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Death Penalty: Fix What's Broken

By Jim Wooten

State Rep. Barry Fleming (R-Harlem) was dead-on in his commentary on the Brian Nichols case. Said Fleming:

"We're in a day and age when people get on a jury and they'll say they will vote for a death penalty, but simply won't do it. That has to be accounted for."

That's it. Those who most vigorously oppose the death penalty have great incentive to work their way onto capital cases to keep the penalty from being imposed. There's no way to detect their bias until the deed's done.

Without question, Nichols deserved death. He's an evil man, dangerous to every correctional officer he encounters for the remainder of his life. He sets the standard for application of the death penalty.

Henceforth, every death penalty opponent will be able to make the case in the court of public opinion: If Brian Nichols didn't get death, then no run-of-the-mill mass murder deserves it, lest that constitute unequal justice.

The General Assembly should act to allow judges to impose capital punishment without requiring all 12 jurors to agree on death. All 12 should agree on guilt, but the penalty phase should be a simple recommendation to the judge who could impose the appropriate penalty.

"This case has rocked Georgia's criminal justice system," said the state senator who heads the judiciary committee, Preston Smith (R-Rome): "This case has been a poster child for why there needs to be reform in the system."

In the meantime, yes, federal prosecutors should try Nichols for the murder of off-duty U.S. Customs agent David Wilhelm. And ask for death.

http://www.ajc.com/opinion/content/shared-blogs/ajc/thinkingright/entries/2008/12/15/_state_rep_barry_fleming.html

Document 2

TIME

Jan. 14, 2008, Vol. 171, No. 2, pp. 38-41

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Death Penalty Walking

By David Von Drehle

• *Capital punishment costs millions of dollars to enforce. Untrained personnel are administering lethal injections. Now a Supreme Court case may force us to consider whether this system makes sense*

On Jan. 7, the supreme court will hear oral arguments in a pair of Kentucky lawsuits challenging the lethal three-drug cocktail used in most U.S. executions. The gist of the cases is that the drug combination is unnecessarily complicated, using three chemicals when one would do, and that when this procedure is administered by undertrained prison officials, there's an unconstitutional risk that something will go wrong. Instead of going to a quiet death, an inmate could experience terrifying paralysis followed by excruciating pain.

In a perfect world, perhaps, the government wouldn't wait 30 years and several hundred executions to determine whether an execution method makes sense. But the world of capital punishment has never been that sort of place. This weighty moral issue, expressive of some of our society's deeply held values, involves a lot of winging it. In 1990, for instance, a sponge used in the headpiece of Florida's electric chair wore out. There's no factory or parts catalog for execution devices, so the prison sent a guy to pick up a sponge at the store. Problem was, he bought a synthetic sponge instead of a genuine sea sponge, and when Jesse Tafero was strapped in, his head caught fire. Florida officials diagnosed the problem afterward by testing a similar sponge in a toaster.

In comparison, lethal injection sounds more scientific--almost therapeutic--but its history is as improvised as that supermarket sponge. In 1977 an Oklahoma lawmaker sketched the protocol on a notepad with the help of a medical examiner. More research has gone into the proper way to brush your teeth. But the idea caught on, and now, years later, more than half the states have adopted some version of the Oklahoma cocktail. Judges in courts across the country are scratching their head over the odd concoction, and the Supreme Court has effectively halted all executions to untangle a mess of belated questions: How much risk of torture is too much? How many safeguards are necessary? What makes a punishment cruel and unusual?

Decades of well-intentioned brainstorms like this one--legal, medical, procedural, political--have accumulated into one thoroughly screwed-up system. Any other government program that delivered 3% of what it promised--while costing millions of dollars more than the alternative--would be a scandal, but the death penalty is different. In its ambiguity, complexity and excess, the system expresses a lot about who we are as a nation. We're of mixed minds, and most of us would rather not spend a lot of time thinking about killing. A majority of Americans support the idea of capital punishment--although fewer are for it if given a choice of life without parole. At the same time, a substantial number in a recent poll said they could not serve on a death-penalty jury.

Our death penalty's continued existence, countering the trend of the rest of the developed world, expresses our revulsion to violent crime and our belief in personal accountability. The endless and expensive appeals reflect our scrupulous belief in consistency and individual justice. This is also a nation of widely dispersed power--many states, cities and jurisdictions. Out of this diversity has emerged the staggering intricacy of death-penalty law, as thousands of judges and legislators from coast to coast struggle to breathe real-life meaning into such abstract issues as what constitutes effective counsel, what is the proper balance of authority between judge and jury, what makes a murder "especially heinous," what qualities and defects in a prisoner compel mercy, and so on.

Such parsing has gone on for nearly 50 years, since the gestation of the model penal code after World War II. But it isn't getting us anywhere. Even supporters of capital punishment can't admire a process in which fewer than 3 in 100 death sentences imposed in the U.S. are carried out in any given year. California's death row houses more than 660 prisoners, but no one has been executed in the state in nearly two years. Pennsylvania, with 226 inmates on death row, hasn't carried out a sentence since the '90s. In Florida a spree killer named William Elledge, who confessed to his crimes and has openly discussed his guilt in interviews, will soon complete his 33rd year on death row with his appeals still unresolved. Thirty-three years! He's one of about 55 men in Florida alone with more than 25 years on death row.

The more effort we invest in trying to make this work, the harder it seems to be to give up. The death penalty in the U.S. is a wreck, but it's our wreck--a collage of American attitudes, virtues and values.

The Rube Goldberg Death Machine

Less democratic nations have abolished the death penalty without regard for popular opinion. Less violent nations have forgotten the reasons for it. Less humane nations have no qualms about unfair executions. The kernel of the issue, it seems, is the signature American angst over how to balance individual rights with public order.

The debate almost always comes down to the question of whether to fix it or end it. But these alternatives largely miss the reality. Every attempt to fix the death penalty bogs down in the same ambivalence. We add safeguards one day, then shortcut them the next. One government budget contains millions of dollars for prosecutions, while another department spends more millions to defend against them. Indeed, the very essence of ambiguity is our vain search for a bloodless, odorless, motionless, painless, foolproof mode of killing healthy people. No amount of patching changes the nature of a Rube Goldberg machine. In 1996 Congress passed an extensive overhaul of capital punishment, but as in all previous overhauls, the changes quickly spawned new nuances to appeal. Ten years later, one of the most skillful anti-death-penalty lawyers in the country, Mark Olive, summed up the impact of the grandly titled Anti-terrorism and Effective Death Penalty Act, saying "It gave us 10 years of fresh issues to litigate."

