Sentencing For Life

Americans Embrace Alternatives to the Death Penalty

A Report by The Death Penalty Information Center

SENTENCING FOR LIFE:

Americans Embrace Alternatives to the Death Penalty

"Everybody believes that a person sentenced to life for murder will be walking the streets in seven years."

— Judge Charles Weltner, Georgia Supreme Court

A Report by
The Death Penalty Information Center
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Executive Summary

A new national opinion survey reveals for the first time that Americans may be ready for a change regarding the death penalty. More people would choose life without parole plus restitution to the victim's family over the death penalty for first degree murder. But Americans, including many serving on death penalty juries, are unaware that such lengthy sentences are now being regularly applied by most states.

These results are from a bipartisan opinion poll conducted by the Democratic polling firm of Greenberg/Lake and the Republican Tarrance Group. They interviewed 1,000 registered voters and found that support for the death penalty drops to under 50% when voters are offered a variety of alternative sentences, including a life sentence with no parole for at least 25 years plus mandatory restitution.

Many Americans do not realize that the sentencing schemes of most states have undergone fundamental changes in recent years. Forty-five states and the federal government now employ sentences in which no parole is possible for at least 25 years for their most serious murder cases. In two-thirds of the states, those who are not given the death penalty face life imprisonment with *no possibility of parole ever*. Yet only 4% of Americans believe that those convicted of first degree murder would spend the rest of their lives in prison according to the Greenberg/Lake and Tarrance poll.

The myth persists that even the most dangerous murderers will be released in seven years if they are not executed. Such misperceptions fuel support for the death penalty and politicians' demands for more executions.

Jurors serving in capital cases are equally in the dark, frequently assuming that their choice is between a meaningless life sentence and death. Judges often are forbidden by law from explaining to the jury that inmates must now serve 25, 35 or more years before even becoming eligible for parole. Both in the courts and on the streets, the death penalty rides a wave of misinformation with no basis in current sentencing law.

The poll documents that Americans are looking for alternatives to the death penalty because they have grave doubts about the recurrent problems associated with this ultimate punishment. "Voters worry that innocent people may be killed (58% have doubts), that capital punishment is too expensive (46% have doubts), and that the death penalty is racist (48%)," according to a summary by the polling firms. As the evidence supporting these doubts continues to grow, death penalty support will continue to decline.

This most recent national poll is consistent with a series of state polls conducted over the past five years which repeatedly show that people support alternatives to the death penalty. Dissatisfaction with the death penalty has increasingly led people to consider forms of punishment which offer society sufficient protection and which give some recompense to the victims of crime. As the implementation of these sentences becomes better known, the death penalty will once again be the choice of only a minority in this country.

Introduction

"Everybody believes that a person sentenced to life for murder will be walking the streets in seven years."

—the late Judge Charles Weltner, Georgia Supreme Court[1]

"Some of the jurors were wanting to know would he get out in like seven years on good behavior .... If we were gonna' put him in prison, we wanted to make sure he would stay there. But ... we didn't really feel like he would .... we really felt like we didn't have any alternative."

—Juror in an interview following a death verdict against Randall Rogers[2]

"[T]here is an effective alternative to burning the life out of human beings in the name of public safety. That alternative is just as permanent, at least as great a deterrent and—for those who are so inclined—far less expensive than the exhaustive legal appeals required in capital cases. That alternative is life imprisonment without the possibility of parole."

—Mario Cuomo, Governor of New York[3]

Contrary to the conventional wisdom that Americans wholeheartedly support the death penalty, the latest national opinion poll released in conjunction with this report shows that more people in this country would prefer alternative sentences that guarantee both protection and punishment over the death penalty. Death penalty support becomes a minority opinion when the public is presented with a variety of alternative sentences. Most Americans, however, are unaware that the length of imprisonment embodied in these alternatives is now the norm almost everywhere in the country.

"The failure of executions to achieve more than a spectacle has raised the question: Could America live without the death penalty? Are there alternatives to deal with the type of criminals who are currently sentenced to death? Would the American people be satisfied with those alternatives?"

Since its reinstatement in 1976, the death penalty has brought little but frustration to both proponents and opponents alike. The evidence of racism, of innocent defendants, of costs and delay continue to plague this country's recent experiment with the punishment of death. The failure of executions to achieve more than a spectacle has raised the question: Could America live without the death penalty? Are there alternatives to deal with the type of criminals who are currently sentenced to death? Would the American people be satisfied with those alternatives?

