through the appellate process. If John is convicted, his case continues up through the state and federal judicial system, facing many of the same random variables that impacted the process up to his conviction, but after conviction John is no longer presumed innocent, but must prove to the courts that his trial was unfair and that he is entitled to a retrial, or a reduced sentence, or some other relief. Despite the heavier burden on the defendant after conviction, in many states there is less money available at this stage to do additional investigation, to pay attorneys for the many years of work that are required, etc.

As John's hypothetical case illustrates, the possibilities for errors and misjudgments are boundless, and the opportunities to correct the errors are severely limited. With such an uncertain system for deciding who should die, dare we impose a penalty that is absolute and irreversible?

A Son on Death Row

By Barbara Lewis[78]

It was the week before Mother's day and all was well. I was at a peak in my life, having recently received word that a job bid had been awarded me, increasing my pay a decent two dollars per hour. This would take me to the highest achievement possible since I only had a high school equivalency and some college courses. I had always worked two jobs since my divorce, but now the change was about to come. I had not been at this place in my life before so I was very happy.

I left work at 4:00 a.m. and stopped by the local Acme to pick up paper towels needed for my second job. Suddenly I was drawn to the aisle where greeting cards are found. My eyes fell on one section: "comfort." I picked up a card that read, "I'd like to take the hurt away, but sometimes we must hurt for a while. Know that I am always with you." I'm not the kind of person to buy nice cards and send them to people; even when I try my best, I just don't get around to it. Yet this card seemed to stay in my hand. I thought the card would be appropriate for my daughter; she had divorced recently and could use some encouraging words.

My world of happiness, though, was about to change forever. It was during these same hours, I later found out, that one of life's most horrible dreams had come to pass. Somewhere around midnight my only son's girlfriend of six years was silenced forever. My son was implicated in her death, was charged, and eventually sentenced to death.

Fate blessed me to receive the news when both my daughters and special friends were with me. It was then that I proceeded to give the card to my daughter. She read it and said, "Here, Mom, you bought this for yourself." I know now that the message inside was sent from a higher source who knows still my destiny. I often repeat the words from that card to get to the next moment of my life.

It is very hard sometimes now just to get up in the morning or to do simple things. You go to bed each night with the same prayer on your mind. "Please, Lord, help us all keep going." It can take twice

[78] Adapted from an article that originally appeared in *The Voice,* (Number 5, Summer 1995), the newsletter of Murder Victims Families for Reconciliation, and is reprinted with their permission.

as long to get dressed in the morning because your thoughts get caught up in the nightmare that just won't go away. And a part of you doesn't want the nightmare to go away – because that would feel like a betrayal of all the love you will always share with your child. It's all right that your dreams are shattered, but all hope is stripped away by the echo of the words "death penalty."

Where do you turn for help? You run to the church but the silence there lets you know that no help will greet you in your darkness. Suddenly, but slowly, you realize that it's just you, your maker and your own family that feel and understand your pain. Sometimes words fail you; an expression leads you to embrace each other. You hug each other to squeeze out that gnawing, aching pain that seems to steal in and cause your success to become failure.

I have tried several times to meet the qualifications necessary to go on with my career expansion. But my concentration is divided. I can't ignore the emotions that center around my son's case – and even about the lives of others caught up in crimes and the death penalty. Each time I get almost there, it becomes necessary to postpone completion. I am constantly concerned that I will plateau with my employer since I often must lose time from work due to illness or emotional treatment.

Holidays come, each one bringing its own pain and sadness. You struggle to get through without speaking about your pain, but before you realize it you are engaged in conversation about your situation – spoiling the happiness for others. Then embarrassment sets in and you want to be alone. Well meaning friends try to pull you out of your thoughts – and you can pretend it works for a while, but then your stomach gets sick, your mind won't work, and you find tears are coming from your eyes.

I often want to run away and hide, not for the shame of the crime, but from what I have learned from this experience. I've learned that it's not so much what you did, but who you are and how much you can afford to pay that matters. I've discovered the hopelessness that comes with realizing that, for those who need mercy, the golden rule has no place in this world. I've learned that, with a capital crime, the only recognized victims are the ones lost at the scene of the crime. It is unfortunate that the families of the accused are not recognized as having the greater loss – a loss that includes not just the prospect of our child's death by execution, but

the loss of pride and dignity, and the loss of friendships. Words cannot describe the suffering we experience.

I know in my heart that my son could have been the dead victim. If he had, I would not want another life to be taken at any cost. I can be certain of this because I have lost a favorite uncle, an eleven-year-old niece, and a twenty-five-year-old nephew.

I visit my son almost every week. He tries very hard to give something back to society, but we are still persecuted by the authorities at the prison where he is being held, currently in very unsanitary and degrading conditions.

I am proud that, despite being accused and found guilty of an unforgettable act of violence, he has reached out unselfishly to help others both inside and outside of the institution. He often is the strength of the family when our young children won't act as we teach them; he always manages to somehow tell us, "Don't give up."

I thank God for the time we have had since he has appealed his death sentence. The hardest period was last year when, over Thanksgiving weekend, he was granted a stay of an execution date that had been scheduled for December 2, 1994. More appeals are now in progress; I should be getting news soon. I pray for relief, yet my soul knows that many of my fellow citizens are unmoved by these kinds of tragedies until they spill over and touch them directly.

There is comfort in sharing with people who are aware that this could happen to anyone's family – who are aware that each person has natural limits before their tolerance level causes out-of-control reactions. I am grateful for those I met at a meeting of citizens opposed to the death penalty, a meeting held after the execution of another Delaware convict. I am also very grateful for my friend and chosen sister Anne Coleman. Anne, the mother of a murder victim, represents the light in the darkness. She has recognized what we try to impress upon all we meet – that forgiveness and reconciliation are far more valuable qualities than death and destruction of human life. While we know that not all death row prisoners should be given freedom again, we also know that no one should die by the hand of another. "Thou shalt not kill" is the law of God; when Christ bought our freedom with his life, He cautioned us to "Do unto others as ye would have them do unto you."