Supreme Court Justice Harry Blackmun aptly described this endless activity as "tinker[ing] with the machinery of death." He spoke as a veteran tinkerer, having helped cook up an abstruse set of requirements for calculating the aggravating and mitigating factors in a prisoner's life and crimes--a concept that continues to bog down juries and judges a generation later. Other veterans of the Supreme Court's long struggle with capital punishment have also soured on the experiment. Justice Lewis Powell told a biographer that the vote he most regretted was the one he cast in 1987 to save capital punishment. Another member of the five-Justice majority in that case, Sandra Day O'Connor, told a group of Minnesotans not long ago that they should "breathe a big sigh of relief every day" that their state doesn't have the death penalty. Justice John Paul Stevens, who as a new Justice in 1976 voted to restore capital punishment, now speaks of the "serious flaws" in the system he helped devise.

However, attempts to end capital punishment must overcome inertia and the weight of public sentiment. This isn't easy. In the U.S., support for the death penalty has fallen from a high of about 80% at the peak of the murder epidemic of the 1980s and '90s to somewhere between half and two-thirds, depending on the poll. But politicians know that a 69% approval rating is nothing to sneeze at. Only one state has abolished capital punishment since the Supreme Court reinstated it in 1976: New Jersey, last month. Legislatures in New Mexico, Montana, Nebraska and Maryland appear to be within one or a few key votes of following suit. New York's high court struck down that state's death penalty without stirring up much protest. But while that means 14 states now have no death-penalty law in effect, the majority of states are a long, long way from giving up.

An Inconsistent, Ungainly Collapse

Instead, the death penalty is being hollowed out. Nearly all the states have adopted the alternative of life-without-parole sentences, and prosecutors and juries are embracing the option. Life without parole doesn't trigger the separate sentencing trials and automatic appeals that can make death sentences so financially and emotionally costly. As a result, prosecutors are seeking and juries are delivering far fewer death sentences: last year's total of 110 was the lowest since the introduction of the modern death-penalty system. Nationwide, the number of death sentences has fallen almost two-thirds, and the trend extends even to Texas, the heart of the death-penalty machine. There, 14 prisoners were sentenced to death in 2006, compared with 40 a decade earlier.

The number of executions has also dropped dramatically from its modern peak in 1999. The 42 executions in 2007 were the fewest in 13 years. A number of states had called formal or informal moratoriums even before the Supreme Court effectively halted executions nationwide pending its review of lethal injection.

We now have a situation in which a majority of the states that authorize the death penalty seldom if ever use it. Last year only 10 states carried out an execution. And even that number overstates the vigor of the system. If you don't count executions of inmates who voluntarily dropped their appeals and asked to be killed--essentially government-assisted suicides--the state count falls to eight.

Our Rube Goldberg contraption is being dismantled the same way it was built--not straightforwardly but in uncoordinated and even inconsistent steps. The ungainly, ambivalent collapse of the death penalty seems unfitting for a punishment whose very existence is largely symbolic. But the trend is unmistakable.

The Supreme Court is part of this slow-motion shutdown of the death-penalty machine. In recent years the court has banned executions of mentally retarded inmates and of prisoners who committed their crimes as minors. The mere fact that the court is hearing the lethal-injection cases is historic because the institution has always been reluctant to inquire into the business end of the death penalty.

The last time the court descended into the gruesome details was in 1947, when it ruled on the case of an unfortunate Louisiana inmate, Willie Francis. Sentenced to death in 1945 for murder, he was strapped into the electric chair several months later and zapped--but something went wrong, and he survived. Francis recovered enough to realize that the state intended to repair the chair and put him back in it. He begged the court for a reprieve. The squeamishness of the Justices was apparent in the opinion, but ultimately five of them agreed that the equipment malfunction was an honest mistake and thus Louisiana was entitled to try again. That time, Francis was killed.

There's nothing attractive about the specifics of the death chamber. In the arguments on Jan. 7, the Justices may hear descriptions of bloody surgeries, called cutdowns, performed by EMTs

and less trained prison officials as they struggle to insert IV lines into the ruined veins of longtime drug abusers. Without a doctor present, it often falls to prison officials--sometimes watching from a separate room--to determine whether an inmate is unconscious or simply paralyzed as the searingly painful heart-stopping agent potassium chloride takes effect.

It's possible the court will ponder this haphazard procedure and say again, as it ruled in the Francis case: Too bad--accidents will happen. Or it might follow the lead of U.S. District Judge Jeremy Fogel, who ruled that the three-drug cocktail, administered by people without proper training and supervision, is cruel and unusual. Or something in between.

The discussion itself is another sign of the nation's ambivalence about the ultimate, irreversible punishment. And as long as we're ambivalent, we'll continue to have the system we have made for ourselves--inefficient, beyond repair and increasingly empty.

A Crumbling System

Fewer than three of every hundred death sentences are ever carried out. Among the 36 states that have the death penalty, only 10 performed an execution last year.

[This article contains a complex diagram. Please see hardcopy of magazine)

Opinion

The death penalty -- it's unworkable

The American Law Institute, instrumental in structuring the model statutes on which most death sentences are based, has withdrawn its support of such laws.

By Michael Traynor

February 4, 2010

Nearly 50 years ago, as concern grew in the country about the fairness of death penalty laws, the American Law Institute published a "model statute" aimed at helping state lawmakers draft laws to ensure that death sentences were meted out fairly and consistently.

Last fall, the institute withdrew its support for the model death penalty law. The decision was a striking repudiation from the very organization that provided the blueprint for death penalty laws in this country.

The institute, with a membership of more than 4,000 lawyers, judges and law professors of the highest qualifications, is the leading independent organization in the United States producing scholarly work to clarify and improve the law.

In the decade after the institute published its law, which was part of a comprehensive model penal code, the statute became the prototype for death penalty laws across the United States. Some parts of the model -- such as the categorical exclusion of the death penalty for crimes other than murder and for people of limited mental abilities -- withstood the test of time. But the core of the statute, which created a list of factors to guide judges and jurors deciding when to sentence someone to death, has proved unworkable and fostered confusion and injustice.

Now, after searching analysis by our country's top legal minds, the institute has concluded that the system it created does not work and cannot be fixed. It concluded that we cannot devise a death penalty system that will ensure fairness in process or outcome, or even that innocent people will not be executed.

I am speaking for myself, not as a representative of the institute, but I can say with certainty that the institute did not reach these conclusions lightly. It commissioned a special committee and a scholarly study, heard various viewpoints and debated the issues extensively. A strong consensus emerged that capital punishment in this country is riddled with pervasive problems.

The death penalty cannot balance the need for consistency in sentencing with the need for individualized determinations. Its administration is unequal across racial groups. There is a grave lack of resources for defense lawyers. The law is distorted by the politics of judicial elections, and it consumes a disproportionate share of public resources.

California's death penalty exemplifies these problems. Portions of California's law were copied from the institute's model statute. The system now is on the verge of collapse. There are about 700 people on death row in California, and it can take 25 years for mandatory appeals to be completed. Since 1978, California has executed 13 prisoners, while 72 have died of old age or other causes.