This report releases the results of a new national poll which demonstrates that Americans are willing to give up the death penalty if certain stringent sanctions are enforced. This poll, and similar state opinion polls, confirm that abstract support for the death penalty drops significantly when respondents are given a choice between capital punishment and sentences which assure lengthy incarceration and compensation

for the family of the victim. Only 41% of the population would choose the death penalty over a sentence of life without parole coupled with restitution to the victim's family.

One of society's best kept secrets is that the length of sentences which people would support over the death penalty are already in place and functioning in most of the United States. Forty-five states (plus the District of Columbia) presently employ a life sentence in which there is no possibility of parole for at least 25 years. Thirty-three of those jurisdictions use a life sentence in which parole is *never* possible. Yet parole information is often withheld from jurors in capital cases and the use of these severe sentences is unknown to most of the public. As one recent study concerning the public's knowledge about the death penalty concluded, "[A] majority of Americans have taken a very strong position on an issue about which they are substantially uninformed."[4]

In many states, the stringent restrictions on release of those convicted of murder are a new phenomenon. But in those places where they have been the law for some time, they are working as promised. In California, for example, no prisoner sentenced to life without parole has been released in 25 years.[5]

From all indications, America could be safer without the death penalty and would realize an enormous monetary saving as well. Judging by the crime rates in those states that have abolished capital punishment and instituted alternative sentences, the absence of the death penalty would cause no rise in the murder rate.[6] Capital murderers would *not* be released after serving only seven years. Hundreds of millions of dollars and thousands of hours of court time would be saved by replacing the death penalty with alternative sentences. The money saved could be devoted to crime prevention measures which really do reduce crime and violence and thus are the true alternatives to the death penalty.

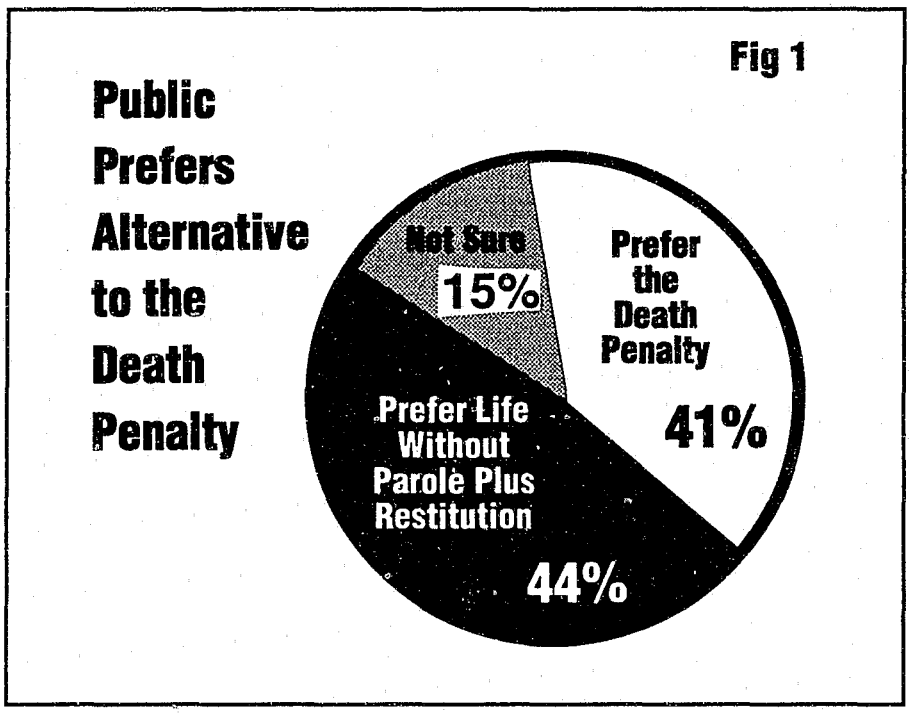
Public Opinion and the Death Penalty

In 1966, more Americans opposed the death penalty than favored it.[7] Executions were halted in 1967 and did not resume for 10 years when support for the death penalty had grown. Today, a new phenomenon is emerging from the polls. Support for the death penalty drops precisely to the same low percentage as in 1966 when people are given the choice of stringent alternative sentences.

"Today, a new phenomenon is emerging from the polls. Support for the death penalty drops precisely to the same low percentage as in 1966 when people are given the choice of stringent alternative sentences."

In March of this year, the polling firms of Greenberg/Lake and the Tarrance Group conducted a national survey of people's opinions about the death penalty. This poll revealed an increasing trend, first detected in a series of state polls on this issue, that Americans would favor certain alternative sentences over the death penalty. Although a majority of those interviewed said they favored capital punishment abstractly, that support is reversed when the sentence of life without parole, coupled with a requirement of restitution, is offered as an alternative. Forty-four percent favor that alternative, while only 41% selected the death penalty.