I'd like to thank all of my friends and acquaintances of the past year, especially MVFR members Sam Shepherd and Pat Bane, along with DCADP for their sincere responses and support during this dark

period of my life. I will always remember your phone calls, cards, and letters that encouraged me to keep going. Stay with me and each other.

Mercy, Compassion, and Forgiveness

By Kathy Dillon[79]

On October 24, 1974, my father, Emerson Dillon, was shot and killed in the line of duty on the New York State Thruway. He had been a New York State Trooper for 16 years.

The news about a robbery earlier that day had not yet been reported on his patrol car radio. My father pulled over a car, probably for speeding. Its two occupants had been involved in the robbery. They shot my father in the chest and left him to die on the side of the road. After a massive search, they were later apprehended and charged with murder.

I was 14 years old. I had five brothers and sisters, at that time ranging in age from 7 to 17. My mother was left alone to raise the six of us.

The death penalty was in place in New York state at that time. At the trial, it was the vote of one juror, who was opposed to the death penalty, that prevented an execution from occurring in New York state for the murder of my father.

I remember hearing my mother and godfather express their anger and disappointment that those who had murdered my father would not receive the death penalty. It was confusing for me to hear that. I had been born and raised a Catholic, so the seeds had already been planted that it was wrong to kill. Even at age 14, the death penalty didn't seem right to me because I knew it meant killing. I remember writing a letter to a friend at that time, saying that, even though some of the adults in my life were in favor of the death penalty, I didn't think it was the answer.

I must say that I am grateful for that lone juror whose vote said, "No more killing." For me, I believe it would have added to the horror, the trauma, and the pain surrounding my father's death, if I had had to come to terms with yet another murder – a state-sponsored murder, associated with my father's murder. For me, I know it would have done much more harm than good.

Ten years later, in July 1984, my boyfriend of four years was shot and killed. After a two-day search, Dave's body was found with

[79] This article originally appeared in *The Voice*, (Number 5, Summer 1995), the newsletter of Murder Victims Families for Reconciliation, and is reprinted with their permission.

a bullet wound in the head. Once again someone I loved had been left to die – this time on the side of a dirt road. At the time of his death, Dave Paul was 26, an engineer at IBM in Fishkill, NY. Neither his family nor I will ever know the answers to many of the questions that remain about Dave's death. We have only the memories of a kind and loving man whose life was cut short by a senseless act of bloodshed. Those involved in his murder served short sentences and then were released.

The truths so frequently put forth in opposition to the death penalty give plenty of reasons to reject it. Despite grieving the murders of two loved ones, I still feel that the death penalty is too violent in itself to be considered a solution to crime. If one of the inherent messages of the death penalty is to teach others not to kill, then more peaceful messages are needed to teach that – messages that reinforce the dignity and value of human beings. For those of us seeking a more peaceful world, the death penalty undermines our efforts with its outright violence.

Jesus' message is about mercy, compassion, and forgiveness. To be in favor of the death penalty is a blatant rejection of these teachings.

The pain, sadness and trauma experienced by family and friends when a loved one is murdered is multiplied exponentially when a state-sponsored execution is carried out as a sentence for murder. The executed person leaves behind his or her loved ones, who must suffer the loss. I believe that no one, including the family of the condemned, should have to suffer such grief as that suffered when a loved one is intentionally killed. I believe that neither my father nor Dave would wish on anyone the same pain that their families suffered when they were murdered.

To be in favor of the death penalty reflects a disregard for human life. It reflects the same kind of disregard for life that was shown to my father and Dave when they were murdered, for it too, is murder.

My two younger brothers are police officers, as is my brother-in-law. It is important to me that people understand that I deeply loved my father, that I love my brothers and that I respect police officers. That is neither negated nor lessened by virtue of my being opposed to the death penalty. It doesn't mean that I love or respect them any less than a person who is a proponent of the death penalty.

I believe that it is by faith and grace that I have arrived at this point where I have been spared the anger, vengeance, and bitterness that can consume the spirit. I have tried to stay grounded in my faith and in a basic commitment to non-violence. Sometimes I ask myself, "what am I supposed to learn from these two murders?" The answer, at least in part, has to be forgiveness.

We only hurt ourselves when we carry anger and vengeance in our hearts. The likelihood of reaching a place of reconciliation and forgiveness seems greater to me if the murderer is not put to death. It seems to me that all of the negative feelings could be frozen in time forever at the moment of execution. With the passage of time, forgiveness and reconciliation could occur. A face-to-face meeting, in the spirit of reconciliation, is still a possibility with those who killed my father. Perhaps one day I will be granted the strength and grace to do that. It could bring mutual healing. It would not even exist as a possibility had they received the death penalty.

Darkness Cannot Extinguish Light

By Hector Black[80]

When we entered the courtroom, there was a man who looked to be in his 30s sitting in the jury box. It occurred to me that this could be Ivan Simpson, the man who murdered and raped our daughter. At one point he looked in our direction, but I lowered my eyes, not wanting to look at him. If it was Ivan Simpson, I was not ready to meet his eyes. There were many familiar faces. Beona, Trish's father, two uncles, an uncle by marriage and his twin daughters, several people from Emmaus House where Trish went to church, some Friends from Quaker meeting, Harriet Coppage who also spent a year or more with us when she was a young girl.

There were two minor drug cases before ours and I studied this man who might be Ivan Simpson. His shoulders drooped, but he was strong, he hung his head except for the one time he looked over our way. I had written Judge Goger a 4-page letter about Trish and what she meant to us, and why we did not want the death penalty. I could see him looking over at us, trying to take our measure.

When the hearing began, the man in the jury box moved to one of the tables in front of the judge, and I knew it was he.

The District Attorney, Paul Howard, who had been so cold to our request that this not be a death penalty case sat next to me. After a couple of minutes he reached over and shook my hand.

I don't remember the sequence of events after this. The atmosphere was tense. I remember they wanted to be sure that Ivan Simpson understood what he was doing in pleading guilty. Then the charges were read. There were several times during the more painful parts of the hearing, that I remembered the friends and family who were thinking of us, and holding us in the Light and I felt uplifted. I thought of Trish several times and felt her close. This chronicle of all the terrible things Ivan Christopher Simpson had done to our daughter was extremely painful, although I had read most of them some months ago in the autopsy report.

