

# WHY THE DEATH PENALTY SHOULD BE ABOLISHED: Examining the Evidence

There are arguments for and against the death penalty, but most of those “for” begin to crumble once the data and the relevant facts are examined. The arguments against the death penalty, however, are supported by these same facts and data. Some of this information is presented below in very brief form. There are references attached and footnotes are being prepared as a separate document that go into more detail on some of the issues. In short, **capital punishment should be abolished because:**

**THE DEATH PENALTY IS EXTREMELY ARBITRARY:** In the Furman decision declaring the death penalty unconstitutional in 1972 Justice Stewart said that “these death sentences are cruel and unusual in the same way that being **struck by lightning** is cruel and unusual. For, of all the people convicted of rapes and murders ... the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed” (Furman v Georgia, 1972, p. 34-35). The Gregg decision in 1976 was supposed to correct all of the problems addressed in Furman but it is clear that arbitrariness still exists in various forms and at different stages of the death penalty process.

**Geographic Arbitrariness** - One form of arbitrariness is a function of geographic variations in the use of capital punishment. In examining where the death penalty has been used since its reinstatement in 1976 it might be surprising to realize that only 2% of the counties in the United States have accounted for most of the executions, and 85% of the U.S. counties have not had anyone executed in more than fifty years (DPIC, Executions by State). Since 1976 the North-East has virtually eliminated the death penalty executing only 4, less than 1/3 of 1% of those executed, the Mid-West as executed only 6% of those executed, the West has executed 12%, but the South has executed 82% of those executed since the death penalty was reinstated in 1976. Florida has executed more people (97) since 1976 than all of the Western and Northeastern states combined (89) (DPIC, Executions by State).

**Culpability Arbitrariness** - There are frequently multiple offenders in a murder, and it is often the least culpable offender that receives a death sentence resulting in ‘culpability arbitrariness’. Offenders with a prior record and experience in the criminal justice system may quickly work out a plea bargain with the prosecutor by casting most of the blame on a less experienced offender who played no role or a minor role in the crime. In Florida, an ex-con (Walter Rhodes) killed two police officers but when captured said two people traveling with him (Jesse Tafero and Sonia Jacobs) did the killing. Tafero and Jacobs received the death penalty and Rhodes was released on parole after 18 years. Tafero was executed and Jacobs was later released after evidence of her innocence emerged (Ko, Michael & Ian Lth, 2003).

In Arizona, Patrick Bearup was the only one of four defendants in an Arizona case to receive the death penalty, even though he was not directly involved in killing the victim and was clearly the least culpable. The other three defendants, one of whom instigated the offense, another who beat the victim with a baseball bat, and a third who shot the victim, were all given plea bargains. Two of these participants could be released soon. A judge who reviewed this case criticized the prosecutor for pursuing the death penalty against a man who “even under the state’s theory did not cause the

physical death” of the victim, however, the judge did not overturn the death sentence and Bearup is still on death row awaiting execution (Lemons, 2010; Santos, 2013).

**Prosecutorial Arbitrariness** - Political forms of arbitrariness can be found at all levels of the criminal justice system. Prosecutorial arbitrariness is a significant form of arbitrariness and sometimes overlaps with geographic arbitrariness. In 2012 former United States Supreme Court Justice John Paul Stevens said,

Arbitrariness in the imposition of the death penalty is exactly the type of thing the Constitution prohibits... the random or capricious imposition of the penalty, (is) akin to the risk of being struck by lightning. Today one of the sources of such arbitrariness is the decision of state prosecutors - which is not subject to review - to seek a sentence of death. It ...may be influenced by the prosecutor’s estimate of the impact of his decision on his chances for reelection or for election to higher office (New York Review of Books, 2012).

John Donahue produced a comprehensive and statistically sophisticated report examining the arbitrary and discriminatory manner in which capital punishment had been applied in Connecticut (Donahue, 2013). The findings of this study were instrumental in the Connecticut legislature abolishing the death penalty in 2012. Donahue says,

the state’s record of handling death-eligible cases represents a chaotic and unsound criminal justice policy.... (The) death penalty regime does not select from the class of death-eligible defendants those most deserving of execution. At best, the Connecticut system haphazardly singles out a handful for execution .... arbitrariness and discrimination are defining features of the state’s capital punishment regime” (Donahue, 2013, p.1-3).

Defendants in Waterbury were much more likely to receive the death penalty than comparable defendants in any other part of the state.

**Fiscal Arbitrariness:** - ‘Geographic arbitrariness’ and ‘prosecutorial arbitrariness’ are interrelated, and in small rural counties a third factor, ‘fiscal arbitrariness’ may also be involved. Prosecutors in these small counties are reluctant to admit that costs affect their decisions about the use of capital punishment, perhaps because of the belief that ‘you can’t put a price on justice’, but the reality is that one death penalty case, by itself, can bankrupt most small rural counties (Chammah, 2014). James Farren, the District Attorney of Randall County, Texas recently said, “While ... justice is not for sale, if I bankrupt the county, and we simply don't have any money, and the next day someone goes into a daycare and guns down five kids, what do I say? Sorry?”(Chammah, 2014, p. 2).

**Gubernatorial Arbitrariness** – The Governor plays a major role in both the selection of the people to be executed and when they are to be executed. The Governor is also the primary decision-maker in the clemency and commutation process which can prevent an execution even after an execution date has been set. Kubick and Moran studied the relationship between gubernatorial elections and executions in death penalty states controlling for a wide range of variables. They found that states were 25% more likely to conduct executions in gubernatorial election years than in other years of the gubernatorial cycle. “Taken together, our results

indicate that election-year political considerations influence both the timing and racial composition of executions” (Kubick and Moran, 2003, p. 24).

An example of how politics might affect the clemency process is found in Florida. Bob Graham became governor of Florida in 1979. In Graham’s first term in office there were **six** cases considered for execution. **Five** of the **six (83%)** were granted clemency and their sentences were commuted to life in prison and **one** of the **six (17%)** was executed. Three reasons were given for the **five** commutations: **one** of the **five** cases that were granted clemency **was** commuted because of possible innocence; **three** were commuted because the death sentence was disproportionate in comparison to the sentences of the co-defendants in the case; and **one** was commuted because the sentence was too harsh for the crime committed (DPIC, Clemency). These are all logical and legitimate reasons why a governor might commute a death sentence to a sentence of life without the possibility of parole (LWOP). However, the one person executed (John Spenkeliink, the first non-volunteer executed in the U.S. after the Gregg decision) would clearly have qualified for a commutation under the category of ‘the sentence was too harsh for the crime committed’ because “Spenkeliink had been offered a chance to admit to second-degree murder and to receive a life-in-prison sentence, but he refused to do so” (Clark County Prosecutor, n.d.). Spenkeliink’s last words prior to his execution speak to an important point to be discussed a little later. He said just before the switch was thrown, "Capital punishment -- Them without the capital get the punishment" (Clark County Prosecutor, n.d.)