Fig 1

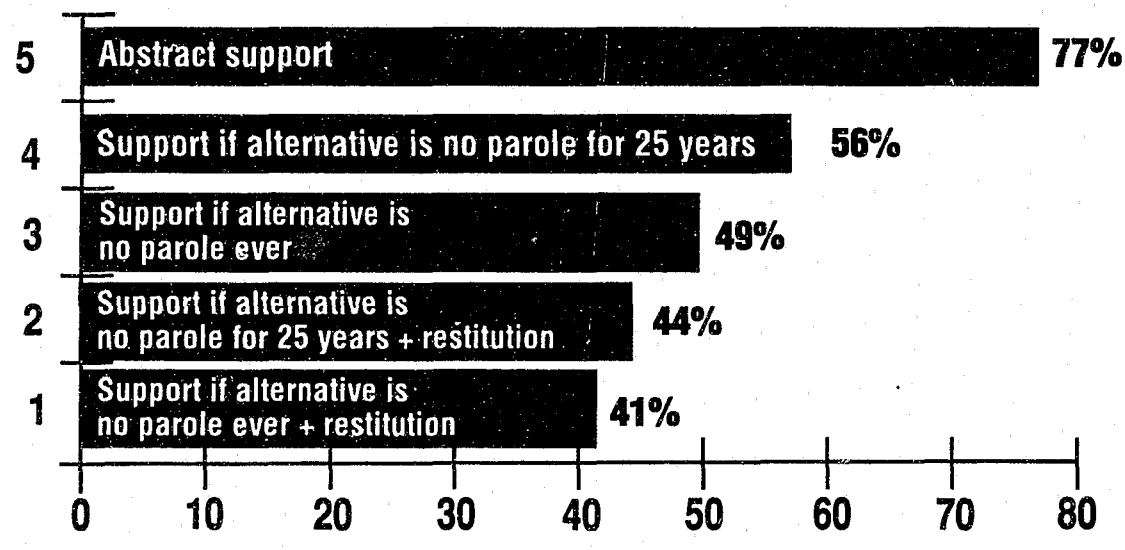


Even the choice of a sentence which guaranteed restitution and no release for at least 25 years caused death penalty support to drop by 33%.

These results indicate a strong desire on the part of the public for protection from those who have committed society's

Fig 2

Support for the Death Penalty When Alternatives Are Presented



worst crimes. There is also a preference for connecting punishment with restitution to those who have been hurt by crime. Support for the death penalty drops below 50% with a range of alternative sentences, especially those including restitution. Compared to the 77% who favor the death penalty in the abstract, support drops by 21% when a sentence of life with no parole for 25 years is considered; if a requirement of restitution is added to that sentence, support drops by 33%. And the sentence of life without parole plus restitution causes a support drop of 36% and relegates capital punishment to a minority position. (See Fig. 2).

Recurrent Problems Erode Death Penalty Support

Why is it that people who appear to support the death penalty are willing to abandon that support in favor of alternative sentences? The answer may lie in the fact that people who support the death penalty nevertheless retain serious doubts about it which are triggered by some of capital punishment's recurrent problems. Also, people are unaware of the sweeping changes that have occurred in the actual amount of time which convicted murderers will have to serve for their crimes.

Doubts About the Death penalty

Most people express doubts about the death penalty when presented with some of the problems which have plagued this ultimate punishment for years. Forty-eight percent responded that the issue of racism in the application of capital punishment raised some or serious doubts about the death penalty.