Carla Anderson, the Victim Witness person, told us that we should feel free to leave the courtroom if this would be too much to hear. I just held Susie's hand and we wept quietly. I was grateful for my deafness which made some parts inaudible to me. At some point

[80] This essay was written in 2002.

after this, one of his lawyers read out some of the things that had happened to Ivan Simpson – that he had been born in a mental hospital, that his mother had repeatedly tried to drown him and his 3 siblings, and had succeeded in drowning one while he was present. That she had put another sibling in a coma from drowning. That he had been raped and nearly strangled to death by a brother. I could only hear parts of what was said.

I think after this Ivan Simpson was asked "How do you plead?" To each of the charges he quietly said "guilty," and the judge pronounced sentence for each charge. Life, 9 years, life, life.

At this point I think the judge asked if there were any victim impact statements to be read. Michelle, Trish's cousin, spoke first. She told of how she had learned of Trish's death watching the TV, of the agony she felt, the terrible loss, and she repeated several times "I hate you Ivan Simpson for this!" "I hate you Ivan Simpson for this!" She was standing with her twin sister and weeping. After she returned to her seat it was my turn.

I had my briefcase because a friend had suggested that I bring a couple of photos of Trish to show the judge. I asked the judge if I could approach the bench. "I have a couple of photographs with me. I would like to show them to you so that you would have an idea of who we are talking about here." He indicated that this would be OK. So I showed him a picture of Trish taken the summer before she was killed, and explained that the young white girl in the photo was the daughter of the woman who had tutored Trish when she was a child. She had come with her mother to visit Trish in Tennessee that summer. The other photo was of Trish as a child, maybe 10 years old, together with her sister and our daughters – all in dresses made of the same color and pattern. The judge thanked me for bringing them and looking at him, I could tell that I was dealing with a real human being who knew how much this pained me. That was a comfort.

Susie told me afterwards that a big sheriff had come up behind me to stop my approach to the judge, nearly grabbed me but someone else restrained him.

I read the following statement, improvising a little:

My name is Hector Black. This is my wife, Susie. We first met Patricia Ann Nuckles when she was a thin and neglected child of eight living with her mother and younger sister in Vine City. We moved to Vine City in

1965, working in a tutoring program established by the Atlanta Friends Meeting. Although Patricia was not our child by any claims of birth, she was our child by the very claim of love.

She lived with us and became a much-loved part of our family. She was one year older than the oldest of our three girls. Because my wife is handicapped and mostly confined to a wheelchair, our children all learned to help her with basic chores. Trisha also took her turn – it somehow put her on an equal footing with our other children. I can still hear her scolding her sisters when they tried to avoid helping. Trish always took her responsibilities seriously. She became our daughter, our children's sister. We watched for 35 years as she grew into a beautiful woman, beautiful in every way. We thought we were helping her, but as can happen when we give, we received far more from her than we gave. She was God's gift to our family.

She was not ashamed of her background. Rather, she used this experience to help others, especially children in the Emmaus House Program on Hank Aaron Drive, and in the public library in Kirkwood where she worked with children such as she had been. She wanted to make the world a better place, and she did.

November 21, 2000, was the darkest day our family has ever experienced. Our lives, mine and the lives of my wife and three daughters were changed forever as we learned piece by piece what had happened to Patricia, our daughter, our children's beloved sister. Every day we struggled to try to remember the beautiful and loving person she was, and drive out the horrible thoughts and visions of how she died. Many times it seemed as though the darkness was stronger than we were, that this terrible deed was so burned into our lives that we would never be able to celebrate who Patricia was. How much we loved her, and how much she loved us. I thought God had abandoned me.

About three months after Trish was killed, I remember looking at the table we had set out with photographs of her from different periods of her life. The one that caught my eye was a picture of her at about 9 years of age looking back over her shoulder with such a sweet expression on her face, and I smiled for the first time remembering her as a child. It was the first time I had looked at those photos without a stab of pain.

We were not abandoned. The love of family and friends surrounded us, and God worked through them. I knew that I could not live in this darkness. A friend had given us a book of writings for people who have suffered loss. Among them was the saying, 'All the darkness in the world cannot extinguish the light of a single candle.' Those words helped us.

They are written on her headstone in the little graveyard on our farm where Trish is buried, where my wife and I hope to be buried.

I know that love does not seek revenge. We do not want a life for a life. Love seeks healing, peace and wholeness. Hatred can never overcome hatred. Only love can overcome hatred and violence. Love is that light. It is that candle that cannot be extinguished by all the darkness and hatred in the world.

Judge Goger, that is the reason we are not asking for the death penalty.

I know that 'Forgive us our trespasses as we forgive those who trespass against us' was not meant to be empty words. I don't know if I have forgiven you, Ivan Christopher Simpson, for what you did. All I do know is that I don't hate you, but I hate with all my soul what you did to Patricia.

My wish from my heart for all of us who were so terribly wounded by this murder, including you, Ivan Christopher Simpson, is that God would grant us peace.

When I came to the place where I would read this lines, "I don't know if I have forgiven you, Ivan Christopher Simpson. I don't hate you, but I hate with all my soul what you did to Patricia," I was facing the judge and the microphone, but Ivan Simpson was behind me. Something made me turn around so that I could speak directly to him.

When I read the last line, "My wish from my heart is that all of us who have been so terribly wounded by this murder, including you Ivan Christopher Simpson is that God would grant us peace," I was looking directly at Ivan Simpson and he lifted his head, our eyes met. Tears were streaming down his cheeks. Both of us were in great pain. It was one of those rare moments when raw wounds and pain will strip away all pretense, all falseness. It was somehow a moment of terrible beauty that I will never forget.

There was such torment in his look. How could I hate this man? Certainly I could hate what he had done, but hate someone who had suffered so much as a child, someone tormented by what he had done and filled with remorse? Even Carla Anderson, the victim witness person who must have seen countless cases of false remorse and stony silence said with awe "This is something we rarely see, genuine remorse."

I feel that Susie and I have been through a fire and come out the better for it. I was reluctant to drive to Atlanta, so far away, I did

not want to go through more pain, I was afraid I would break down and be unable to say what I wanted to say. Susie had a stress fracture in her foot and we did not want to aggravate it so she did not stand to speak.