In Graham’s second term as governor one sentence was commuted early in the term based on possible innocence, but a total of 15 people were executed in this four-year term. If **83%** of the cases were granted clemency during the first four years by Governor Graham using the three reasons that were given, and one was granted early in his second term, one might ask what reasons were given for granting clemency by all of the other governors of Florida in the 32 years since Graham left office? The answer is easy because it is the same for all of the other governors, - NONE! (DPIC, Executions by State; DPIC, Clemency). In total, 95 people have been executed in Florida since anyone was granted clemency although **six** out of the first **eight** considered after the Gregg decision had their sentences commuted. One might argue that the last 95 cases were completely different from the first eight, and these 95 cases really were the ‘worst of the worst’, but to a statistician the probability of that occurring would be laughable.

**Jury Arbitrariness** - Jurors may be arbitrary in their decisions for any kind of criminal or civil trial, but life and death decisions are even more arbitrary because of the ‘death-qualification’ process. In capital cases two separate trials are held, the first to determine guilt and the second to determine the sentence. Unfortunately, the same jurors are involved in both trials. Because of this, juries in capital cases go through a special selection process to see if they are willing to give a death sentence if the defendant is found guilty in the first trial. This is once again related to prosecutorial arbitrariness. Prosecutors have had the option of removing a juror for cause if they were opposed to the death penalty for a long time but now the selection process is more involved and more important.

An elaborate study by Cowan, et al examined the impact of death-qualification using a group of 288 adults who met the qualifications for jury service before a Witherspoon exclusion. After watching a video about a trial based on a real case each individual completed a ballot indicating what his or her decision in the case would be. In the death qualified group 78% voted guilty to some degree of murder compared to 53% of the Witherspoon excludable group who

voted guilty, a difference of 25% between the two groups (Cowan et al, 1984). This suggests that 25% more people would be found guilty by a death-qualified jury than a non-death qualified jury indicating that many innocent people may be on death row and potentially executed because of the jury selection process.

Robert Bohm reviewed the large body of research on death-qualified juries and how they affected death penalty cases and summarized the findings from this research as follows:

Research shows that death-qualified jurors are less concerned with due process and more inclined to believe the prosecution than are excludable jurors. Death-qualified jurors ... have more misconceptions about the death penalty and the death-sentencing process... Death-qualified jurors are more likely to believe that the focus of the penalty phase of a bifurcated trial should be only on the nature of the crime rather than mitigation, and (they) are more likely to believe that the death penalty deters murder. (Death-qualified jurors) are less likely to believe that innocent people are convicted of capital crimes, that the death penalty is unfair to minorities, and that life without parole really means that a prisoner will not be released from prison. Most troublesome, death-qualified jurors have been found to be more conviction prone” (Bohm 2012, pp. 48-49).

In other words, the research indicates that the death-qualified jury stacks the deck in favor of conviction, and execution, before the first piece of evidence is presented!

**Judicial Arbitrariness** – While judges can be arbitrary in their individual death penalty sentences, to find an unusual type of ‘judicial arbitrariness’ in the activities of the United States Court of Appeals can be somewhat disconcerting. Apparently, even federal judges with lifetime appointments appear to be affected by politics in making death penalty decisions in the appeal process. An examination by Horn (2007) of the decisions of the U.S. Court of Appeals for the Sixth Circuit on death penalty appeal cases found that these judges voted differently depending on which president had appointed them. Randomly selected three-judge panels of the Court of Appeals normally decide death penalty appeals brought before the court. Sixteen judges are eligible to sit on these three-member panels, with nine republican and seven democratic appointees at the time of this study (Horn, 2007).

The study found that 75% of the democratic appointed judges voted in favor of the defendant whereas 15% of the republican appointed judges did so. A defendant who gets a panel with two of the three judges appointed by a republican president has a far greater chance of being executed than one with two members who were appointed by a democratic president. If, by the luck of the draw, the panel is made up of three republican appointees or three democratic appointees the outcome appears to be a virtual certainty! Nathaniel Jones, a retired U.S. 6th Circuit Court judge said, "It's a roll of the dice. When I look at a lineup of a panel in this kind of case, you can almost go to the bank on what the result is going to be” (Horn, 2007, pp. 2-3). Arthur Hellman, a University of Pittsburgh law professor said, "It looks very much like a lottery. Literally, if someone lives or dies depends on the panel they get” (Horn 2007, p. 3). Clearly ‘luck’, rather than the merits of the case, determines who will live or die under these circumstances.

**THE DEATH PENALTY IS RACIALLY DISCRIMINATORY:** Research has found that the murderer is much more likely to be charged, convicted and executed if the victim is white. In executions for interracial murders in the United States 93% had a white victim and black defendant (DPIC, Espy Execution File). In Florida, a white person has never been executed

for the rape or murder of a black person (Radelet, 2001; DPIC, Espy Execution File). According to Mandery, in the entire history of the United States every rape case that received a death sentence had a white victim and a black defendant (Mandery, 2013 p. 18)!

**GAO Study** - The U.S. General Accounting Office (GAO) reviewed all of the research related to race and the death penalty and found “a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty. In 82% of the studies, race of victim influenced the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were... more likely to be sentenced to death.... This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques” (U.S. Government Accounting Office, 1990, pp. 5-6).

**Baldus Study** - Racial disparity and discrimination occur in virtually all phases of the death penalty process although it may be most egregious in some of the earlier stages. Baldus’s conclusions were dramatic. (1) The chances of receiving a death sentence were 4.3 times greater for defendants whose victims were white than for defendants whose victims were black. (2) Of the 128 cases in which the death penalty was imposed, 108 (84%) involved white victims. (3) Prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims but in only 32% of the cases when both the defendant and victim were white. (4) When there was a black defendant and a white victim 21% of the cases received a death sentence and when both the defendant and victim were white 8% received a death sentence. If both the defendant and victim were black only 1% received the death penalty. The effects of race, however, are not uniform across the spectrum of homicide cases in this study. As might be expected, in the least aggravated cases very few defendants are sentenced to death regardless of race. Also as expected, in the most aggravated cases a high percentage of defendants are sentenced to death regardless of their race or their victim’s race. It is in the cases in the middle of the aggravation distribution that race has its greatest influence. In the aggravation mid-range cases death sentences are imposed on 34% of the killers of white victims and 14% of the killers of black victims. Stating this differently, Baldus et al. said that 20 out of 34 defendants receiving a death sentence for killing a white person would not have gotten the death penalty if their victims had been black instead of white (Baldus et al. 1990).

**Blume Study** - Blume, et al. reach the same general conclusions as Baldus et al. finding significant disparities based on both race of the defendant and race of the victim. They did an analysis of death row populations in 31 states from 1977 through 1999 and reached the following conclusion:

A racial hierarchy clearly exists. Black defendants who murder white victims receive death sentences at the highest rate; white defendants who murder white victims receive death sentences at the next highest rate; and black defendants who murder black victims receive death sentences at the lowest rate. The hierarchy stems in part from prosecutors’ reluctance to seek death in cases involving black victims, and eagerness to seek death in cases involving black defendants and white victims (Blume et al, 2004, p. 167).