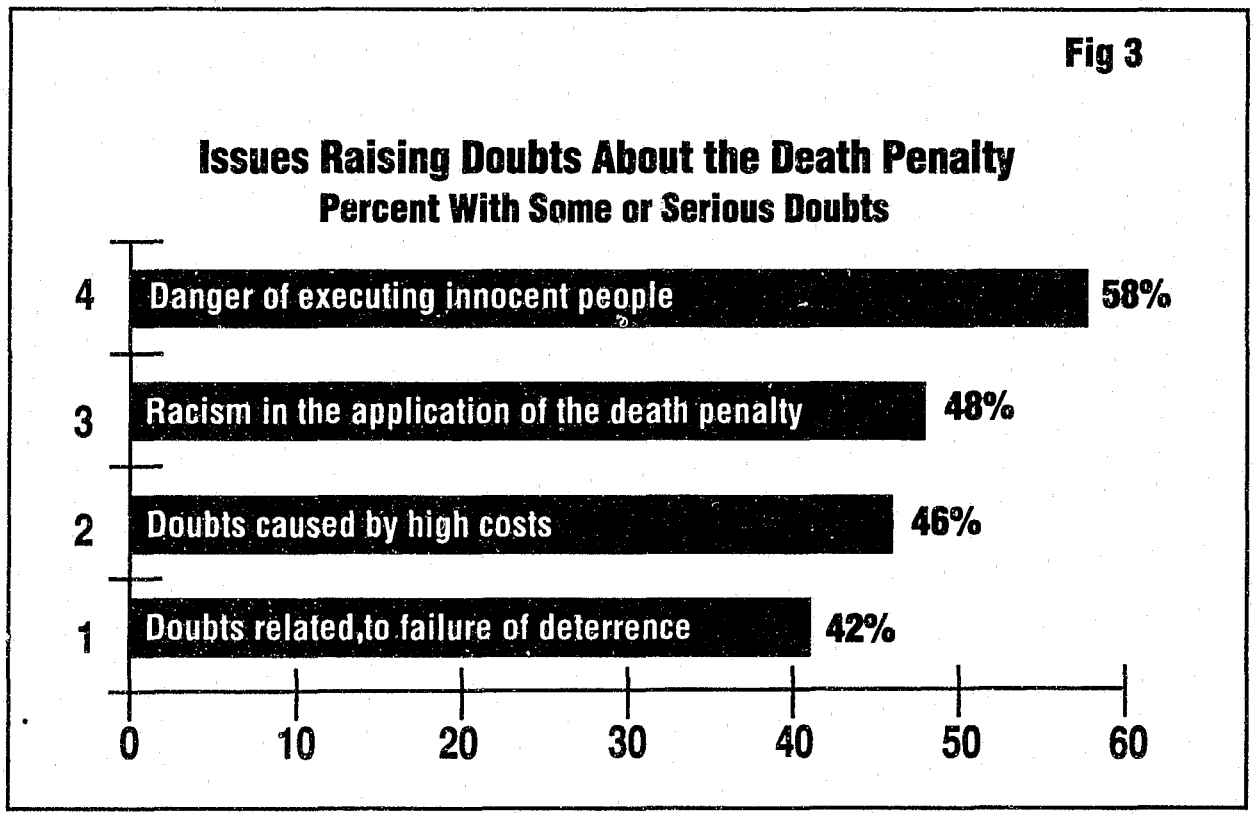
The perception of racial injustice within the criminal justice system, symbolized by the image of Rodney King in Los Angeles, is reinforced by the fact that Blacks are represented on death row three and half times their proportion in the population as a whole. And defendants who kill a white person in America are many times more likely to get the death penalty than those who kill a black person.[8] It is not surprising that almost three-fourths of Blacks believe that a black person is more likely than a white person to receive the death penalty for the same crime.[9] As these facts about capital punishment become more widely known, the enthusiasm for the death penalty may continue to wane.

Americans also expressed doubts about the death penalty after hearing information about the costs of the death penalty and the absence of any unique deterrent effect. The strongest doubts, however, were raised by the prospect that innocent people could be executed. Fifty-eight percent of those polled said the question of innocence raised doubts in them about the death penalty. (See Fig. 3.)

All of these issues are likely to cause further erosion in the public's support for the death penalty as new information buttresses people's concerns. Studies of the cost of the death penalty, for example, repeatedly show that it is much more expensive than the alternative of life in prison.[10] Reports on the death penalty's deterrent effect consistently conclude that it is no more a deterrent than lengthy prison terms.[11] With all forms of government experiencing a need for streamlining expensive programs, the death penalty is ripe for a cost and benefit review. [12]

Other recent studies have confirmed that many who have been convicted of capital crimes, and even some who have been

Fig 3



executed, were innocent.[13] In their recent book, *In Spite of Innocence*, the authors discuss over 400 cases in which the defendant was wrongly convicted of a crime punishable by death. At least 23 cases have resulted in the execution of innocent people.[14] The Supreme Court did little to dispel people's doubts with its recent ruling that new claims of innocence are almost never reviewable by the federal courts through habeas corpus petitions.[15]

It is sobering to recall that when the Supreme Court overturned all the existing death sentences in 1972 on constitutional grounds, a number of innocent lives were spared. Five of those who were on death row at the time went on to prove their innocence.[16] These innocent lives might well have been sacrificed and the same is undoubtedly true of some who are on death row today.