After Ivan Simpson was given a life sentence without parole and was being led away, he said he wanted to say something. He turned and faced us and said twice with tears running down his face. "I am so sorry for the pain I have caused. I am so sorry for the pain I have caused."

As we left the courtroom, Paul Howard the DA shook my hand. I thanked him, but could tell that he was not happy with the outcome. Outside the courtroom people were seated on some benches and Carla Anderson was asking if we had some questions. I saw Michele, Trish's cousin who had said how much she hated Ivan Simpson, sitting with an empty space beside her. I thought she might feel that what I had said invalidated somehow what she had said, so I sat beside her. Told her how sorry I was about her mother's death (about a month after Trish's) and we hugged each other.

Debbie, the priest from Emmaus House asked if we any of us who wished would like to say a prayer together. We all held hands – It took her a few minutes to get control of her voice.

Quite a few people thanked me for what I had said. I talked to Ivan Simpson's lawyers, Susan Wardell in particular. She told me how important she felt my letter to the judge was because otherwise he would not have known how we felt about the death penalty or our relationship with Trish.

I could not sleep that night. I kept thinking about what had happened. It was as though a weight had been lifted from me. I knew that I had forgiven Ivan Simpson, that I must write to him and tell him this and encourage him that his life is not over, that he can help others also in prison, perhaps especially in prison, where there is so much darkness. This forgiveness, like everything before, does not seem to be something I have "won" or "earned." It is a gift of grace.

The Human Experience of Capital Punishment

Reprinted from "The Capital Punishment Debate,"
published by the Office of Church in Society, The American Lutheran Church
[now part of the Evangelical Lutheran Church in America], in 1985.

Execution is a form of violent death. But the penalty of death begins long before the actual execution and includes many more persons than the offender. It is part of a *cycle of violence* which also includes the victim's family, the offender's family, the executioner, the prison warden and guards, and finally, all of us. The death penalty is more that a violent *act*. It is a violent *process* that involves us all because it is carried out in our name. And no one who is involved in the process can walk away unaffected.

The Victim's Families

The family and friends of a murder victim often report that they feel victimized twice: once by the murder itself, and again by the vagaries of the criminal justice system.[81] Victims' loved ones need to be assured that what happened [to the victim and] to them is unfair and tragic. They need people who will listen to their feelings without judging, blaming, or stigmatizing them. They need a chance to grieve, restitution for the burdens caused by the offense, and opportunity to participate in their own case, and freedom from the fear of further violence. But these needs are often overlooked in the rising tide of vengeance institutionalized in a capital case. The victim's family becomes a public spectacle in the publicity and ritual surrounding a capital trial. They are later dragged repeatedly through the experience – even years later – at time of appeals, required by due process, and, finally, at the execution. The death penalty process often freezes the victim's family at the single point of anger, leaving them with a bitter and hate-filled legacy rather than contributing to real healing.

The Offender's Family

The family of the offender is also victimized by the death penalty process and execution. Many murder victim's families develop a special empathy for the family of the death penalty victim.

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[81] This is reported, for example, by Marie Deans, founder of "Murder Victim's Families for Alternatives to the Death Penalty," as at the American Lutheran Church Consultation on Capital Punishment, held in Minneapolis, MN, January 12-13, 1984.

As one such woman said, "The ultimate effect of the loss is the same."[82] It is an important question whether or not society is being "made right" by inflicting such grief and sorrow on yet another family, adding to the cycle of violence and the trail of victims.

Death Row

The death penalty cannot be separated from the human experience of those sentenced to die. To avoid abstraction we need to see it in its human dimensions. An anthropologist has described the experience of a person sentenced to die as "a ritual death of his/her entire being as a human."[83] Prison guards who see Death Row inmates approaching sometimes say, "Dead man coming!" Death row inmates in Ohio once had to wear uniforms with a red patch over their heart. That symbolizes the whole experience: isolation, constant harassment (psychological and sometimes physical), living as one marked for violent death.[84] It is, in a word, dehumanization. As a minister who visits regularly on Death Row in Georgia describes it, "Death Row defines human beings as animals – as non-persons. As we prepare to take their lives, we create the institution of Death Row to take their humanity as well."[85] Under such conditions it is little surprise that some inmates will choose execution as a release from the experience of Death Row. One former Death Row inmate said, "You go crazy there!"[86]

Wardens, Guards, Executioners

The list of wardens who have spoken out against capital punishment is impressive.[87] It is easy to understand why – they oversee the actual executions, which are a nasty business. They fear botched execution attempts, commutations which arrive too late, and killing a person later found innocent, all of which do happen. …

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[82] Marie Deans, at the ALC Consultation on Capital Punishment, 1984.
[83] Colin Turnbull, quoted by Murphy Davis in "A Stand for Life," *Catholic Worker*, vol. L, No. 5, August 1983.
[84] As recounted by Death Row inmates, prison chaplains and Death Row visitors at the ALC Consultation on Capital Punishment, 1984.
[85] Murphy Davis, *art. cit.*
[86] At the ALC Consultation on Capital Punishment, 1984.
[87] See occasional papers issued by Institute for Southern Studies, P.O. Box 531, Durham, NC 27702; see also in Hugo Adam Bedau ed, *The Death Penalty in America*, 3rd Ed., (Oxford University Press, NY: 1982), pp. 89, 351.

[E]very execution is a barbarous event involving fellow human beings. More people are drawn into the cycle of violence.

Society

The death penalty affects all of us. The practice of executions legitimizes the use of violence to solve problems, adding to the cycle of violence in our society. We have already ended the use of torture and maiming as criminal penalties, because we have judged that they make society something we do not want it to be. It is time to consider how the death penalty affects our society.