**Donahue Study** - The Donahue study discussed earlier in terms of arbitrariness also examined racial discrimination and the death penalty in Connecticut. Similar to the Baldus study

and the Blume study he found that the death penalty system resulted in racial disparity that did not disappear when controls are introduced for the type of murder, the egregiousness of the crime, and other aggravating factors related to the crime. Donahue also found that capital felony charging decisions by the prosecutor produced additional proof of the racially discriminatory manner in which the death penalty system works. For example, minority defendants who killed whites received more harsh treatment, being charged 25 percent more frequently than those who killed minorities. Donahue emphasized that the regression findings in this study showing that race is a major determinant of who receives the death penalty are extremely robust and varying the forms of analysis and using different samples and different regression models produced similar results (Donahue, 2013).

Justice Lewis Powell Jr. was the swing vote in a 5-4 decision and wrote the majority opinion in *McCleskey v. Kemp* 481 U.S. 279 (1987) where the Baldus study results were presented. The majority ruled that although there was clearly racial discrimination in the death penalty system it could not be shown that it directly affected the outcome of this particular case. In other words, unless a defendant can show that there was racial discrimination in their specific case it is irrelevant how much discrimination exists in the death penalty system. After Justice Powell retired his biographer asked him if he would change his vote in any of the cases in which he had participated. “Yes,” Justice Powell said, “*McCleskey v. Kemp*” (The New York Times Print Archives, June 11, 1994).

**Racial Prejudice and the Death Penalty** - Studies have also been conducted on racial prejudice and the death penalty. Using data from the 1990 General Social Survey Barkan and Cohn examined reasons why more whites than blacks seemed to favor the death penalty in virtually every poll that had ever been conducted. Based on their research they concluded that, “White support for the death penalty in the United States has strong ties to anti-black prejudice...racial prejudice emerges here as a comparatively strong predictor of white support for the death penalty” (Barkan and Cohen, 1994).

**Stereotypical ‘Blackness’ and Death Sentencing** - In a study by Eberhardt et al. photographs of African-American men who had been on trial for murder were shown to a group of research subjects who did not know that these photos were of people who had been on trial for murder. They were asked to rate each photo in terms of how strongly the person appeared to be ‘stereotypically black’. The researchers stated that,

... above and beyond the effects of other variables that were controlled, defendants whose appearance was perceived as more stereotypically Black were more likely to receive a death sentence than defendants whose appearance was perceived as less stereotypically Black. (If the victim was white) 24% of those Black defendants who fell in the lower half of the stereotypicality distribution received a death sentence, whereas 58% of those Black defendants who fell in the upper half received a death sentence” (Eberhardt et al., 2006 p. 384).

In other words, after a real-world conviction more than twice as many defendants who looked “more Black” received a death sentence than those who looked “less Black.” “We found that the perceived stereotypicality of Black defendants convicted of murdering Black victims did not

predict death sentencing.... Defendants who were perceived to be more stereotypically Black were more likely to be sentenced to death only when their victims were white” (Eberhardt et al., 2006, p. 384).

**THE DEATH PENALTY IS USED AGAINST THE LOWER CLASSES:** Rich, famous, and influential offenders are able to avoid receiving the death penalty and frequently even a conviction. Many people believe that the O.J. Simpson case (**Casarez and Sgueglia, March 13, 2018**) and the Robert Blake case (Fryer, et. al, May 4, 2016) are examples. They were both charged but found ‘not guilty’ of murdering their wives, however, they were both later found responsible in civil suits for large sums of money. Rich people don’t receive the death penalty, it is used instead for people who have the least resources and consequently have the “worst lawyers”. On April 9, 2001, Supreme Court Justice Ruth Bader Ginsburg said, "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial. People who are well represented at trial do not get the death penalty" (McAllister, 2003, p. 74). An examination of 461 capital cases by The Dallas Morning News found that nearly **one in four** condemned inmates had been represented at trial or on appeal by court-appointed attorneys who have been disciplined for professional misconduct at some point in their careers (*Dallas Morning News*, September 10, 2000). An investigation by the Texas Defender Service found that, "Death row inmates today face a **one-in-three** chance of being executed without having the case properly investigated by a competent attorney and without having any claims of innocence or unfairness presented or heard" (Texas Defender Service, 2002). John Spenkelink’s last words are worth repeating in this context, "Capital punishment -- Them without the capital get the punishment" (Clark County Prosecutor, n.d.).

**THE DEATH PENALTY IS VERY EXPENSIVE:** There have been numerous studies of the cost of the death penalty and several reviews of these studies have been conducted. The most recent review stated that:

These studies show that the cost of a death penalty system is much greater than an LWOP system. The studies have varied in many ways. Some have studied specific components while others have been more comprehensive. They have been conducted in different states, at different times, with varying differences in the state systems. They have been conducted under different auspices, for different purposes, and by people with different perspectives. Studies have been made by academicians, legislative commissions, journalists, and interested citizens. The studies clearly varied in quality, style, and type of publication. Most importantly, however, despite all of these differences, the studies all agree in one very important way – **they all found that the death penalty system was much more expensive than an LWOP system.** The costs vary greatly from state to state and study to study, but it would be safe to say that **on average the death penalty system is probably at least two or three times as expensive as an LWOP system,** considerably more in some states and perhaps a little less in others. ... It is also clear that if the death penalty system is retained the total cost of the system will continue to increase exponentially even as the number of cases decrease (Waldo, 2018, p. 327).

There has never been an exhaustive and comprehensive study of the cost of the death penalty specifically for the state of Florida. The best study in Florida was done by the Palm Beach Post in 2000. At that time they calculated that the death penalty was costing the state of Florida \$51,000,000 more per year than it would cost to give every death row inmate a life sentence without any possibility of parole (Date, 2000). Assuming those same numbers were used each year since the death penalty was reinstated in 1979 the total cost would be \$1,989,000,000 from 1979 through 2018. There have been a total of **97** executions in Florida during this time period so the average cost to the state of Florida would be **\$20,505,155 per execution**.

**A recent California Legislative report said the death penalty costs 20 times more than a life sentence without parole** (CCFAJ, 2008, p. 84). A report presented in 2010 and updated in 2015 on FOXNews (surprise, surprise), reviewed many of the studies on the cost of the death penalty available at that time. The report stated, “Every time a killer is sentenced to die, a school closes.... Forget justice, morality, the possibility of killing an innocent man or any of the traditional arguments that have been part of the public debate over the death penalty. The new one is this: The cost of killing killers is killing us” (Barnes, 2015). One might ask, how many lives could be saved, how many pre-delinquents could be diverted, and how many crimes could be prevented, if the money spent on the death penalty were re-allocated into more worthwhile endeavors?

**THE DEATH PENALTY WILL EXECUTE INNOCENT PEOPLE:** If the death penalty is used the execution of an innocent person is inevitable. How many executions of innocent people are acceptable? Since 1972 there have been 164 people exonerated from death row, 28 of these from the Florida death row, more than any other state. Most of these people probably would have been executed if it were not for luck and the extreme efforts of people working outside of the criminal justice system. In Florida there have been 97 executions and 28 exonerations since 1972. This means that for every ten people executed there have been three or four people on death row who were found to be innocent and exonerated. Some of these exonerations occurred after many years on death row, some after having their death warrants signed. For example, James Richardson was on Florida's death row for 21 years before he was exonerated and Frank Lee Smith for 14 years, but Smith died on death row before he was exonerated. In Ohio, it took 39 years before Wiley Bridgeman and Kwamc Ajamu were exonerated (DPIC, Innocence).