The recent release of Walter McMillian from Alabama's death row on March 2, 1993 illustrates this continuing danger.[17] Mr. McMillian faced execution for six years. His appeals were turned down four times, despite the fact that no physical evidence linked him with the crime and twelve witnesses placed him elsewhere at the time. Only the discovery by new attorneys of improper procedures used by the prosecutors and of witnesses who changed their stories allowed the conviction to be overturned and charges to be dropped.[18] Except for a series of fortuitous events, Mr. McMillian might have been

executed while the courts refused to hear his valid claims of innocence.[19]

As the number of death row inmates across the country continues to reach record highs, and as the pace of executions accelerates, the probability of innocent people receiving the death penalty increases. This, too, will likely increase the doubts which people have about this ultimate punishment.

Awareness of Longer Sentences

Most Americans are poorly informed about the likely sentences which capital murderers would receive if not given the death penalty. Only 4% believed that those sentenced to life for first degree murder would be imprisoned for the rest of their lives. The average estimate of how long such a prisoner would serve was 15.6 years. Even when asked how long someone with a *life without parole* sentence would serve, only 11% believed that such a person would never be released. As discussed more fully below, those perceptions are far off the mark. Two-thirds of the states utilize sentences for first degree murder which guarantee that the inmate will never be eligible for release. (See Fig. 4) Most of the remaining states forbid considering parole for at least 25 years. (See Fig. 5.)

"Two-thirds of the states utilize sentences for first degree murder which guarantee that the inmate will never be eligible for release. Most of the remaining states forbid considering parole for at least 25 years."

Results From State Polls

Although the results from this latest poll may be surprising to those who believe that capital punishment has wide and unwavering support, they are consistent with a series of state polls which have explored some of the same issues over the past five years. These polls repeatedly showed that when people were presented with alternatives to the death penalty, their support for the death penalty dropped dramatically. Polls conducted in recent years in California, Florida, Georgia, Kentucky, Minnesota, Nebraska, New York, Oklahoma, Virginia and West Virginia all concluded that people prefer various alternative sentences to the death penalty.[20]

Another interesting finding reported consistently in the state polls, and confirmed by the national poll, is that death penalty support drops more with an alternative sentence of no parole for 25 years than with a sentence mandating absolutely no parole, *provided* that the lesser sentence is combined with the requirement of restitution.[21] This result challenges the notion that people automatically favor the harshest of all possible sentences, such as the death penalty or life with no parole. Rather, people support reasonable alternatives which attempt to restore equilibrium and justice where it has been fractured in society.

These state polls also indicated the ambivalence which people have about capital punishment. People believe that the death penalty is arbitrary, that it is imposed in a racially discriminatory manner, and that there is a danger that innocent people may be executed by mistake. That ambivalence makes actual jurors hesitant to impose the death penalty when they are faced with the decision. It also leads people to readily prefer realistic alternatives, once they are given the choice.

Moreover, the support for alternatives to the death penalty appears to be growing. In a national poll in 1986, Gallup reported a 19% drop in support for the death penalty when life without parole was offered as an alternative.[22] The same question produced a 23% drop in 1991.[23] Now, in 1993, support for the death penalty dropped 28% when this same alternative was offered in the Greenberg/Lake poll. Similarly, a state poll conducted in New York in 1989 revealed that 62% of the people would prefer a sentence of life without parole plus mandatory restitution rather than the death penalty. In 1991, the same question was asked and 73% supported this alternative.[24]

The state polls reveal a number of other significant public perceptions on the death penalty. For example:

- When Nebraskans were asked which sentence would do the *greatest good for all concerned*, twice as many selected alternative sentences over the death penalty, and no parole for

30 years plus restitution was the first choice among the alternatives.[25]

- A majority of New Yorkers said they have moral doubts about the death penalty and are not really comfortable with capital punishment. Over 90% of New Yorkers agreed that the best way to reduce crime is to give disadvantaged people better education, job training, and equal employment opportunities. [26]
- Almost half of the respondents in Florida believed that the death penalty is racially and economically discriminatory.[27]
- In Oklahoma, only 5% of the people believe that the existence of the death penalty has definitely made the state a safer place to live. An additional 22% believe it probably has made it a safer place, but 62% of the people responded that it either has probably *not* or definitely *not* made Oklahoma safer. Oklahomans would also prefer a sentence of life in prison over the death penalty by a margin of 56-35% if they were convinced that the death penalty discriminates against minorities.[28]

These and similar results from other states show the shallowness in the support for capital punishment. People are frustrated and frightened about violent crime. If they are offered no alternatives which reasonably meet their concerns for protection and punishment, then the death penalty seems attractive.