The Death Penalty and Restorative Justice: Equipping the Faithful When Innocence Isn't the Issue

by The Rev. Melodee Smith[88]

Restore us, O Lord God of Hosts; Let your face shine, that we may be saved. Psalm 80:19

The adversarial nature of the criminal justice system begs the question, "Whose side are you on?" If one denounces a system of capital punishment that is highly discretionary, discriminatory, and dehumanizing, one is accused of being soft on crime or not caring about the victim or his/her loved ones. If one proclaims that the loved ones of a murdered victim require justice for healing, the needs of the accused/offender and his loved ones can quickly be forgotten. Whose side are YOU on, and are there only two sides – two parties battling to win – regardless of the truth, regardless of the pain that the flawed, and sometimes corrupt process inflicts, regardless of the cost, social as well as economic.

When challenged or confronted during this heated life and death debate by unaware bystanders or cynical observers, we in the church have an opportunity to witness our faith and demonstrate the meaning of God's love as Jesus teaches us. For when we actively show concern for accused/offenders who are too poor to have a chance at justice or when we reach out in significant and helpful ways to families grieving the unspeakable loss of a murdered loved one, we know where we will find God – embracing those in need of compassion and love, those who are suffering and in search of healing and hope.

'Standing with those who suffer' is one of the positions people of faith can take when challenged by the social and political divisiveness of the death penalty – where Jesus stands and where the Holy Spirit is working. Those who suffer from violent crime and murder include the murdered victim's loved ones – family and friends. People in communities of faith and the broader society we live in also experience suffering and loss in addition to what is induced by fear and learned prejudices. And accused/offenders, along with their

[88] Melodee Smith was a Doctor of Ministry student at Eden Seminary when this essay was written in 2002. She is also a graduate of law school in Michigan.

loved ones, must not be overlooked as survivors of murder – even when "innocence" isn't the issue.

How does a person of faith stand with those who suffer without feeling like one has betrayed or abandoned other hurting parties with different needs? While the criminal justice system focuses on the laws/rules that have been broken, who is guilty and how the guilty should be punished, we are challenged to consider a different paradigm. Lifting up the values and principles of restorative justice which, in contrast, addresses the harm resulting from violence and murder, acknowledges who is hurting and how survivors might experience healing. ***PEACE*** just may guide our way to equip the faithful for meeting needs with helpful tools and effective skills.

P*astoral care*
E*ducation*
A*dvocacy*
C*ommunity*
E*quity*

Among the greatest needs that survivors of murder report is the need for pastoral care, education, advocacy, community, and equity. A justice that heals, restorative justice with ***PEACE***, does not unrealistically imply that things will ever be the same again for any of the survivors; nor does it simplistically promise to erase or eliminate the pain, memory or indescribable feelings of loss from an outrageous act of violence that breaks the human heart and often times attempts to crush the human spirit. Restorative justice does, however, offer survivors hope for an end to the cycle of violence and an opportunity to restore relationships – with God and with one another.

Restore us to yourself, O Lord, that we may be restored.
Lamentations 5:21

Pastoral care

The gift of presence, of listening, of being there beyond the initial shock of learning that your loved one has been stolen from you in a violent act is what family members of victims say would help most from people of faith. Bill Pelke, whose grandmother was killed by four teenage girls, helps us to understand that as each of us experiences death in different ways, pastoral care is needed during all stages of grief and anger, pain and loss. Barbara Lewis, whose

son faces execution in Delaware, is grateful for the pastoral care from her church that recognizes her son's need to not be abandoned during times of trial and judgment, as well as her own pain from waiting every day for the moment when the State will kill him. New York community organizer, David Kaczynsky, whose brother Ted once faced the possibility of the death penalty, knows first hand the needs of a community torn apart by fear of crime and violence as he reminds us that it is the church that must speak out with love for the healing of all parties.

Restore me to the joy of your salvation, and sustain in me a willing spirit. Psalm 51:12

Education

Gaining knowledge of scriptural, theological, and historical roots of restorative justice and the death penalty, people of faith, such as the late Rev. Virginia Mackey, can develop a restorative vision to address the harm associated with murder, killing, and violence. Katherine McBrayer, whose cousin Tom was randomly murdered on a subway train in Chicago, says that when people of faith develop information about the criminal justice system, this helps the faithful understand how, why, and what murder victim survivors are experiencing – whether one is a family member of a victim, an accused/offender, or family member or an individual in the community. Tonya McClary, National Program Director for the American Friends Service Committee, reports that learning about the dynamics of grief and loss, the consequences of abuse and neglect, and the impact of poverty and racial discrimination in our communities can enable and assist the religious community in meeting the healing needs of survivors.

So those who were engaged in the work labored, and the repairing went forward at their hands, and they restored the house of God to its proper condition and strengthened it. 2 Chronicles 24:13

Advocacy

Speaking out against injustice and sinful policies/practices, taking action to witness our faith and providing support for survivors by working to establish a justice that heals is formidable advocacy

which is urgently needed. When SueZann Bosler, whose father, the Rev. Bill Bosler, was stabbed to death in her presence, she needed a lawyer to protect her rights in order to get the court in Florida to listen to her need to forgive her father's killer, objecting to state sponsored revenge. Lois Robison needed an advocate as well when she learned, before her mentally ill son was executed, that less than 2% of all people who kill face the death penalty, while more than 40% of death row inmates have been diagnosed with some form of mental infirmity. And when Illinois Governor George Ryan, a Methodist who once voted to enact death penalty litigation, courageously sought information about capital punishment from a bi-partisan Commission he appointed, he instituted a moratorium on executions that led to legislative hearings, an international debate about ending a death penalty that is too flawed to fix, and a mass commutation of sentences for the condemned prisoners in Illinois.

My friends, if anyone is detected in a transgression, you who have received the Spirit should restore such a one in a spirit of gentleness. Take care that you yourselves are not tempted. Bear one another's burdens, and in this way you will fulfill the law of Christ. Galatians 6:1-2

Community

Creating community for survivors is equally crucial for healing and restorative justice. Survivors of murder may feel alienated or otherwise abandoned by the broader society, sometimes simply because people just don't know what to say or because we are afraid to say the wrong thing. Often accused/offenders are without any sense of community because we are legitimately shocked and outraged by the crime. Robert Coulson, prior to his execution in Texas, brought estranged members of the Episcopal Church together to provide prayers for victim family members and his family, placing importance on the presence of a loving God. Jennifer Bishop, National Chair of Murder Victim Families for Reconciliation, works with religious communities to develop alternatives to capital punishment and challenge social policies that promote justice without mercy. And when SMU Professor Rick Halperin teaches his students about the death penalty in America, they are astonished to learn that while a majority of people of faith say they support capital punishment, most people of faith also say they are firmly opposed to

racial discrimination and arbitrary executions – facts that the Rev. Dr. Herman Haller states shore the very foundation of the death penalty.