A list of at least 27 people that are believed to possibly (probably) be innocent that have been executed in the United states since the Gregg decision in 1976 have been identified (Bohm, 2012, p. 219-236). Seven of these executions occurred in Florida. (Robert Sullivan (1983), James Adams (1984), Willie Jasper Darden (1988), Roy Stewart (1994), Bernard Bolender (1995), Leo Jones (1998), and Bernie Demps (2000). Jesse Tafero (1990) is also included on this list by some (Radelet, Bedau, and Putnam, 1992). Two former Texas District Attorney's, Grant Jones and Sam Milsap, now oppose the death penalty because they believe they probably sent innocent men to their death. Estimates of the percentage of people executed who are innocent ranges from .027% to over 6% and there is not agreement among the experts, but most say between 2% and 5%. Despite differences in their approaches and assumptions, however, they all agree that statistically, it is impossible to create a system by which an innocent person is



never executed. Even Justice Scalia agreed with this but he came up with a very low (and false) percentage of .027% (Risinger, 2007),

**THE DEATH PENALTY IS NOT USED FOR THE “WORST OF THE WORST”:**

Some proponents of capital punishment say they don't really like the death penalty but in extreme cases, for the 'worst of the worst' murderers, it is the only appropriate punishment. However, with only minimal forethought it is obvious that the death penalty is not used for people who committed the "worst of the worst" murders. Most would agree that contract killers who are paid to kill, and have killed many people for money, just as 'a job', are clearly among the "worst of the worst" murderers. A quick inspection, however, finds that these multiple murderers are almost never executed. Oscar Veal was a contract killer for a large drug ring and murder-for-hire operation. He was convicted of seven counts of murder and eight counts of racketeering conspiracy. However, in exchange for testimony about a drug organization prosecutors recommended a sentence of 25 years in prison. For Veal, killing was simply a job. In his trial testimony he said, "Even though it may sound sick, that's the way ... we looked at it." Veal's attorney cited other examples in which sentences were reduced in exchange for valuable information. Phillip "Crazy Phil" Leonetti, served just 5 years despite a criminal record that included 10 murders. Salvatore "Sammy the Bull" Gravano, was sentenced to only 5 years despite his involvement in 19 murders and other crimes. (McElhatton, January 14, 2011). One of the most notorious contract killers was referred to as the 'Ice Man'. He had murdered over 200 people as a paid killer, yet he did not get the death penalty (Carlo, 2009).

**THE DEATH PENALTY HAS NOT BEEN FOUND TO BE A DETERRENT:** All of the earlier and less sophisticated research on deterrence found either no deterrent effect or a counter deterrent (or "brutalization") effect where the murder rate was higher when the death penalty existed. For example, if the murder rates for death penalty states are compared to abolition states for virtually any year, the death penalty states always have a higher murder rate than the non-death penalty states. Comparing murder rates for states in 2016 the rate in death penalty states was 5.6 compared to a murder rate of 4.5 for abolition states. In 2015 the rates are 5.2 and 4.3, in 2010 the rates are 5.0 and 4.0, in 2005 the comparable rates are 5.9 and 4.0, in 2000 the rates are 5.7 and 4.3, and in 1995 they are 8.6 and 6.8. To go back to earlier periods, in 1928 the murder rate in death penalty states was 8.8 compared to 4.2 in abolition states, in 1933 comparable rates are 10.5 and 3.7, in 1938 they are 7.6 and 2.2, in 1943 they are 5.5 and 2.1, and in 1949 they are 6.0 and 2.2. The murder rates vary greatly from year to year for a lot of different reasons, but the rates are virtually always higher in death penalty states than they are in abolition states regardless of the time period. These results obviously do not support deterrence.

When states have abolished the death penalty the murder rate has declined more often than it has increased after the abolition. The rate of law enforcement officers murdered is normally about the same in death penalty and abolition states, and frequently even less in abolition states. (All of the above calculations are made using the FBI Uniform Crime Reports for the respective years.)

More recent and more sophisticated research on the deterrent effect of the death penalty has had mixed outcomes. An early review of these research studies by Waldo (1981) said that most studies found no effects, some studies found deterrent effects, and some studies found "brutalization" effects suggesting the death penalty increased rather than reduced murders. More

recently, a report released on April 18, 2012 by the National Research Council of the National Academies of Science reviewed all of the research that has been conducted on deterrence and the death penalty and found that all of these studies were flawed in several ways. The committee concluded “that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates”. The committee recommended that this research “should not influence policy judgments about capital punishment” (National Research Council, 2012, p. 2). The most recent review of this body of research concluded, “In sum, the research evidence and moral arguments fail to support deterrence as a legitimate punishment for homicide. There is no credible evidence for execution as a deterrent to homicide” (Vito and Vito, 2018, p. 180).

### **THE DEATH PENALTY CREATES SEVERAL “STICKY PROBLEMS”:** The

U.S. Supreme Court has ruled that it is unconstitutional to execute those under the age of 18 (Roper v. Simmons, 2005), those who are ‘insane’ (Ford v. Wainwright, 1986), and those who are ‘retarded’ or mentally deficient (Atkins v. Virginia, 2002). People in these categories are deemed incapable of making mature, adult decisions and are therefore not responsible for some of their actions. However, determining which of the numerous mentally ill, mentally deficient, PTSD, and youthful offenders deserve to be executed have become very “sticky problems”. Insanity, for example, is a legal term, not a medical or psychiatric term, and the criminal justice system continues to send mentally ill people to death row. If the defendant is able to get a psychiatrist to represent him it becomes a contest between dueling psychiatrists and the outcome is unpredictable. In terms of age at the time of the crime, a person could be ineligible for execution on one day but on the next day they could be eligible if the crime occurred on their 18<sup>th</sup> birthday. For an 18-year-old it is another decision that is up to the prosecutor and depends more on where and when the crime occurred than the nature of the crime or characteristics of the offender. Mental deficiency depends on an IQ score and if it is one-point higher than an arbitrary range (70 +/- 5 points) the person would be eligible for execution. Where should the line be drawn between those eligible and ineligible for execution? Different prosecutors and different judges make these determinations in different ways resulting in different decisions. Each of these “sticky” problems is difficult for the criminal justice system to deal with and occupy a lot of time and utilize scarce criminal justice resources. Luckily, all of these problems would be eliminated simply by the abolition of the death penalty.

### **THE DEATH PENALTY DOES NOT REDUCE VICTIM FAMILY SUFFERING:**

Most families who had a member murdered and who go through the experience of the offender being executed don’t seem to find the closure they need. The death penalty process takes many years to evolve and sometimes new trials, new testimony by family members, the reliving of old memories, renewed grief and suffering, and sometimes even guilt feelings after the execution. Many survivors of homicide do not want the person who murdered their family member to be executed. They say it is one more death they have to deal with, it will not bring back their family member, and it slows down the grieving and healing process so they can go on with their lives. Some say they would like to see the money spent on the death penalty used instead to help the family members of the victims in their recovery process or to help solve some of the ‘cold case’ murders that happened in the past.