Resources are woefully inadequate. More than half of the people on death row don't have access to a constitutionally-required lawyer. A statewide commission found that there remains a serious risk that the state will execute an innocent person. And then there is the cost. Housing a prisoner on death row costs taxpayers \$90,000 a year more than if that prisoner were held in another type of high-security prison. The total additional cost for housing all of California's death row inmates is more than \$60 million a year.

These problems are entrenched in the death penalty system, both in California and nationwide. The cumulative result: Executions remain as random as lightning strikes, or more so, and that is the very problem the institute's model statute intended to fix. In addition, across the country, at least 139 individuals have been released from death row after establishing their innocence.

The institute's action comes at a time of widespread reevaluation of capital punishment. Fifteen states have abandoned capital punishment, including three in the last three years. In 2009, the country saw the lowest number of death sentences since the death penalty was reinstated in 1976.

We now have decades of experience, which the institute lacked when it proposed its model statute almost 50 years ago. Life without the possibility of parole, now an important alternative in nearly every state, was then virtually untried. To the extent that society needs to punish murderers severely, it can do so far more effectively using tough yet fair prison sentences rather than through an ineffective and extravagant death penalty.

The American Law Institute could have chosen to do nothing. But having laid the intellectual and legal groundwork for the modern death penalty, it concluded that it had a responsibility to act now that the system's fatal flaws have fully emerged.

The withdrawal of the model death penalty statute recognizes that it is impossible to administer the death penalty consistently and fairly, and it therefore should not remain a punishment option in this country. The institute could no longer play a role in legitimizing a failed system. How much longer can any of us?

Michael Traynor is president emeritus of the American Law Institute and lives in Berkeley. Copyright © 2010, [The Los Angeles Times](#)

November 17, 2008

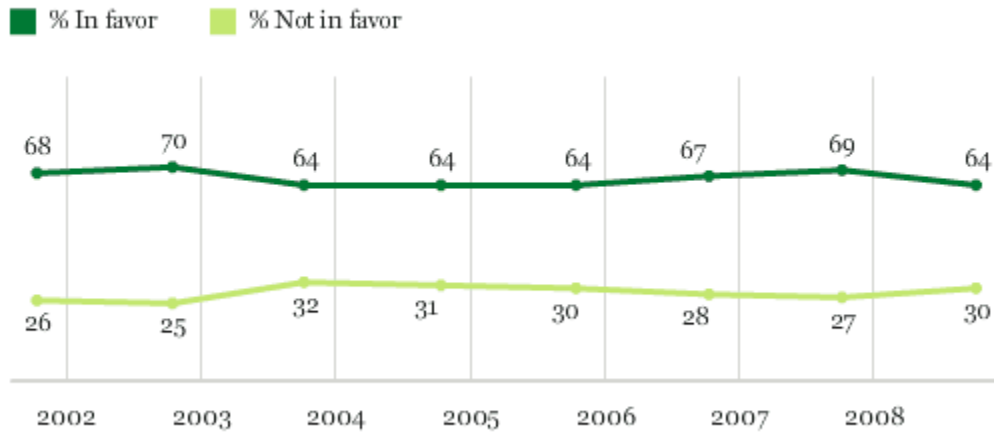
Americans Hold Firm to Support for Death Penalty

Only 21% say it is applied too often

- PRINCETON, NJ -- Last week's recommendation by a Maryland commission that the state's death penalty law be repealed contrasts with broad U.S. public support for the punishment. According to Gallup's annual Crime survey in October, 64% favor of Americans favor the death penalty for someone convicted of murder, while just 30% oppose it.

Are you in favor of the death penalty for a person convicted of murder?

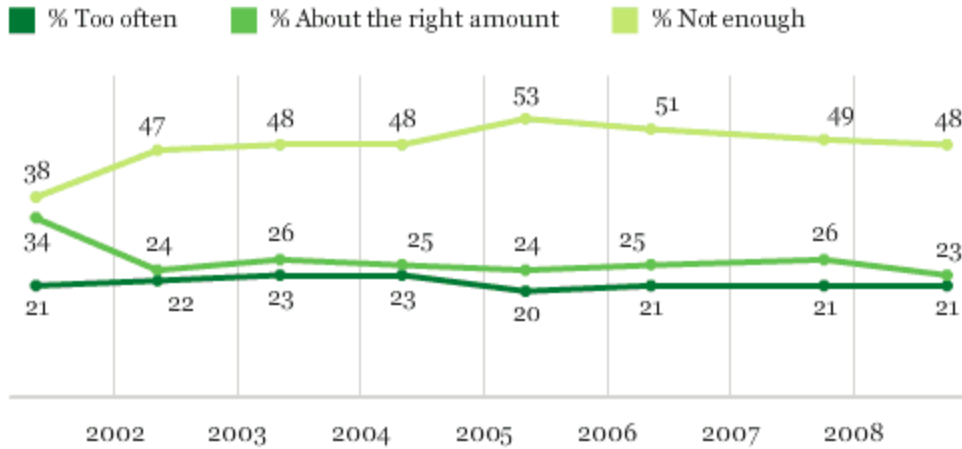
2001-2008 trends from Gallup Poll Crime Survey, conducted each October



GALLUP POLL

In addition to the majority of Americans who support the death penalty, nearly half (48%) believe it is not imposed often enough. Only 21% of Americans say it is imposed too often, with a nearly equal number, 23%, saying it is imposed about the right amount of time.

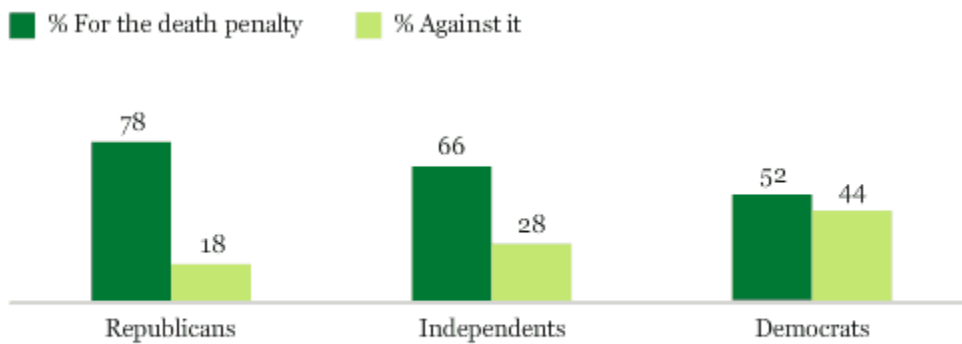
In your opinion, is the death penalty imposed -- [too often, about the right amount, or not often enough]?



GALLUP POLL

The death penalty is favored by most Republicans nationwide, but it also receives the general support of a solid majority of independents and more than half of Democrats.