If you return to the Almighty, you will be restored.
Job 22:23

Equity

Give us your poor, your people of color, your mentally infirmed – and we will execute them for you! … is not what the Statue of Liberty stands for – even in difficult times. But this is the motto for the criminal justice system when the death penalty is sought, especially when the murdered victim is white. Mike Farrell, a human rights activist and actor, helps us understand that the death penalty is a human rights violation, and not just a criminal justice issue. When paranoid schizophrenic Larry Robison was executed on a night he selected, a night of a full moon, he admitted that he was dying to get off death row. Prison without treatment and medication for the mentally ill is cruel and inhuman. Linda White, whose daughter was murdered in Texas, works to end executions because she believes the death penalty is morally reprehensible and that it speaks volumes about who we are as a society. Loved ones of murder victims frequently complain that they are not regularly informed or consulted about the process that may require as much as 15-20 years to conclude all the litigation and may cost taxpayers 10 times as much as seeking life in prison while survivors' financial needs are virtually ignored.

In conclusion, or rather from the beginning, we are called to reflect on the meaning of the cross and work for restorative justice with strength and courage, trust and hope, peace and love. It is part of our mission to equip peacemakers with tools and skills that will serve those who are suffering, and to boldly witness God's bountiful love, compassion and mercy! Let us pray that we can find ways to inspire one another to work together and send each other forth to create a culture of restorative justice that heals – with PEACE!

Juveniles, the Death Penalty, and the International Stage

By Jeffrey Spencer[89]

When we talk about "juveniles" in this curriculum, we are talking about people who were less than 18 years old at the time the crime of which they are accused was committed. Because of the time a trial and appeals take, someone could easily be in their 20s when finally convicted of that crime. However, because the crime took place when they were under 18, we can refer to them as juvenile offenders.

Up until March 1, 2006, it was considered constitutional to execute people who committed capital offenses when they were juveniles. On that date, the United States Supreme Court ruled in *Roper v. Simmons* that it is unconstitutional to execute a person for a crime committed when that person was under the age of 18.

Prior to that decision, the United States kept company with an interesting list of nations as being the only countries that executed juvenile offenders. Amnesty International confirmed the execution of juveniles between 1985 and 1999 in eight countries: Bangladesh (1 in 1986), Iran (an unknown number in the early 1980s), Iraq (13 in 1987), Pakistan (3 since 1985), Nigeria (1 in 1997), Saudi Arabia (1 in 1992), the United States (9 between 1985-1994), and Yemen (1 in 1993). Barbados abolished the death penalty for juveniles in 1989.[90]

Since 2000, only five countries in the world are known to have executed juveniles: China, Democratic Republic of Congo (DRC), Iran, Pakistan, and the United States. Pakistan and China have officially abolished the death penalty for juvenile offenders, though there have been problems with nation-wide compliance with the law.[91]

Between 1976 and 2005, 22 juvenile offenders were executed in the United States, over half of which took place in Texas.[92] All these executions of juvenile offenders took place despite its prohibition under leading international instruments relating to human

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[89] This essay was written in 2006.

[90] Amnesty International USA, http://www.aiusa.org/abolish/juveniles.html (22 August 2007).

[91] From Amnesty international USA's website http://www.amnestyusa.org/abolish/juveniles.html (28 March 2003).

[92] http://www.deathpenaltyinfo.org/article.php?scid=27&did=882 (22 August 2007).

rights and to the conduct of armed hostilities. The relevant texts are as follows:[93]

- *International Covenant on Civil and Political Rights* (ICCPR): "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age …" (Article 6(5))
- *Convention on the Rights of the Child* (CRC): "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age …" (Article 37(a))
- *American Convention on Human Rights* (ACHR): "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age …" (Article 4(5))
- *Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949* (Fourth Geneva Convention): "In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence." (Article 68)
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Additional Protocol I): "The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed." (Article 77(5))
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (Additional Protocol II): "The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence …" (Article 6(4))
- *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (UN Economic and Social Council resolution 1984/50, adopted on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984): "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death …"

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[93] Amnesty International, "Juveniles and the Death Penalty – Executions Worldwide Since 1990," http://www.amnesty.org/ailib/aipub/1998/ACT/A5001198.htm (17 August 2000).

Then, on March 1, 2005, in the case *Roper v. Simmons*, the United States Supreme Court ruled that the death penalty for those who had committed their crimes at under 18 years of age was cruel and unusual punishment and hence barred by the Constitution. The decision was 5 to 4 and death penalty statutes remain on the books in several states. If a new court chooses to rehear the issue and overturns *Roper*, the execution of juvenile offenders could being again in the United States.

Resources for Further Study

Websites

- justice.uaa.alaska.edu/death/index.html has a wonderful listing of all the "political" or "practical" arguments about the death penalty with lots of links to both pro and con death penalty websites.
- Tons of facts and information about the death penalty: www.deathpenaltyinfo.org (the organization ends up being anti-death penalty at least in part because of their research).
- A pro-death penalty site: www.prodeathpenalty.com
- An anti-death penalty site: http://www.amnestyusa.org/ (find the "Death Penalty" link)
- http://www.patweb.com/dpquiz/index.htm has two on-line death penalty quizzes, a national edition and a Georgia edition.

Curricula

- *Restorative Justice – Toward Nonviolence*, by the Rev. Virginia Mackey, published and available from the Presbyterian Criminal Justice Program, Presbyterian Church (USA), 100 Witherspoon St., Louisville, KY 40202-1396, 888-728-7228 x5803 or 502-569-5803. Using Habakkuk as a biblical foundation, this curriculum explores the possibilities of a different approach to criminal justice – restorative justice instead of punitive justice. It includes suggestions for use by individuals, small groups, workshops, and in seminars.