Many of the organizations around the country in favor of abolition of the death penalty are led by people who had someone in their family who was murdered, and virtually all of these organizations have active members who had someone in their family who was murdered. At the present time Renny Cushing, a former member of the New Hampshire House of Representatives, whose father was shot and killed when he opened his front door in response to the doorbell ringing, is head of such a group in New Hampshire. He was a sponsor of an abolition bill that passed in the NH legislature only to be vetoed by the Governor.

Many family members of homicide victims think in terms of restorative justice, not revenge. Many of the survivors of homicide have found that although nothing can ever eliminate the pain that they suffer, the concept of restorative justice reduces the pain of their loss, brings them closer to closure, provides more peace of mind, and lets them go on with their lives better than living with constant hate for the offender and the desire for revenge and retribution.

**THE DEATH PENALTY CREATES “COLLATORAL DAMAGE”**: The death penalty harms many people, including jurors, investigators, police officers, prison staff, attorneys, judges, witnesses, governors, relatives and friends of victims and defendants, as well as all concerned citizens. A recent book devoted entirely to all of the different groups of people harmed by the death penalty is: Bohm, Robert, Capital Punishment's Collateral Damage, Carolina Academic Press, 2013. It should be fairly obvious that family members and friends of the person on death row are “collateral victims” of the death penalty and it may be equally obvious that the attorneys and volunteers that worked on the case are also “collateral victims”. But prison employees are probably a category that most people do not think of as being "collateral victims" of the death penalty. Upon closer inspection, however, it is obvious that there are many such victims.

Ron McAndrews, warden at Florida State Prison, who resigned because of his experience with the death penalty, said in an interview –

It was getting to me, but ‘I had some good crutches.... there was the red wine, cognac, and pills. Thank God for a very supportive wife. The scars are so goddamn clear it’s scary. All just so a governor could pound his little chest and scream, ‘Vote for me because I’m hard on crime.’.... suddenly I couldn’t sleep at all. Not without drinking a lot of liquor. A lot of wine. Not without taking sleeping pills.... It was starting to get really bad, because, mixed in with all this, I started to have some horrible nightmares. It was the faces of the men that I executed. I woke up and saw them literally sitting on the edge of my bed. I’d moved over to make room for them. They didn’t say anything to me. They just looked.”

Even Governors are not immune from the “collateral damage” inflicted on others by the death penalty. “After running for governor as a supporter of the death penalty, (Arkansas) Gov. Mike Beebe said Wednesday that the experience of signing a death warrant for the first time caused his thinking on the issue to ‘evolve’ and that he would sign legislation outlawing the punishment if legislators were to send him such a bill.... Beebe said he changed his mind about the death penalty after having to sign his first death warrant (M. Stratford, January 16, 2013). Beebe Signed 8 death warrants but the courts delayed all eight.

Correctional officers who work every day with prisoners on death row, even those who support the death penalty, also suffer collateral damage.

Jerry Givens (was a Virginia correctional officer who) executed 62 people.... Givens pushed the button. He saw (the inmate's) body spasm through the window. And then it was over. He had taken his first life. Inevitably, Givens said the emotion of an execution would come flooding back. ...“Ultimately, though, it was a man he didn't execute who would make the biggest impression. Earl Washington Jr. was sentenced to death in 1984.... Just days before his scheduled execution in 1985, lawyers secured a stay based on doubts about his guilt. In 1993, DNA tests provided strong evidence that Washington was not the killer.... making him the first person on Virginia's death row to be exonerated by DNA evidence.... ‘The fact that you had the entirely wrong person was a revelation to some people.’ The man who would have been Washington's executioner was one of them. Givens said the case shook his faith in the justice system. He came within days of putting an innocent man to death. ‘If I execute an innocent person, I'm no better than the people on death row,’ Givens said.... “Nevertheless, he still wonders whether there were any innocents among the 37 people he executed via the electric chair and the 25 by lethal injection. The man who prayed for the forgiveness of each of the condemned said he may need it himself. ‘The only thing I can do is pray to God to forgive me if I did,’ Givens said. ‘But I do know this — I will never do it again’ (Jouvenal, J., 2013).

**THE DEATH PENALTY IS OPPOSED BY MOST RELIGIONS:** Most major religious organizations oppose capital punishment. Among these are the: American Baptist Churches in the U.S.A., American Friends Service Committee, American Jewish Committee, Buddha Dharma Education Association, Buddhist Peace Fellowship, Christian Church (Disciples of Christ), Church of the Brethren, Episcopal Church, Evangelical Lutheran Church in America, Florida Conference of Catholic Bishops, Florida Council of Churches, Friends United Meeting, General Conference Mennonite Church, The Moravian Church, National Council of the Churches of Christ in the U.S.A, Orthodox Church in America, Presbyterian Church (U.S.A.), Reformed Church in America, Unitarian Universalist Association, United Church of Christ, United Methodist Church.

There are 17 Death Penalty Offenses in the Old Testament: Adultery, Attacking One's Parents, Bestiality, Blasphemy, Contempt of Court, Cursing One's Parents, Desecration of Sabbath, Disobeying One's Parents, Homosexuality (only for males), Idolatry, Incest, Kidnapping, Loss of Virginity While Living With Parents, Murder, Prostitution by Priest's Daughter, Witchcraft, and Worshipping Other Gods. (See Bohm, 2012, pp. 313-314). If the death penalty is justified on the basis of the Old Testament, shouldn't all of these behaviors receive the death penalty today? But the Old Testament is inconsistent because there are examples of murderers that were not punished by death. Biblical figures Cain, Moses, and David all murdered someone, but they were not put to death for these murders.

On the other hand, the New Testament does not support the death penalty. Instead, Jesus talks about love, mercy, repentance and forgiveness. For example: (NIV) Matthew 5:38-39 -

“You have heard that it was said, ‘Eye for eye, and tooth for tooth.’ But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also.” (NIV) John 8:7 - “When they kept on questioning him, he straightened up and said to them, ‘Let any one of you who is without sin be the first to throw a stone at her.’”

(NIV) Romans 12:17-21 – “Do not repay anyone evil for evil...On the contrary: If your enemy is hungry, feed him; if he is thirsty, give him something to drink. Do not be overcome by evil, but overcome evil with good.” (NIV) Matthew 5:7 - “Blessed are the merciful, for they will be shown mercy.”

**The United States is the only major Christian country that uses the death penalty. What would Jesus have done? Who would Jesus have executed?**

**THE DEATH PENALTY DOES NOT REQUIRE RETRIBUTION:** The concept of retribution, *lex talionis*, was developed by the early Babylonians and was present in both biblical and early Roman law. This concept says that criminals should receive punishment equivalent to the injuries and damages they had inflicted upon their victims. Many early societies sometimes applied this “eye-for-an-eye” principle literally, but apparently not always. *Lex talionis*, an eye for an eye, a tooth for a tooth, a life for a life is an old concept and it is still the strongest argument for most people who support capital punishment. But why should it apply only to the death penalty, “a life for a life”? If retribution is to be taken seriously, we would rape the rapist, put out the eye of the person who blinded someone, knock out a tooth, break an arm, cut off a hand, rob the robber, steal from the thief, etc. We don’t do any of those things because it would be ridiculous to do so. The same is true of murder, it is ridiculous to kill someone because they killed someone. On closer examination, however, it is obvious that we really don’t follow *lex talionis* even for murder. Very few murderers are executed. According to the Uniform Crime Reports there were 16,617 murders in 2017 and there were 23 executions. If we were really following a life for a life philosophy, there should have been 16,617 executions, an average of 46 executions per day for each of the 365 days of the year (including Christmas and all other holidays.). For a more elaborate discussion of retribution see (Kain, George F. and Dale Recinella, 2018).