Jurors, too, look for alternatives. As many prosecutors who have brought "sure fire" death cases to juries know, there is often a reluctance by jurors to actually impose the death sentence on guilty murderers.[29] Jurors faced with making life and death decisions repeatedly inquire about the true meaning of a "life sentence," apparently hoping that this sentence will provide them with an acceptable alternative to sentencing someone to death.[30] When they are told that parole eligibility will not be explained, they incorrectly assume that the defendant will be out again in 7 years. Faced with that alternative, jurors often choose death.

The Trend Toward Longer incarceration

The development of prison sentences in which parole is restricted either for a substantial number of years or forever is a growing trend among states today. As a response to violent murders, almost every state, as well as the federal government, now uses a lengthy guaranteed minimum sentence before parole can even be considered. The perception that a murderer convicted of a capital crime will be back on the streets in seven years if not given the death penalty is totally inaccurate.

This is a significant change from twenty years ago when the death penalty was temporarily

Figure 4[32]

Life Without Parole States

Alabama	Idaho	Missouri	Rhode Island*
Arkansas	Illinois	Montana	South Dakota
California	Iowa*	Nebraska	Utah
Colorado	Louisiana	Nevada	Vermont*
Connecticut	Maine*	New Hampshire	Washington
Delaware	Maryland	Oklahoma	West Virginia*
District of Col.*	Massachusetts*	Oregon	Wyoming
Hawaii*	Michigan*	Pennsylvania	

*States without the death penalty.

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In addition:

- Mississippi, Virginia and South Carolina allow a sentence of life without parole for certain recidivists.
- Kentucky requires that a murderer serve half his term if sentenced for a number of years. Thus, a sentence equivalent to life without parole is available by sentencing the defendant to an exceedingly long term of years.
- In Wisconsin, the sentencing judge has the power to set the parole eligibility date which, in reality, could be longer than a person's natural life. A similar provision is in force in Alaska.
- The federal government employs life without parole for murders under certain statutes.

suspended by the Supreme Court's ruling in *Furman v. Georgia*. Nearly 600 death sentences were commuted to life imprisonment by that decision, and almost every inmate has either been released or has an expected parole date set.[31]

For defendants sentenced today, however, the prospects are quite different. Thirty-three states (plus the District of Columbia and the federal government) employ a sentence of life without parole in some form. (See Fig. 4). A total of 14 states call for the imposition of a life sentence in which parole is not possible for at least 25 years. Still others require that the inmate serve at least 20 years before being considered for release. (See Fig. 5). And even in those few states where parole is possible in under 25 years, it is very unlikely that those convicted of the worst crimes would be paroled on their first try, if ever.

Figure 5

Restricted Parole:

Years Before Parole Eligibility Under Available Sentences for 1st Degree Murder Convictions

Alaska* 33 yr	Minnesota* 30 yr	Ohio 20 yr
Arizona 25 yr	New Jersey 30 yr	S. Carolina 30 yr
Florida 25 yr	New Mexico 30 yr	Tennessee# 25 yr
Indiana# 30 yr	New York* 25 yr	Texas 35 yr
Kansas* 40 yr	N. Carolina 20 yr	Virginia# 21 yr
Kentucky 25 yr	N. Dakota* 30 yr	

*States without the death penalty.

- #Actual minimum sentence is longer, but inmates could be released after the years stated if they received both parole and all possible "good time" credit.
- Under Georgia law, anyone previously imprisoned under a life sentence must serve 25 years before parole consideration.
- Canada requires that a convicted murderer serve 25 years before being eligible for parole.

Effectiveness of Alternative Sentences

People are frightened by press accounts of parole consideration for such notorious criminals as Charles Manson and Sirhan Sirhan. No doubt, people believe that if these criminals are eligible for parole, anyone would be. But neither of these men was sentenced under a life *without* parole scheme, since that penalty had not been enacted when they had committed their crimes. The fact that these and similar cases receive consideration for parole, even though denied, tends to obscure the fact that today such offenders would not even be eligible for parole. In every state, the myth that if people are not given the death penalty they will be released in 7 years is simply not true.