Books

- *Dead Man Walking*, by Sister Helen Prejean, published by Vintage Books, Random House.
- *Actual Innocence*, by Barry Scheck
- *Executing Justice*, by Lloyd Steffen, published by The Pilgrim Press. Available from United Church of Christ Resources.
- *Capital Punishment: A Reader*, edited by Glen H. Stassen, published by The Pilgrim Press. Available from United Church of Christ Resources.
- *Death Blossoms*, by Mumia Abu-Jamal. Plough: Farmington, PA. 1997. And *Live From Death Row*, by Mumia Abu-Jamal. Avon: New York. 1995. Both are the personal reflections of a man on

death row since his 1982 conviction for the murder of a police officer, after a trial many have criticized as profoundly prejudiced.

- *Death At Midnight: The Confession of an Executioner*, by Donald A. Cabana. Northeastern University Press: Boston. 1996. By and about a former prison warden who, after giving the order and supervising the execution of two death row prisoners, could not do it anymore.
- *Just Revenge: Cost and Consequences of the Death Penalty*, by Mark Costanzo. St. Martin's Press: New York. 1997. Explores the history, politics and morality of executions. It deals with all sides of the issue of capital punishment.
- *Death Row Chaplain*, by Byron E. Eschelman. (Out of print; may be available at your library or through inter-library loan.) Rev. Eschelman was chaplain on death row at San Quentin a half century ago. He says, "Each time the cyanide fumes choke out a life at San Quentin, they also seep into the total chemistry of human society."
- *Against the Death Penalty*, by Gardner C. Hanks. Herald Press: Scottsdale, PA. 1997. A comprehensive argument against the death penalty that responds to those who cite the Bible to justify capital punishment.
- *Hurricane: The Miraculous Journey of Rubin Carter*, by James S. Hirsch. Houghton Mifflin: New York. 2000. After more than twenty years in prison for three murders he did not commit, former boxer Rubin "Hurricane" Carter finally won his freedom. Recounts not only his quest for justice, but also his personal transformation.
- *Last Rights*, by Joe Ingle. (Out of print; may be available at your library or through inter-library loan.) The account of thirteen prisoners on death row.
- *The Green Mile*, by Stephen King. Plume: New York. 1997. Although fiction, King offers an accurate account of life on death row and a moving portrayal of the effect of executions on the executioner.
- *Deathwork*, by James McLendon. Bantam: New York. 1977. Written by a former prison guard and the son of a senior prison official, this fictional account of the execution of four prisoners is disturbing and shocking and realistic.
- Citizens United for Alternatives to the Death Penalty has a list of recommended books at their website: www.cuadp.org/books.html

Videos

- *The Religious Community Confronts the Death Penalty*, available from the National Death Penalty Abolition Group,
- Discussion guide for *Dead Man Walking*, available from Presbyterian Criminal Justice Program, Presbyterian Church (USA), 100 Witherspoon St., Louisville, KY 40202-1396, 888-728-7228 x5803 or 502-569-5803.

Resources for Organizational Involvement

Go to http://www.deathpenaltyinfo.org/article.php?did=547&scid=37#Abolition for information about international, national, state, local, religious, and other death penalty abolition groups.

National Coalition to Abolish the Death Penalty
(202) 331-4090 www.ncadp.org

ACLU Capital Punishment Project
(202) 675-2319
www.aclu.org/capital/index.html

Amnesty International USA Program to Abolish the Death Penalty
(202) 544-0200 www.aiusa.org

Citizens United for Alternatives to the Death Penalty (CUADP)
(800) 973-6548 www.cuadp.org

Citizens United for the Rehabilitation of Errants (CURE)
(202) 789-2126
www.curenational.org

Death Penalty Information Center
(202) 289-2275
www.deathpenaltyinfo.org

Equal Justice USA/Quixote Center
(301) 699-0042 www.ejusa.org

Journey of Hope From Violence to Healing
(877) 92-4-GIVE(4483)
www.journeyofhope.org

The Justice Project
(202) 638-5855
www.thejusticeproject.org

Murder Victims' Families for Human Rights
(617) 868-0007
www.murdervictimsfamilies.org

Murder Victims' Families for Reconciliation
(512) 782-9895 www.mvfr.org

NAACP Legal Defense and Educational Fund
(212) 965-2267 www.naacpldf.org

Religious Organizing Against the Death Penalty Project
(202)588-5489
www.deathpenaltyreligious.org/

Death Penalty Focus
(888) 2-ABOLISH
www.deathpenalty.org

Human Rights Watch
(212) 290-4700
http://www.hrw.org/campaigns/deathpenalty/

Things You Can Do To Stop the Death Penalty[94]

SIGN "A DECLARATION OF LIFE" – "A Declaration of Life" is a formal, notarized statement saying that, in the event you are killed, you do want your murderer to be held accountable *but not be subjected to the death penalty*. Tell your family about your signed statement and send a copy to Cherish Life Circle, Convent of Mercy, 273 Willoughby Ave., Brooklyn, NY 11205. A copy of "A Declaration of Life" is on the final pages of this Reader.

EDUCATE YOURSELF – Keep learning about capital punishment and its use in the United States. Read a book, go to a lecture, and/or visit a website.

INVITE A KNOWN AND/OR KNOWLEDGEABLE SPEAKER TO ADDRESS YOUR FAVORITE GROUPS – Consider inspirational speakers about the imprisonment of the innocent, the mentally retarded, and the mentally ill. Murder victims' family members, death row survivors, and other knowledgeable speakers can be arranged to visit your area.

MAKE A CONTRIBUTION – Donate money and/or other resources to a local and/or a national death penalty abolition group. Consider joining the National Coalition to Abolish the Death Penalty (call 888-286-2237 or visit www.ncadp.org).

WRITE A LETTER TO THE EDITOR – Any time you see an article on the death penalty in a newspaper or magazine, write a letter to the editor to make your abolition voice heard.

USE YOUR CITIZENSHIP – If you are a citizen in the United States and have the right to vote,
a) REGISTER TO VOTE.