Support for the Death Penalty, by Party ID

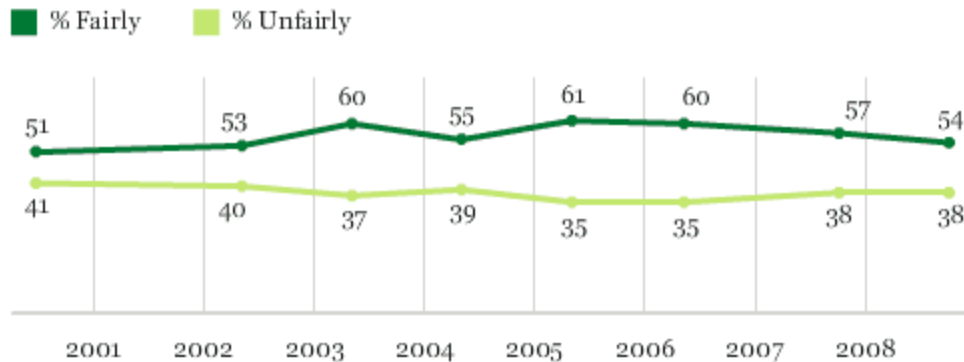


Oct. 3-5, 2008

GALLUP POLL

In its preliminary report -- the final report will be issued next month -- the Maryland Commission on Capital Punishment cited evidence that the death penalty does not act as a deterrent to crime, and that it is racially biased in its application. Americans don't share the same view on at least one of these arguments. The slight majority of Americans in the Oct. 3-5, 2008, poll -- 54% -- say they believe the death penalty is applied fairly in the country today -- a rough indication that Americans don't perceive bias to be a major problem with the death penalty system.

Generally speaking, do you believe the death penalty is applied fairly or unfairly in this country today?



GALLUP POLL

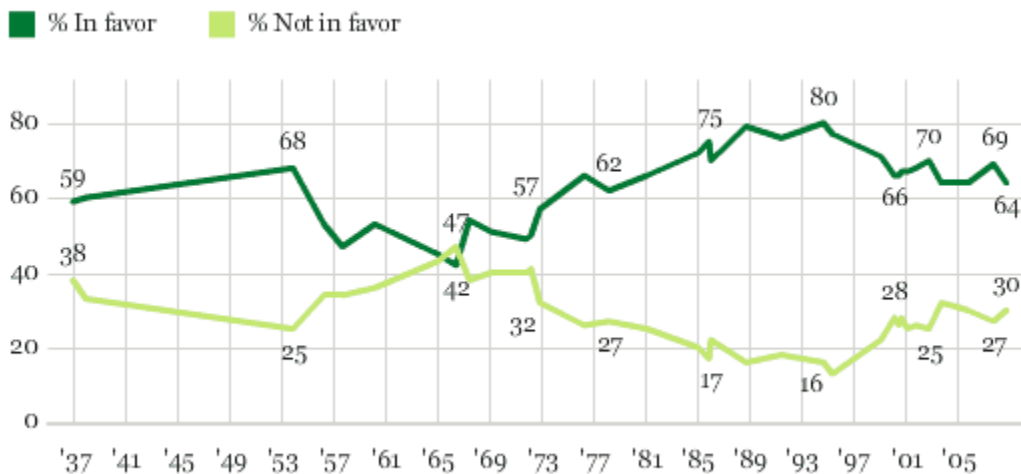
On the other hand, previous Gallup research has found that most Americans believe the death penalty is not a deterrent to crime. According to a May 2006 Gallup Poll, only 34% said it was a deterrent, while 64% disagreed. Open-ended questions asked in previous years have shown that most Americans who favor the death penalty do so because they believe it provides an "eye for an eye" type of justice.

Long-Term Trend

Although the current 64% support for capital punishment is high, support is a bit lower than it has been at other times over the past decade, when 69% or 70% were in favor. Those readings, in turn, are lower than the ones from the 1980s and 1990s, when support averaged 75%. The highest individual measure of public support for the death penalty in Gallup's records is 80%, recorded 14 years ago in September 1994.

Death penalty support was substantially lower from the late 1950s through the early 1970s. As Gallup has previously reported, it appears that Supreme Court rulings on the death penalty in the 1970s [may have sparked increased public support for the punishment](#), starting around 1976.

Are you in favor of the death penalty for a person convicted of murder?



GALLUP POLL

Death Penalty vs. Life in Prison

Over the years, Gallup has consistently found lower support for the death penalty when it is offered as an alternative to life imprisonment with no possibility of parole. Most recently, in May 2006, Gallup found 47% naming the death penalty as the better penalty for murder, versus 48% preferring life imprisonment.

Bottom Line

The majority of Americans continue to support the use of the death penalty as the punishment for murder. Most Americans (71%) also say the death penalty is used either about the right amount or not often enough.

While Americans generally agree that the death penalty is not a deterrent, and, as previous Gallup research has shown, widely acknowledge that some innocent people have been executed, most nevertheless support the death penalty as punishment for murder. The reason is very likely their concept of justice. [According to a 2003 Gallup study](#), close to half of Americans who supported the death penalty cited some aspect of retribution for the crime as the reason.

Survey Methods

Results are based on telephone interviews with 1,011 national adults, aged 18 and older, conducted Oct. 3-5, 2008. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ± 3 percentage points.

Interviews are conducted with respondents on land-line telephones (for respondents with a land-line telephone) and cellular phones (for respondents who are cell-phone only).

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

Document 5

SIRS Researcher

Leading Issues Timelines
2009

[Capital Punishment Timeline](#)

Title: Death Chamber

Caption: An American prisoner, sentenced to death, is strapped into a chair in the gas chamber, circa 1945. The black hood carries a Westinghouse Electric Company logo. (Photo by Weegee (Arthur Fellig)/ International Centre of Photography/Getty Images)



Document 6

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Time for a Moratorium Against the Death Penalty

By Bernard Kouchner and Carl Bildt

PARIS--Today, the European Day Against the Death Penalty, we join forces in speaking out against what constitutes the ultimate, irreversible denial of human rights, and a cruel and inhuman punishment that does not belong to modern times.

We cannot remain silent when thousands of persons are still being executed or sentenced to death every year. We cannot remain silent when we see footage from public group hangings in Iran, read about the beheading of a juvenile offender in Saudi Arabia, or the execution in Texas of a man who was mentally disabled.

We are very concerned by the large number of executions in China and the marked increase in the number of executions in Japan. We are deeply disappointed when we see a country like Liberia reintroducing the death penalty, and we urge Belarus to join the European consensus against the use of capital punishment.

The death penalty violates the very fundament of human rights, including the right to life. It is the ultimate cruel, inhuman and degrading punishment; it often entails excruciating suffering. It is irrevocable, and mistakes are irreparable. All judicial systems make mistakes, and as long as the death penalty persists, innocent people will be executed. The death penalty is a symptom of and an encouragement to a culture of violence. It is not a solution to it, as is often claimed, and it does not deter crime more than other punishments. The death penalty quite simply has no place in a modern criminal justice system.