People are also disturbed by reports of prisoners who actually are released after a relatively short time, some of whom commit additional crimes. In Texas, for example, there is much confusion about sentencing. Prisoners, on the whole, are only serving 20% of their sentences and recidivism is a serious problem.[33] Typically, even those with a life sentence have been getting out in less than six years, partly due to the overcrowding in Texas' prisons.[34]

What is not widely known, however, is that for those convicted of *capital murder*, the reality is now quite different: a life sentence for them means they would not even be *eligible for parole* for 35 years. However, Texas law forbids either side from informing the jury about the true meaning of a life sentence in a capital case, and so death sentences are being returned under a gross misperception. Jurors, and the public in general, mistakenly believe they must choose between releasing a violent murderer in 6 years or imposing the death penalty, even though the reality is quite different.

States that have used the sentence of life without parole say it works as promised. California has had a sentence of life without parole for over 25 years and not one person sentenced under this law has been released from prison.[35] In Alabama, U.S. Court of Appeals Judge Edward Carnes, who headed the state's capital punishment division as assistant attorney general for many years, said that "life without parole in Alabama means just that—no parole, no commutation, no way out until the day you die, period."[36]

"States that have used the sentence of life without parole say it works as promised. California has had a sentence of life without parole for over 25 years and not one person sentenced under this law has been released from prison."

Louisiana has perhaps the nation's toughest life sentence law. "Life in the state of Louisiana is just that—life," said a pardons board official in Baton Rouge. "There are no 50-year life sentences or 25-year life sentences. Life means natural life." Nearly a 100 lifers have served 20 years or more at Louisiana's State Penitentiary in Angola.[37]

In South Dakota, all those given life sentences serve without possibility of parole. The only

chance for release is through the commutation process requiring unanimous approval of the commutation board and the governor. *No one* convicted of homicide has been commuted since 1974.[38]

In Connecticut, assistant public defender Robert Gold described his state's recent experience with the life without parole alternative: "The sentence means what it says. You get carried out of the prison in a pine box as your only means of exit. Parole, good time, or other means of shortening the sentence are not available to people who have been convicted of [a] capital felony."[39]

Most of the states without the death penalty now utilize a sentence of life without parole for their worst offenders. Michigan, for example, has had a mandatory life law for first degree murder at least since 1931. It also bears the distinction of being the first English-speaking jurisdiction to permanently abolish the death penalty. For the past decade, the governor has averaged only one commutation per year of those sentenced to life for first degree murder. The time served for those few who were commuted between 1983 and 1990 averaged 27 years.[40]

In the District of Columbia, the voters overwhelmingly rejected the death penalty shortly after the city council passed legislation allowing for a sentence of life without parole for first degree murder. In New York, Governor Cuomo has also proposed this sentence as an alternative to reinstating the death penalty.

Commutation of Sentence

For those who would opt for a sentence under which prisoners could never be released, the theoretical possibility of executive clemency may appear to be a problem. In most states, either the governor or an appropriate board has the power to commute sentences.[41] Unless restricted by law, such a process could result in the reduction of a life without parole sentence to a simple life sentence where parole is possible.

In reality, however, this is a very remote possibility. Governors have the same power to grant clemency in death sentences but rarely do. On the average, there has only been 1 such commutation in 20 years for each state with the death penalty.[42] Presumably, if the same defendants had been given life without parole sentences, governors would have had even less incentive to commute them since the possibility of a mistaken execution would no longer be a motivation. This is borne out in states like Michigan, California and South Dakota which have had a life without parole sentence for some time and where commutations of those convicted of first degree murder are exceedingly rare or non-existent.[43]

Moreover, the power to grant clemency is needed for those cases where evidence challenging the defendant's innocence or

sentence arises only after the trial and appeals. The Supreme Court recently reinforced the need for such a safety valve when it refused to review the claims of innocence from a condemned Texas inmate, Leonel Herrera. "Clemency," said the Court, "is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted."[44]

Some states have even gone so far as to restrict the executive's power of clemency in the worst cases. In California, for example, a prisoner serving life without parole cannot even apply for clemency for 30 years.[45] And in New York, Gov. Cuomo has proposed a constitutional amendment that would forbid anyone from granting clemency to those serving life without parole, should the legislature adopt such a sentence instead of the death penalty.[46] Thus, the possibility that dangerous criminals would be granted clemency is practically non-existent.