**THE DEATH PENALTY IS IMMORAL:** It is morally wrong to kill and the state sets a bad example for its citizens by killing. Why should the state kill people to show that killing people is wrong? Perhaps no one has voiced this better than Cesare Beccaria in his classic book published in 1764. “The death penalty cannot be useful, because of the example of barbarity it gives men. It seems to me absurd that the laws, which are an expression of the public will, which detest and punish homicide, should themselves commit it, and that to deter citizens from murder, they order a public one” (Beccaria, 1764, 1963). The commission of any homicide is immoral, and the carrying out of an execution by the state is an act of homicide and clearly immoral.

**THE DEATH PENALTY IS A MAJOR DISTRACTION:** The death penalty distracts the criminal justice system, the legislature, other state leaders, and society from more important legal and social issues. More importantly, perhaps, it diverts limited financial resources away from more effective ways to reduce murder and other violent crime. It can be argued, indirectly, even without the brutalization possibility discussed previously, that the death penalty increases crime rather than decreases it. Considering the high cost of the death penalty, and the research on deterrence previously discussed, more crime can be prevented without the death penalty than with it. The large body of research on deterrence and crime starting with Beccaria in 1764 notes that there are three components to deterrence; the certainty of punishment, the celerity (swiftness) of punishment, and the severity of punishment. The death penalty is only concerned with the severity of punishment. All of the research that has been conducted, beginning with Beccaria's discussion of deterrence, has shown that the certainty and swiftness of punishment are much more important than the severity of punishment in preventing any kind of crime, murder included. Unless a potential murderer believes there is a high probability they will be caught (certainty), then the severity (death penalty) of punishment is irrelevant. Removing the distraction of the death penalty, and using the money saved to increase the certainty and swiftness of punishment, can solve and prevent more crimes. Most police chiefs would likely agree with this statement.

#### **FURTHERMORE:**

The **AMERICAN BAR ASSOCIATION** has called for a moratorium on the death penalty "call(ing) upon each jurisdiction with capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with longstanding American Bar Association policies" (ABA, 1997). After conducting studies in several death penalty states the ABA says the "efforts to forge a fair capital punishment jurisprudence have failed. Today, administration of the death penalty ... is ... a haphazard maze of unfair practices with no internal consistency" (Carelli, 1977).

The **AMERICAN LAW INSTITUTE** removed the death penalty (Sect. 210.6) from the Model Penal Code because they concluded it could not be fixed. This statute was the strongest legal support for the death penalty and was used by the states in re-writing death penalty statutes after the Furman decision. **The death penalty no longer exists in the Model Penal Code.**

**MURDERERS WILL STILL DIE,** they will never go free. They will receive a sentence of life in prison without any possibility of parole and will die in prison. It will take longer for them to die, give them more time to regret what they have done, more time to try to make amends for their mistakes, perhaps work on some meaningful hobby's or useful projects that make money for the state, and as previously discussed, at the same time save the state of Florida a lot of money that that goes into the capital punishment process.

Researchers should **STUDY INCARCERATED MURDERERS** in order to learn how to better prevent future murders. Physical scientists, social scientists, medical doctors, psychiatrists, criminologists, etc. should be given the resources and opportunities to study serial murderers and contract murderers, as well as more mundane forms of murder. We still know very little about psychopathy/sociopathy and other characteristics that might lead to such

murders. Yes, some of these people have committed horrendous crimes and they deserve serious punishment and society needs to be protected by preventing them from committing more such crimes. But at the same time, we need to learn from these tragedies so we can prevent similar crimes in the future. If we can learn things that would prevent even one serial or contract killer from ever taking multiple lives it would be a major step forward.

At a national level, we should be concerned by **THE COMPANY WE KEEP**. The following countries are those that use the death penalty the most: China, Iran, United States, Iraq, Saudi Arabia, Sudan, North Korea, Syria, Yemen, Libya, Somalia, Afghanistan, and Viet Nam. Only **one European country** and only **20% of American** countries still have the death penalty, but most of these countries use it very seldom.

The death penalty is rapidly **DECLINING IN USE**. This is happening in the U.S. and around the world. Twenty states in the U.S. have abolished the death penalty, 8 in the last 12 years. Three other states are currently under a gubernatorial moratorium. Forty states haven't used it in the last 5 years and only eight states used capital punishment in 2018. Today, 142 countries no longer use the death penalty, compared to only 17 countries that didn't use the death penalty in 1970.

This is not a **LIBERAL OR CONSERVATIVE ISSUE**, many conservatives and conservative organizations oppose capital punishment. "In 2019, conservative legislators are leading the call for death-penalty abolition in conservative-leaning states such as Wyoming, Montana, and Kentucky, and playing a critical role in **bipartisan efforts** to repeal or reform capital punishment in Virginia and New Hampshire" (DPIC, Feb. 19, 2019).

**A FINAL THOUGHT!!!** There are not many problems facing the state of Florida that can be solved just by passing a law, but this is an easy one to fix! Abolish capital punishment and solve a lot of human problems in the process!

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## REFERENCES

American Bar Association, 1997. Death Penalty Moratorium Resolution. Retrieved from [https://www.americanbar.org/groups/committees/death\\_penalty\\_representation/resources/dp-policy/](https://www.americanbar.org/groups/committees/death_penalty_representation/resources/dp-policy/)

American Law Institute, (2009). Report of the Council to the Membership of The American Law Institute On the Matter of the Death Penalty. April 15. Retrieved from [http://www.ali.org/doc/Capital%20Punishment\\_web.pdf](http://www.ali.org/doc/Capital%20Punishment_web.pdf).

Atkins v. Virginia, 536 U.S. 304 (2002)

Baldus, David C., George Woodworth and Charles S Pulaski Jr. (1990). *Equal Justice and the Death Penalty: A Legal and Empirical Analysis*, Boston, Northeastern University Press.

Barkan, Steven E., and Steven F. Cohn. 1994. "Racial Prejudice and Support for the Death Penalty by Whites." *Journal of Research in Crime and Delinquency* 31:202-209.

Barnes, Ed, Published March 27, 2010, Last Update June 22, 2015. Just or Not, Cost of Death Penalty Is a Killer for State Budgets. FOX NEWS . Retrieved from <https://www.foxnews.com/us/just-or-not-cost-of-death-penalty-is-a-killer-for-state-budgets>

Barnes, 2015

Beccaria, Cesare, 1963. *On Crimes and Punishments*, Bobbs-Merrill, [(1764) 1963

Blume, John, Theodore Eisenberg, and Martin T. Wells. "Explaining Death Row's Population and Racial Composition." *Journal of Empirical Legal Studies* 1.1 (2004): 167.

Bohm, Robert (2012). *Deathquest: An Introduction to the Theory and Practice of Capital Punishment in the United States* (4<sup>th</sup> edition). Waltham, MA, Anderson Publishing.

Carlo, Philip, 2009. *The Ice Man: Confessions of a Mafia Contract Killer*, St. Martin's Paperbacks.