Europe is at the forefront of efforts to abolish the death penalty. That has, of course, not always been the case. In medieval and early modern Europe, before the development of modern prison systems, the death penalty was used as a punishment for a wide range of crimes. With the emergence of nation states and the idea of citizens, however, justice became increasingly associated with equality, universality and dignity. Today it is a requirement for membership in the EU and an issue on which Council of Europe member states have also been able to take a firm joint position. As a result, no execution has taken place on the territory of the organization's member states since 1997.

The good news is that there is a consistent trend toward abolition of the death penalty. Progress has been dramatic in last few decades, and today more than two-thirds of all states have abolished the death penalty in law or in practice.

Since the Third World Congress Against the Death Penalty, which took place in Paris in February 2007, Albania, Cook Island, Rwanda, Uzbekistan and Argentina have abolished capital punishment. The use of the death penalty is also becoming increasingly restrained in retentionist

countries. This global trend is supported by the various international tribunals, including the International Criminal Court, which, although dealing with the most heinous crimes, have no power to impose the death penalty.

There is, however, no room for complacency. The European Union, as well as the Council of Europe, have intensified their efforts against the death penalty in international fora such as the U.N., where last year the General Assembly, in a historic vote, with cross-regional support, adopted a resolution calling for a moratorium on executions with a view to abolishing the death penalty.

This year the General Assembly will follow up on that initiative, through the recommendations of the secretary-general. It is also an issue that the chairmanship of the Council of Europe will highlight at the United Nations in the framework of the Cooperation between the United Nations and the Council of Europe.

Today on the European Day Against the Death Penalty, we call upon governments of all countries that still retain the death penalty to show political courage and strive toward the abolition of it under all circumstances. As a first step, we call on governments to introduce a moratorium with immediate effect. We also stress the courageous and crucial role played by human rights defenders in the struggle to abolish this heinous human rights violation, and we encourage civil society to remain active. Together we must support the deep-rooted trend to universal abolition. Together we can make a difference.

Bernard Kouchner is the French minister of foreign and European affairs. Carl Bildt is the Swedish minister of foreign affairs.

Document 7

Virginia Scheduled to Execute Man Whose Lawyers Failed Him

Edward Bell, a Jamaican immigrant convicted of killing a police officer, is scheduled to be executed in **Virginia** on February 19 despite a conclusion by a federal District Court that his lawyers failed to present any mitigating evidence at his trial. Judge James Jones of the Eastern District of Virginia held that the representation Bell received violated constitutional standards. However, a new sentencing hearing to explore the ample mitigating evidence that existed was never granted. According to the clemency petition filed for Bell, "Judge Jones said in a colloquy with the representative of the Attorney General, 'You'll agree that there was **zero mitigation evidence presented in this case**. The brief testimony that was presented, again, as I think the witnesses have agreed, really probably hurt Bell more than they helped him. Certainly those witnesses, there was nothing elicited from them that did anything to shed any light on Bell or his character or motives or background.' Again speaking to the representative of the Attorney General, Judge Jones summarized the situation: defense counsel 'present[ed] no mitigating evidence, zero mitigating evidence. The prosecutor said it, you agree, I agree. The defense counsel presented zero.'"

In addition to the evidence of Bell's positive influence on many people that might have convinced a jury to spare Bell's life if it had been heard, Bell also has evidence of his innocence and mental retardation. Much of the evidence in the circumstantial case against Bell is in dispute, including a key prosecution witness recanting his claim that Bell confessed to him in jail. While Bell meets Virginia's statutory definition of mental retardation, with testing showing an IQ of 68 with serious deficiencies in adaptive functioning, no court has ever given Bell a hearing to prove his mental retardation. Governor Tim Kaine may stay or commute Bell's death sentence.

(Edward Nathaniel Bell Clemency Petition to Governor Tim Kaine, January 23, 2009)
(emphasis added).

<http://www.deathpenaltyinfo.org/virginia-scheduled-execute-man-whose-lawyers-failed-him>

Bureau of Justice Statistics Bulletin
Nov. 2004
Page(s) : 1-17
Justice Department (DOJ)
Justice Statistics Bureau (BJS)

Capital Punishment, 2003

*By Thomas P. Bonczar and Tracy L. Snell
BJS Statisticians*

Highlights

- At yearend 2003, 37 States and the Federal prison system held 3,374 prisoners under sentence of death, 188 fewer than at yearend 2002.
- Of those under sentence of death, 56% were white, 42% were black, and 2% were of other races.

Persons under sentence of death		
	1993	2003
White	1,585	1,878
Black	1,125	1,418
American Indian	24	29
Asian	16	35
Unknown race	5	14

- The 369 Hispanic inmates under sentence of death accounted for 12% of inmates with a known ethnicity.
- Forty-seven women were under sentence of death in 2003, up from 38 in 1993.
- The 144 inmates received under sentence of death during 2003 represent the smallest number of admissions since 1973.
- The number of executions decreased to 65 during 2003, the lowest number since 1996 (45).
- Of the 7,061 people under sentence of death between 1977 and 2003, 12% were executed, 4% died by causes other than execution, and 36% received other

dispositions.

- The number of States authorizing lethal injection increased from 25 in 1993 to 37 in 2003. In 2003, 98% of executions were by lethal injection, compared to 68% in 1993.

- Since 1977, 718 of the 885 executions (81%) were by lethal injection.

Eleven States and the Federal Government executed 65 prisoners during 2003. The number executed was 6 fewer than in 2002. Those executed during 2003 had been under sentence of death an average of 10 years and 11 months, 4 months longer than the period for inmates executed in 2002.

At yearend 2003, 3,374 prisoners were under sentence of death. California held the largest number on death row (629), followed by Texas (453), Florida (364), and Pennsylvania (230).

During 2003, 25 States and the Federal prison system received 144 prisoners under sentence of death.

During the year, 267 inmates were removed from death row, the largest number since 1976 when the Supreme Court reinstated the death penalty. Illinois accounted for 60% of these removals. (See *Entries and Removals of Persons Under Sentence of Death.*)

In 2003, 65 men were executed, including 41 whites, 20 blacks, 3 Hispanics (all white), and 1 American Indian. Sixty-four were carried out by lethal injection; one by electrocution.

From January 1, 1977, to December 31, 2003, 885 inmates were executed by 32 States and the Federal Bureau of Prisons. Two-thirds of the executions occurred in 5 States: Texas (313), Virginia (89), Oklahoma (68), Missouri (61), and Florida (57).

Capital Punishment Laws

At yearend 2003 the death penalty was authorized by 38 States (table 1) and the Federal Government. No State enacted new legislation authorizing capital punishment in 2003.

The Missouri Supreme Court struck a portion of that State's capital statute on August 26, 2003 (State ex rel Simmons v. Roper, 112 S.W.3d 397 (Mo. banc 2003)). The Court found that evolving standards required that the minimum age for capital sentences be raised to 18 years of age rather than 16 as specified by

Missouri law.