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[94] Compiled from several sources, including:
Citizens United for Alternatives to the Death Penalty, www.cuadp.org
Reflections on "Dead Man Walking", by Sister Helen Prejean, CSJ, and Lucille Sarrat, a six session curriculum on Sr. Prejean's book *Dead Man Walking* and the death penalty. Published by Liguori. To order, call 800-325-9521 or visit www.liguori.org.
The September-December 1997 issue of *The Other Side* magazine. Call 800-700-9280 for more information.

b) WRITE members of congress, your state legislators, and the Governor asking them to consider alternatives to the death penalty, to vote for moratorium legislation that could curtail the execution of juveniles, the mentally retarded, and the mentally ill. Challenge them to deal with the roots of crime, not just the symptoms.
c) VOTE only for candidates who do not make support for the death penalty a campaign issue. Support in any way possible the campaigns of politicians (regardless of party affiliation) who actively speak out for alternatives to the death penalty. Addresses for your representatives are available in your phone book or from the League of Women Voters.

BE SEEN & HEARD – Displaying an anti-death penalty message creates more visibility for the issue. Many organizations have bumper stickers, buttons, and t-shirts; some have items in Spanish as well as English. *Educate yourself* so that when someone asks you why you believe the death penalty is a bad public policy, you can tell them!

OPPOSE SPECIFIC DEATH SENTENCES – Write to the governor of your state in support of stopping executions. If clemency hearings are open in your state, attend and show your support for clemency for condemned inmates. Let the prosecutor in your jurisdiction know you do not want the death penalty sought in any specific case. You can get on an execution alert email list from the National Coalition of Abolish the Death Penalty at www.ncadp.org.

HOLD A CANDLELIGHT VIGIL – Hold a candlelight vigil at midnight (the time of most executions) in front of a government building to pray for prisoners on death row.

TEACH YOUR CHILDREN – Teach your children how to deal with anger constructively from a very young age.

PRACTICE FORGIVENESS – Engage in specific acts of forgiveness on a regular basis.

LEARN CONFLICT RESOLUTION – Invite someone to your church to teach conflict resolution skills – then put them into practice.

GO TO COURT – As an individual, with a friend, or a small group, go to the criminal court nearest you and spend a couple hours watching what goes on.

CARE FOR VICTIMS OF VIOLENT CRIME – Send notes of support to victims of violent crime that you read about in the newspaper. Sponsor prayer services in your church for murder victims' families.

GET INVOLVED IN THE LIFE OF A CHILD (not just your own) – Become a big brother or big sister, or otherwise help kids who need positive role models.

ENTER THE WORLD OF THE POOR – Find one concrete way to enter the world of the poor: a soup kitchen, food bank, homeless shelter, etc.

ADDRESS JUVENILE CRIME – Volunteer at a juvenile detention center or home. Initiate a ministry in your church that serves those in juvenile detention/prison or those being released to your community.

VISIT PEOPLE IN PRISON – Contact a group near you that works with prisoners or those held in detention centers to find out how you can be assisted in visiting or working with prisoners.

WRITE TO A DEATH ROW PRISONER – Adopt a pen pal on death row. Write a letter or send a card. To find out more, contact:
Death Row Support Project
PO Box 600, Dept. "C"
Liberty Mills, IN 46946

MOURN FOR ALL THOSE WHO ARE PUT TO DEATH – Feel your pain and sorrow when an execution occurs. There is healing in mourning, for each time we mourn, we affirm the God-cherished character of the one who has been killed.

A Declaration of Life

I, the undersigned, being of sound and disposing mind and memory, do hereby in the presence of witnesses make this Declaration of Life.

I believe that the killing of one human being by another is morally wrong.

I believe it is morally wrong for any state or other governmental entity to take the life of a human being for any reason.

I believe that capital punishment is not a deterrent to crime and serves only the purpose of revenge.

THEREFORE, I hereby declare that should I die as a result of a violent crime, I request that the person or persons found guilty of homicide for my killing not be subject to or put in jeopardy of the death penalty under any circumstances, no matter how heinous their crime or how much I may have suffered. The death penalty would only increase my suffering.

I request that the Prosecutor or District Attorney having the jurisdiction of the person or persons alleged to have committed my homicide not file or prosecute an action for capital punishment as a result of my homicide.

I request that this Declaration be made admissible in any trial of any person charged with my homicide, and read and delivered to the jury. I also request the Court to allow this Declaration to be admissible as a statement of the victim at the sentencing of the person or persons charged and convicted of my homicide; and, to pass sentence in accordance with my wishes.

I request that the Governor or other executive officer(s) grant pardon, clemency, or take whatever action is necessary to stay and prohibit the carrying out of the execution of any person or persons found guilty of my homicide.

This Declaration is not meant to be, and should not be taken as, a statement that the person or persons who have committed my homicide should go unpunished.

I request that my family and friends take whatever actions are necessary to carry out the intent and purpose of this Declaration; and, I further request them to take no action contrary to this Declaration.

I request that, should I die under the circumstances as set forth in the Declaration and the death penalty is requested, my family, friends and personal representative deliver copies of this Declaration as follows: to the Prosecutor or District Attorney having jurisdiction over the person or persons charged with my homicide; to the Attorney representing the person or persons charged with my homicide; to the judge presiding over the case involving my homicide; for recording, to the Recorder of the County in which my homicide took place and to the recorder of the County in which the person or persons charged with my homicide are to be tried; to all newspapers, radio, and television stations of general circulation in the County in which my homicide took place and the County in which the person or persons charged with my homicide are to be tried; and, to any other person, persons or entities my family, friends, or personal representative deem appropriate in order to carry out my wishes as set forth herein.

I affirm under the pains and penalties for perjury that the above Declaration of Life is true.

DECLARANT

_____

_____

printed name

_____

Social Security Number

WITNESS

_____

_____

printed name

STATE OF _____)

COUNTY OF _____)

Before me, a Notary Public in and for said county and state, personally appeared the Declarant and acknowledged the execution of the foregoing instrument this _____ day of _____ 20___.

WITNESS my hand and notarial seal.

_____

NOTARY PUBLIC

_____

Printed Name

My commission expires: _____

County of Residence: _____

Please send a copy of this notarized form to: Cherish Life Circle, Convent of Mercy, 273 Willoughby Ave., Brooklyn, NY 11205