CCFAJ California Commission on the Fair Administration of Justice, June 30, 2008. *Report and Recommendations on the Administration of the Death Penalty in California*. Retrieved from <http://deathpenalty.org/downloads/FINAL%20REPORT%20DEATH%20PENALTY%20ccfaj%20June%2030.2008.pdf>

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Carelli, Richard, February 2, 1977.. "Lawyers Want to End the Death Penalty". The Associated Press, News & Record. Retrieved from [https://www.greensboro.com/lawyers-want-end-to-death-penalty/article\\_1ecfd70b-98da-582b-8485-0c847339ac6f.html](https://www.greensboro.com/lawyers-want-end-to-death-penalty/article_1ecfd70b-98da-582b-8485-0c847339ac6f.html)

Casarez, Jean and Kristina Sgueglia, March 13, 2018. "O.J. Simpson described 'blood and stuff' in hypothetical murder scenario". CNN. Retrieved from <https://www.cnn.com/2018/03/12/entertainment/oj-simpson-hypothetical-murder-confession-fox-special/index.html>

Chammah, Maurice (2014). *The Slow Death of the Death Penalty*. Marshall Project. December 17. Retrieved from: <https://www.themarshallproject.org/2014/12/17/the-slow-death-of-the-death-penalty>.

Clark County Prosecutor, n.d. Retrieved from <http://www.clarkprosecutor.org/html/death/US/spenkelink002.htm> .



Cowan, Claudia, William Thompson and Phoebe Ellsworth (1984). The Effects of Death Qualification on Jurors' Predisposition to Convict and on the Quality of Deliberation. *Law and Human Behavior*. 8, pp. 53-79.

*Dallas Morning News*, September 10, 2000. "[Quality Of Justice](https://www.google.com/search?q=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&rlz=1C1ILPI_enUS695US695&oq=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&aqs=chrome..69i57.4575j0j4&sourceid=chrome&ie=UTF-8)". Retrieved from [https://www.google.com/search?q=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&rlz=1C1ILPI\\_enUS695US695&oq=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&aqs=chrome..69i57.4575j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&rlz=1C1ILPI_enUS695US695&oq=Dallas+Morning+News%2C+September+10%2C+2000.+%22Quality+Of+Justice%22.&aqs=chrome..69i57.4575j0j4&sourceid=chrome&ie=UTF-8)

Date, S.V., January 4, 2000. "The High Price of Killing Killers", *Palm Beach Post*,. <https://www.newspapers.com/newspage/130320943/>

Donohue, John J. III (2013). Capital Punishment In Connecticut, 1973-2007: A Comprehensive Evaluation From 4686 Murders To One Execution. Stanford Law School, National Bureau of Economic Research, June 8. Retrieved from [http://works.bepress.com/john\\_donohue/87](http://works.bepress.com/john_donohue/87)

DPIC, Abolitionist and Retentionist Countries, Retrieved from <http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries?scid=30&did=140>.

DPIC, Clemency. Retrieved from <http://www.deathpenaltyinfo.org/clemency>.

DPIC, Conservative Support, "Death-Penalty Repeal Efforts Across U.S. Spurred by Growing Conservative Support" February 19, 2019 Retrieved from <https://deathpenaltyinfo.org/node/7326>.

DPIC, Death Sentences in the United States From 1977 By State and By Year. Retrieved from: <http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2008>.

DPIC, Deterrence. Retrieved from <https://deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates#stateswithvwithout>

DPIC, Espy Execution File. Retrieved from <http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file?scid=8&did=269>.

DPIC, Executions by Race. Retrieved from <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976>.

DPIC, Executions by State, Retrieved from <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976>.

DPIC, Innocence. Retrieved from <https://deathpenaltyinfo.org/innocence-list-those-freed-death-row>

Eberhardt, Jennifer L.; Davies, P G.; Purdie-Vaughns, Valerie J.; and Johnson, Sheri Lynn (2006). Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital

Sentencing Outcomes. Psychological Science. Vol. 17, No. 5, pp. 383-386. Cornell Law Faculty Publications. Paper 41. Retrieved on September 17, 2014 from [http://scholarship.law.cornell.edu/lrsp\\_papers/41](http://scholarship.law.cornell.edu/lrsp_papers/41).

Ford v. Wainwright, 477 U.S.399 (1986)

Furman v. Georgia, 408 U.S. 238 (1972)

Fryer, Joe, Rich McHugh, Andrew Blankstein and Tracy Connor, May 4, 2016. "Robert Blake Case: 15 Years Later his Private Eye Speaks Out" NBC NEWS. Retrieved from <https://www.nbcnews.com/news/us-news/robert-blake-case-15-years-later-his-private-eye-speaks-n566006>

Horn, Dan (2007).The politics of life and death: An inmate's fate often hinges on luck of the draw. Cincinnati Enquirer. April 15. Retrieved from: <http://lethal-injection-florida.blogspot.com/2007/04/inmates-fate-often-hinges-on-luck-of.html>

Jouvenal, J., February 10, 2013. "Ex-Virginia executioner becomes opponent of death penalty," Washington Post.

Kain, George F. and Dale Recinella, 2018. "Retribution and Capital Punishment: It's in the Bible, Isn't It", Rutledge Handbook on Capital Punishment, edited by Robert G. Bohm and Gavin Lee. Routledge, New York & London, 2018, pp. 153-169.

Ko, Michael & Ian Lth, September 11, 2003. "Fugitive's Prosthetic Leg Gives Him Away" The Seattle Times. <http://community.seattletimes.nwsourc.com/archive/?date=20030911&slug=fugitive11m0>

Kubik, Jeffrey and John Moran (2003). Lethal Elections: Gubernatorial Politics and the Timing of Executions. The Journal of Law & Economics 46, 1, pp. 1-25.

Lemons, Stephen (2010). Sean Gaines Gets 25 Years in Skinhead Slaying, While Patrick Bearup Remains on Death Row. Dec. 15. Phoenix New Times. Retrieved on December 29, 2014 from: [http://blogs.phoenixnewtimes.com/bastard/2010/12/sean\\_gaines\\_gets\\_25\\_years\\_in\\_s.php](http://blogs.phoenixnewtimes.com/bastard/2010/12/sean_gaines_gets_25_years_in_s.php)

Mandery, Evan (2013). A Wild Justice: The Death and Resurrection of Capital Punishment in America. New York, W.W. Norton & Company.

McAllister, P., 2003. Death Defying: Dismantling the Execution Machinery in 21st Century U.S.A., Continuum International Publishing Group. Retrieved from [https://www.google.com/search?q=McAllister%2C+P.%2C+2003.+Death+Defying%3A+Dismantling+the+Execution+Machinery+in+21st+Century+U.S.A.%2C+Continuum+International+Publishing+Group&rlz=1C1ILPI\\_enUS695US695&oq=McAllister%2C+P.%2C+2003.+Death+Defying%3A+Dismantling+the+Execution+Machinery+in+21st+Century+U.S.A.%2C+Continuum+International+Publishing+Group&aqs=chrome..69i57.8640j0j9&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=McAllister%2C+P.%2C+2003.+Death+Defying%3A+Dismantling+the+Execution+Machinery+in+21st+Century+U.S.A.%2C+Continuum+International+Publishing+Group&rlz=1C1ILPI_enUS695US695&oq=McAllister%2C+P.%2C+2003.+Death+Defying%3A+Dismantling+the+Execution+Machinery+in+21st+Century+U.S.A.%2C+Continuum+International+Publishing+Group&aqs=chrome..69i57.8640j0j9&sourceid=chrome&ie=UTF-8).