Statutory Changes

During 2003, 11 States revised statutory provisions relating to the death penalty. By State, the changes were as follows:

Colorado--Revised an aggravating factor to include use of chemical, biological or radiological weapons and added as an aggravating factor intentional killing of more than one person in more than one criminal episode (C.R.S. 18.1.3-1201(5)(f) and (p), respectively), effective 4/29/2003.

Colorado also added to its list of aggravating factors deliberately killing of a pregnant woman when the defendant knew the victim was pregnant (C.R.S. 18.1.3-1201(5)(q)), effective 7/1/2003.

Delaware--Amended the statute to clarify that, while juries decide the existence of aggravating circumstances, sentencing is at the judge's discretion (Del. Code Ann. 11 Section 4209(d)(1)). Judges departing from a jury's recommendation must issue a written opinion specifying the reason (Del. Code Ann. 11 Section 4209(d)(4)). Both changes were effective 7/15/2003.

Idaho--Idaho amended its code of procedure to require that sentencing proceedings be held before a jury in capital cases unless a defendant waives the jury and the prosecutor consents to this waiver (19-2515, Idaho Code), effective 2/13/2003.

The Idaho legislature also added to its statute a definition of and procedures for determining if a defendant is mentally retarded, an exemption from the death penalty for any defendants who are deemed to be mentally retarded, and alternate sentencing procedures to be used under these circumstances (19-2515A, Idaho Code), effective 3/27/2003.

Illinois--Amended sections of its criminal and procedural codes relating to the death penalty. These changes became effective 11/19/2003.

Illinois established procedures for courts to follow when a death sentence is deemed inappropriate in light of the facts of the case (720 ILCS 5/9-1(g) and (l)).

A new law prohibited imposition of a death sentence on any defendant found to be mentally retarded and setting forth procedures for such a determination (725 ILCS 5/114-15).

The Illinois legislature also added sections regarding admissibility rules for testimony from informants (725 ILCS 5/115-21), written disclosure of any information potentially relevant to witness credibility (725 ILCS 5/115-22), and

criteria for a court to decertify a case as a capital case (720 ILCS 5/9-1(h-5)).

Indiana--Revised the procedural code to require the State Supreme Court to consider during sentence review claims that the sentence is "erroneous" (IC 35-5-2-9(j)(3)(B)). This law was passed in 2003, but was retroactively effective 7/1/2002.

Indiana also amended the statute to allow for post-conviction consideration of new evidence challenging the defendant's guilt or the appropriateness of the death sentence (IC 35-5-2-9(k)), effective 7/1/2003.

Louisiana--Amended the code of criminal procedure to prohibit capital sentencing of mentally retarded persons (La. C.Cr.P. Art. 905.5.1).

Montana--Modified the code of criminal procedure to require that a defendant either admit to or be found guilty beyond a reasonable doubt of aggravating factors in order to be sentenced to death (46-1-401 MCA; 46-18-302, 305, and 310 MCA), effective 10/1/2003.

Nevada--Revised its law to allow juries rather than 3-judge panels to determine death sentences (NRS Section 175.552(1)(b)), effective 6/9/2003; and to set alternatives to a death sentence in cases where a defendant has been found to be mentally retarded by the court (NRS Section 175.552(2), (3), and (4)), effective 10/1/2003.

Texas--Expanded its definition of criminal homicide to include murder during the commission of a terroristic threat (TX Penal Code 19.03(a)(2)), effective 9/1/2003.

Utah--Amended its statute to exempt mentally retarded persons from capital sentences and to specify pre-trial procedures for determining the mental retardation of defendants (Utah Code Ann. Section 77-15a-101); and creating post-conviction procedures for defendants to prove mental retardation (Utah Code Ann. Section 76-3-207(8)), effective 3/15/2003.

Virginia--Excluded mentally retarded defendants from capital sentences (Va. Code Section 19.2-264.3), effective 7/1/2003.

Automatic Review

Of the 38 States with capital statutes at yearend, 37 provided for review of all death sentences regardless of the defendant's wishes. In South Carolina the defendant had the right to waive sentence review if he or she was deemed competent by the court (State v. Torrence, 473 S.E. 3d 703 (S.C. 1996)). Federal death penalty procedures did not provide for automatic review after a sentence of death had been imposed.

The State's highest appellate court usually conducted the review. If either the conviction or sentence were vacated, the case could be remanded to the trial court for additional proceedings or retrial. As a result of retrial or resentencing, a death sentence could be reimposed.

While most of the 37 States authorized automatic review of both the conviction and sentence, Idaho, Oklahoma, South Dakota, and Tennessee required review of the sentence only. In Idaho review of the conviction had to be filed through appeal or forfeited. In Indiana and Kentucky a defendant could waive review of the conviction.

In Virginia a defendant could waive an appeal of trial court error but could not waive review of the death sentence for arbitrariness and proportionality.

In Mississippi the question of whether the defendant could waive the right to automatic review had not been addressed. In Wyoming neither statute nor case law precluded a waiver of appeal.

Arkansas implemented a rule requiring review of specific issues relating to both capital convictions and sentences (Ark. R. App. P.-Crim 10). Recent case law held waivers of this review are not permitted (*Newman v. State*, No. CR02-811, 2002 Westlaw 31030906 (Ark. Sept. 12, 2002)).

Method of Execution

As of December 31, 2003, lethal injection was the predominant method of execution (37 States) (table 2).

Nine States authorized electrocution; four States, lethal gas; three States, hanging; and three States, firing squad.

Seventeen States authorized more than 1 method--lethal injection and an alternative method--generally at the election of the condemned prisoner; however, 5 of these 17 stipulated which method must be used depending on the date of sentencing; 1 authorized hanging only if lethal injection could not be given; and if lethal injection is ever ruled to be unconstitutional, 1 authorized lethal gas, and 1 authorized electrocution or firing squad.

The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the method is that of the State in which the conviction took place (18 U.S.C. 3596).

Minimum Age

In 2003 seven jurisdictions did not specify a minimum age for which the death penalty could be imposed (table 3).

In some States the minimum age was set forth in the statutory provisions that determine the age at which a juvenile may be transferred to adult court for trial as an adult. Sixteen States and the Federal system required a minimum age of 18. Fifteen States indicated an age of eligibility between 14 and 17.

Characteristics of Prisoners Under Sentence of Death at Yearend 2003

Thirty-seven States and the Federal prison system held a total of 3,374 prisoners under sentence of death on December 31, 2003, a decrease of 188 since the end of 2002 (table 4*). Illinois accounted for 84% of this decline with a net decrease of 157 prisoners. Other jurisdictions accounted for a decrease of 31 prisoners during 2003. This was the third consecutive year that the number of prisoners under a sentence of death declined, down from 3,601 on December 31, 2000.

Three States reported 43% of the Nation's death row population: California (629), Texas (453), and Florida (364). The Federal Bureau of Prisons held 23 inmates at yearend. Of the 39 jurisdictions authorizing the death penalty in 2003, New Hampshire had no one under a capital sentence, and New York, Illinois, South Dakota, Colorado, Montana, New Mexico, and Wyoming had 5 or fewer.

Among the 38 jurisdictions with prisoners under sentence of death at yearend 2003, 11 had more inmates than a year earlier, 19 had fewer inmates, and 8 had the same number. California had an increase of 16, followed by Arizona (6), and Texas and Virginia (4 each). Following Illinois, the largest decreases were in Missouri (14), North Carolina (11), and Oklahoma and Pennsylvania (10 each).

During 2003 the number of both white and black inmates under sentence of death declined (by 61 and 133, respectively) while the number of persons of other races (including American Indians, Asians, and self-identified Hispanics) rose from 72 to 78.

Men were 99% (3,327) of all prisoners under sentence of death (table 5*). Whites accounted for 56%; blacks accounted for 42%; and other races (2%) included 29 American Indians, 35 Asians, and 14 persons whose race was unknown. Among those for whom ethnicity was known, 12% were Hispanic.

During 2003 the number of women sentenced to be executed decreased from 51 to 47 (table 6*). Two women were received under sentence of death, and six

were removed from death row. Women were under sentence of death in 17 States. Two-thirds of the women on death row at yearend were being held in four States: California, Texas, Pennsylvania, and North Carolina.

State	Women under sentence of death, 12/31/03		
	All races*	Black	White
Total	47	29	15
California	14	10	2
Texas	8	4	4
Pennsylvania	5	2	3
North Carolina	4	2	1
Alabama	3	1	2
Tennessee	2	2	0
Ohio	1	1	0
Florida	1	1	0
Georgia	1	1	0
Kentucky	1	1	0
Mississippi	1	1	0
Virginia	1	1	0
Arizona	1	1	0
Idaho	1	1	0
Indiana	1	0	1
Louisiana	1	0	1
Nevada	1	0	1

*Includes races other than white and black.

The number of Hispanics under sentence of death rose from 363 to 369 during 2003. Twenty-four Hispanics were received under sentence of death, 15 were removed from death row, and 3 were executed. More than three-quarters of the Hispanics were held in 3 States: California (130), Texas (121), and Florida (30).

The gender, race, and Hispanic origin of those under sentence of death at yearend 2003 were as follows:

	Persons under sentence of death, 12/31/03		
	White	Black	Other races
Male	1,849	1,403	75

Hispanic	335	14	16
Female	29	15	3
Hispanic	2	0	2

Among all inmates under sentence of death for whom date of arrest information was available, about half were age 20 to 29 at the time of arrest for their capital offense; 13% were age 19 or younger; and less than 1% were age 55 or older (table 7). The average age at time of arrest was 28 years.

On December 31, 2003, 34% of all inmates were age 30 to 39, and 64% were age 25 to 44. The youngest offender under sentence of death was 19; the oldest was 88.

Criminal History of Inmates Under Sentence of Death in 2003

Among inmates under a death sentence on December 31, 2003, for whom criminal history information was available, 64% had prior felony convictions, including 8% with at least one previous homicide conviction (table 8).

Among those for whom legal status at the time of the capital offense was available, 40% had an active criminal justice status. Less than half of these were on parole and a quarter were on probation. The remaining third had charges pending, were incarcerated, had escaped from incarceration, or had some other criminal justice status.

Criminal history patterns differed by race and Hispanic origin. More blacks (70%) than whites (62%) or Hispanics (59%) had a prior felony conviction. About the same percentage of whites, blacks, and Hispanics had a prior homicide conviction (8%). A slightly higher percentage of Hispanics (22%) or blacks (18%) than whites (14%) were on parole when arrested for their capital offense.

Since 1988, data have been collected on the number of death sentences imposed on entering inmates. Among the 4,156 individuals received under sentence of death during that time, about 1 in 7 entered with 2 or more death sentences.

Number of death sentences received	Inmates
Total	100%
1	85
2	10
3 or more	4

Number admitted under sentence of death, 1988-2003	4,156
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Entries and Removals of Persons Under Sentence of Death

Between January 1 and December 31, 2003, 25 State prison systems reported receiving 142 inmates under sentence of death; the Federal Bureau of Prisons received 2 inmates. More than half of the inmates were received in 5 States: Texas (29), California (19), Florida (11), and Arizona and Oklahoma (9 each).

Year	Inmates received under sentence of death
1994	327
1995	327
1996	323
1997	281
1998	307
1999	282
2000	234
2001	165
2002	168
2003	144

Of 144 prisoners who were received under sentence of death, 143 had been convicted of murder and 1 of rape (Louisiana). Two of those admitted were female. By race, 92 were white, 44 were black, 3 were American Indian, 3 were Asian, and 2 were of unknown race. Of the 144 new admissions, 24 were Hispanic.

The 144 admissions to death row in 2003 marked a decline of 24 from the 168 admissions recorded in 2002, and represented the smallest number received in a year since 44 persons were admitted in 1973. Between 1994 and 2000, in contrast, an average 297 inmates per year were admitted.

During 2003 a total of 267 inmates were removed from under a sentence of death by means other than execution. Illinois accounted for 60% of these removals: the governor removed all inmates from under sentence of death when he commuted 155 death sentences and granted 4 pardons.

Twenty-six States and the Federal Bureau of Prisons reported 257 persons whose death sentences were removed or overturned. In addition to the 159 inmates removed in Illinois, appeals courts vacated 78 sentences while upholding the convictions and vacated 15 sentences while overturning the convictions. Pennsylvania (16 exits) had the largest number of vacated sentences. Louisiana and Ohio each reported one commutation of a death sentence. Colorado removed three inmates when the Colorado Supreme Court declared their death sentences unconstitutional.

As of December 31, 2003, 224 of 257 persons who were formerly under sentence of death were serving a reduced sentence, 11 were awaiting a new trial, 12 were awaiting resentencing, 7 had all capital charges dropped, and 1 had no action taken after being removed from under sentence of death. The current status of 2 inmates was not available.

In addition, 10 persons died while under sentence of death in 2003. Six of these deaths were from natural causes--2 each in Tennessee and California; and 1 each in Ohio and Utah. Four deaths were suicides--one each in Georgia, Montana, South Dakota, and Tennessee.

From 1977, the year after the Supreme Court upheld the constitutionality of revised State capital punishment laws, to 2003, a total of 6,681 persons entered prison under sentence of death. During these 27 years, 885 persons were executed, and 2,802 were removed from under a death sentence by appellate court decisions and reviews, commutations, or death.¹

Among individuals who received a death sentence between 1977 and 2003, 3,266 (49%) were white, 2,723 (41%) were black, 582 (9%) were Hispanic, and 110 (2%) were other races. The distribution by race and Hispanic origin of the 3,687 inmates who were removed from death row between 1977 and 2003 was as follows: 1,910 whites (52%), 1,499 blacks (41%), 228 Hispanics (6%), and 50 persons of other races (1%). Of the 885 who were executed, 510 (58%) were white, 301 (34%) were black, 61 (7%) were Hispanic, and 13 (1%) were of other races.