McElhatton, J., January 14, 2011. "A killer deal: Be a star witness, escape execution," Washington Times. Retrieved from <https://www.google.com/search?q=McElhatton%2C+J.+A+killer+deal%3A+Be+a+star+witness%2C+escape+execution%2C+Washington+Times>

2C+J.%2C+January+14%2C+2011.+%22A+killer+deal%3A+Be+a+star+witness%2C+escape+execution%2C%22+Washington+Times.&rlz=1C1ILPI\_enUS695US695&oq=McElhatton%2C+J.%2C+January+14%2C+2011.+%22A+killer+deal%3A+Be+a+star+witness%2C+escape+execution%2C%22+Washington+Times.&aqs=chrome..69i57.5456j0j4&sourceid=chrome&ie=UTF-8

National Research Council, 2012, [https://www.google.com/search?q=National+Research+Council%2C+2012%2C&rlz=1C1ILPI\\_enUS695US695&oq=National+Research+Council%2C+2012%2C&aqs=chrome..69i57j0l5.21199j0j9&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=National+Research+Council%2C+2012%2C&rlz=1C1ILPI_enUS695US695&oq=National+Research+Council%2C+2012%2C&aqs=chrome..69i57j0l5.21199j0j9&sourceid=chrome&ie=UTF-8)

New York Review of Books (2012). Justice Stevens on Arbitrariness and the Death Penalty, April 15. Retrieved on December 23, 2014 from: <http://standdown.typepad.com/weblog/2012/03/justice-stevens-returns-to-new-york-review-of-books.html>.

Radelet, Michael (2001). Recent Developments in the Death Penalty in Florida. 'Life Over Death' Capital Litigators Training Conference, Florida Public Defender Association, Orlando, Florida, September 7.

Radelet, Michael L., Hugo Adam Bedau, and Constance Putnam, 1992. In Spite of Innocence: Erroneous Convictions in Capital Cases, Northeastern University Press.

Risinger, Michael, 2007. "Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate," Journal of Criminal Law and Criminology.

Roper v. Simmons, 543 U.S. 551 (2005)

Stratford, M., January 16, 2013. "[Ark. governor reverses course on death penalty](https://www.google.com/search?q=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&rlz=1C1ILPI_enUS695US695&oq=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&aqs=chrome..69i57.25135j0j9&sourceid=chrome&ie=UTF-8)," Associated Press.. [https://www.google.com/search?q=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&rlz=1C1ILPI\\_enUS695US695&oq=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&aqs=chrome..69i57.25135j0j9&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&rlz=1C1ILPI_enUS695US695&oq=Stratford%2C+M.%2C+January+16%2C+2013.+%E2%80%9CArk.+governor+reverses+course+on+death+penalty%2C%E2%80%9D+Associated+Press..&aqs=chrome..69i57.25135j0j9&sourceid=chrome&ie=UTF-8)

Texas Defender Service, 2002. Lethal Indifference: The Fatal Combination of Incompetent Attorneys and Unaccountable Courts., Retrieved from [https://www.google.com/search?q=Texas+Defender+Service%2C+2002.+Lethal+Indifference%3A+The+Fatal+Combination+of+Incompetent+Attorneys+and+Unaccountable+Courts.%2C&rlz=1C1ILPI\\_enUS695US695&oq=Texas+Defender+Service%2C+2002.+Lethal+Indifference%3A+The+Fatal+Combination+of+Incompetent+Attorneys+and+Unaccountable+Courts.%2C&aqs=chrome..69i57.4302j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Texas+Defender+Service%2C+2002.+Lethal+Indifference%3A+The+Fatal+Combination+of+Incompetent+Attorneys+and+Unaccountable+Courts.%2C&rlz=1C1ILPI_enUS695US695&oq=Texas+Defender+Service%2C+2002.+Lethal+Indifference%3A+The+Fatal+Combination+of+Incompetent+Attorneys+and+Unaccountable+Courts.%2C&aqs=chrome..69i57.4302j0j7&sourceid=chrome&ie=UTF-8)

The New York Times's Print Archive, June 11, 1994. *Justice Powell's New Wisdom* <https://www.nytimes.com/1994/06/11/opinion/justice-powell-s-new-wisdom.html>

Uniform Crime Reports, 2018 Retrieved from [https://www.google.com/search?q=Uniform+Crime+Reports%2C+2018&rlz=1C1ILPI\\_enUS695US695&oq=Uniform+Crime+Reports%2C+2018&aqs=chrome..69i57j0.4078j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Uniform+Crime+Reports%2C+2018&rlz=1C1ILPI_enUS695US695&oq=Uniform+Crime+Reports%2C+2018&aqs=chrome..69i57j0.4078j0j7&sourceid=chrome&ie=UTF-8)

U.S. Government Accounting Office, 1990. Retrieved from [https://www.google.com/search?q=U.S.+overnment+Accounting+Office%2C+1990&rlz=1C1ILPI\\_enUS695US695&oq=U.S.+Government+Accounting+Office%2C+1990&aqs=chrome..69i57.2814j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=U.S.+overnment+Accounting+Office%2C+1990&rlz=1C1ILPI_enUS695US695&oq=U.S.+Government+Accounting+Office%2C+1990&aqs=chrome..69i57.2814j0j7&sourceid=chrome&ie=UTF-8)

Vito, Anthony G. and Gennaro F. Vito, "General Deterrence and Brutalization" 2018. *Routledge Handbook on Capital Punishment*, edited by Robert M. Bohm and Gavin Lee. Routledge – Taylor and Francis Group, New York, pp. 170-182

Waldo, Gordon P., 1981. "The Death Penalty and Deterrence: A Review of Recent Research," *The Mad, the Bad, and the Different: Essays in Honor of Simon Dinitz*. Edited by Israel Barak-Glantz and Ronald Huff, Massachusetts, Lexington Books, pp. 169-178.

Waldo, Gordon P., 2016. "Did the Gregg Decision Overcome the Arbitrary and Discriminatory Use of the Death Penalty so Prevalent in Furman?", *Advancing Criminology and Criminal Justice Policy*, edited by Thomas Blomberg, Julie Brancale, Kevin Beaver, and William Bales. New York, Routledge, Taylor and Francis Group, pp. 217-231.

Waldo, Gordon P., 2018. "The Financial Cost of the Death Penalty: Examining the Evidence". *Routledge Handbook on Capital Punishment*, edited by Robert M. Bohm and Gavin Lee. Routledge – Taylor and Francis Group, New York, pp. 313-330.

Waldo, Gordon P. and Raymond Paternoster, 2003. "Tinkering With the Machinery of Death: Failure of a Social Experiment," *Punishment and Social Control* (enlarged second edition), edited by Thomas Blomberg and Stanley Cohen), New York, Aldine De Gruyter, 2003, pp. 311-352.