Executions

According to data collected by the Federal Government, from 1930 to 2003, 4,744 persons were executed under civil authority (table 9).²

After the Supreme Court reinstated the death penalty in 1976, 32 States and the Federal Government executed 885 prisoners:

1977	1
1979	2
1981	1
1982	2
1983	5
1984	21
1985	18
1986	18
1987	25

1988	11
1989	16
1990	23
1991	14
1992	31
1993	38
1994	31
1995	56
1996	45
1997	74
1998	68
1999	98
2000	85
2001	66
2002	71
2003	65

During this 27-year period, 5 States executed 589 prisoners: Texas (313), Virginia (89), Oklahoma (69), Missouri (61), and Florida (57). These States accounted for two-thirds of all executions. Between 1977 and 2003, 501 white non-Hispanic men, 300 black non-Hispanic men, 61 Hispanic men, 8 American Indian men, 5 Asian men, 9 white non-Hispanic women, and 1 black non-Hispanic woman were executed.

During 2003 Texas carried out 24 executions; Oklahoma executed 14 persons; North Carolina, 7; Alabama, Florida, Georgia, and Ohio, 3 each; Indiana, Missouri, and Virginia, 2 each; and Arkansas and the Federal prison system, 1 each. All 65 of the inmates executed in 2003 were male. Forty-one were white; 20 were black; 3 were Hispanic; and 1 was American Indian.

From 1977 to 2003, 7,061 prisoners were under death sentences for varying lengths of time (table 10*). The 885 executions accounted for 12% of those at risk. A total of 2,802 prisoners (40% of those at risk) were removed by means other than execution. About the same percentage of whites (15%), blacks (10%), and Hispanics (10%) were executed. Somewhat larger percentages of whites and blacks (each 41%) than Hispanics (28%) were removed from under a death sentence by means other than execution.

Among prisoners executed from 1977 to 2003, the average time between the imposition of the most recent sentence received and execution was more than 10 years (table 11). White prisoners had spent an average of 10 years and 1 month, and black prisoners, 10 years and 9 months. The 65 prisoners executed in 2003 were under sentence of death an average of 10 years and 11 months.

For the 885 prisoners executed between 1977 and 2003, the most common method of execution was lethal injection (718). Other methods used included electrocution (151), lethal gas (11), hanging (3), and firing squad (2).

Method of execution	Executions, 1977-2003				
	White	Black	Hispanic	American Indian	Asian
Total	510	301	61	8	5
Lethal injection	418	229	59	7	5
Electrocution	79	69	2	1	0
Lethal gas	8	3	0	0	0
Hanging	3	0	0	0	0
Firing squad	2	0	0	0	0

Among prisoners under sentence of death at yearend 2003, the average time spent in prison was 9 years and 7 months, up 6 months from that in 2002.

Inmates under sentence of death	Elapsed time since sentencing	
	Mean	Median
Total	115 mo	103 mo
Male	115	103
Female	92	93
White	118	107
Black	115	104
Hispanic	100	84

The median time between the imposition of a death sentence and yearend 2003 was 103 months. Overall, the average time for women was 7 years and 8 months, 23 months less than that for men (9 years and 7 months). On average, whites, blacks, and Hispanics had spent from 100 to 118 months under a sentence of death.

Methodology

Capital punishment information is collected annually as part of the National Prisoner Statistics program (NPS-8). This data series is collected in two parts: data on persons under sentence of death are obtained from the department of corrections in each jurisdiction currently authorizing capital punishment; and

information on the status of death penalty statutes is obtained from the Office of the Attorney General in each of the 50 States, the District of Columbia, and the Federal Government. Data collection forms and more detailed tables are available on the BJS website .

NPS-8 covers all persons under sentence of death at any time during the year who were held in a State or Federal nonmilitary correctional facility. Included are capital offenders transferred from prison to mental hospitals and those who may have escaped from custody. Excluded are persons whose death sentences have been overturned by the court, regardless of their current incarceration status.

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) NPS-8 adds inmates to the population under sentence of death not at sentencing but at the time they are admitted to a State or Federal correctional facility; (2) If inmates entered prison under a death sentence or were reported as being relieved of a death sentence in one year but the court had acted in the previous year, the counts are adjusted to reflect the dates of court decisions (see the note on table 4* for the affected jurisdictions); and (3) NPS counts are always for the last day of the calendar year and will differ from counts for more recent periods.

All data in this report have been reviewed for accuracy by the data providers in each jurisdiction prior to publication.

Advance Count of Executions: January 1, 2004-November 9, 2004

To provide the latest data on capital punishment, BJS gathers information following each execution. The data include the date of execution, the jurisdiction, method used, and the name, race, and gender of each person executed.

As of November 9, 2004, 12 States had executed 56 inmates, 5 fewer than the number executed as of the same day in 2003.

Three States accounted for nearly 6 in 10 of the executions carried out during this period: Texas performed 21, and Ohio carried out 7, and Oklahoma executed 6.

Lethal injection accounted for 55 of the executions; electrocution, for 1.

Thirty-seven of those executed were white, 18 were black, and 1 was Asian. No women were executed.

Jurisdiction	Number of executions	Method used
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Texas	21	Lethal injection
Ohio	7	Lethal injection
Oklahoma	6	Lethal injection
Virginia	5	Lethal injection
South Carolina	4	Lethal injection*
North Carolina	3	Lethal injection
Alabama	2	Lethal injection
Florida	2	Lethal injection
Georgia	2	Lethal injection
Nevada	2	Lethal injection
Arkansas	1	Lethal injection
Maryland	1	Lethal injection
Total	56	

*South Carolina executed 1 inmate by electrocution.

Final counts for 2004 will appear in *Capital Punishment 2004*, released in late 2005. This annual report will consist of data collected from State and Federal correctional agencies. The report will cover all persons under sentence of death on December 31, 2004, as well as those removed from under sentence of death.

Notes

1. An individual may have been received and removed from under sentence of death more than once. Data are based on the most recent sentence.

2. Military authorities carried out an additional 160 executions between 1930 and 1961.

- The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is director.

BJS Bulletins present the first release of findings from permanent data collection programs.

This Bulletin was written by Thomas P. Bonczar and Tracy L. Snell under the supervision of Allen J. Beck. Tina Dorsey edited the report. Jayne Robinson prepared the report for final printing. At the U.S. Census Bureau, Patricia A. Clark collected the data under the supervision of Steven M. Bittner and Marilyn M. Monahan.

- This report in portable document format and in ASCII and its related statistical data and tables--including five appendix tables--are available at the BJS World Wide Web Internet site: .

- **Office of Justice Programs**

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