Juror Awareness of Alternative Sentencing

In America, juries are the voice of the people. As with the public at large, those who have served as jurors often prefer alternative sentences to the death penalty. A 1992 survey of nearly 800 jurors revealed that only 41% supported the death penalty if alternatives like life without parole were offered.[47] But just as the public is unaware of the fundamental changes in U.S. sentencing laws which have led to longer sentences, so, too, those with the responsibility for considering death sentences are without the correct information. Jurors in capital cases are particularly troubled because they believe they must choose between sentencing someone to death or allowing them to be released in a relatively short time. As the late Georgia Supreme Court Judge Charles Weltner said, "Everybody believes that a person sentenced to life for murder will be walking the streets in seven years." He went on to predict that the option of 20 to 25 years parole ineligibility "would lower the number of death penalties that are given."[48]

The only problem with this prediction is that Georgia law (and the law of many other states) forbids the judge from explaining anything to the jury about parole possibilities, even if the judge receives a direct question from the panel while they are deliberating on a defendant's life or death sentence. In 23 of the 29 states which utilize sentencing by the jury in capital cases, there is an absolute prohibition against any evidence or argument on parole.[49] As a result, jurors are left to their own misperceptions.

In one Georgia death penalty case, the jurors were interviewed after they returned their death sentence. Their comments clearly indicated that they were considering sparing the defendant's life but were swayed by the belief that he would be out in seven years:

> "Some of the jurors were wanting to know would he get out in like seven years on good behavior .... If we were gonna' put him in prison, we wanted to make sure he would stay there. But ... we didn't really feel like he would .... *we really felt like we didn't have any alternative.*"[50]

The jurors in this case sent a note to the judge inquiring about the meaning of a life sentence: "Does life imprisonment mean Mr. Rogers (the defendant) would be eligible for parole in seven years or less on good behavior?" The Court replied: "You are not to concern yourself with the repercussions of either punishment that you fix. I cannot tell you as to the consequences of either of your sentences that you have for your consideration." After receiving this non-answer, the jurors returned a death sentence 34 minutes later.[51]

Nor were this jury's concerns or final decision

unique. A recent study looked at every Georgia trial in which a death penalty was returned by a jury since 1973. In 70 of the 280 cases, the jurors interrupted their deliberations to try to determine how soon the defendant might be released if he were given a life sentence. In all the cases, the jurors' inquiries were rebuffed by the court and a death sentence was returned.[52] According to the Prosecuting Attorney's Council of Georgia, the issue of parole "arises in almost every capital sentencing trial."[53]

Although Georgia does not have a life without parole sentence, some defendants, depending on their crime and prior history, may be sentenced so that they are not eligible for parole for 25 to 30 years. That is significantly different from release after the presumed 7 years and could clearly make a life or death difference in the jury's decision.

Interviews with jurors in other states reveal a similar pattern of concern about the likelihood of early release. In Virginia, those convicted of capital crimes must serve 25 years before becoming eligible for parole and certain repeat offenders may never be considered for parole. However, Virginia law also forbids the jury from considering that information in deciding whether a defendant should be given a life or a death sentence. Jurors thus proceed on grave misperceptions when making their all-important determination. A study by the National Legal Research Group demonstrated the danger of uninformed jurors. The study found that prospective jurors in a sample Virginia county:

- Believed that a capital defendant sentenced to life imprisonment will likely serve only 10 years in prison;
- Believed that the length of time a capital defendant will *actually* serve when sentenced to life imprisonment is important to the penalty determination;
- Would disregard a judge's instruction not to consider parole when sentencing a capital defendant; and
- Would be influenced significantly in their sentencing decisions by information about Virginia's mandatory minimum sentence of 25 years for capital defendants.[54]

From this and similar studies in other states,[55] it is clear that many jurors are sentencing people to death because they either lack adequate alternatives or because they are unaware that such alternatives exist. Executions based on such misinformation represent a travesty of justice. As the late U.S. Court of Appeals Judge Alvin B. Rubin noted, the "widely held misconceptions about the actual effect of imposing a life sentence raise an unacceptable risk that the death penalty may be imposed on some

defendants *largely on the basis of mistaken notions of parole law.*"[56]

Even when a state has incorporated a life without parole option into its choice of sentences, the jurors are likely to believe that the defendant will still be released and, therefore, are more likely to return a death verdict. In a survey of 250 potential jurors in Louisiana, an overwhelming 92% of those polled interpreted a "life sentence without the benefit of probation, parole or suspension of sentence" as meaning that the individual would still be eligible for release in a number of years.[57]

Politicians often add to these inaccurate perceptions when they use the death penalty to bolster their campaigns. For example, while running for governor of California as a pro-death penalty candidate, Dianne Feinstein claimed: "You can't expect somebody to be deterred from committing murder if they know they will only serve four to five years."[58] What she neglected to say is that for those who face the death penalty, the only alternative sentence in California is life imprisonment with *no possibility of parole*. It is not surprising, then, that 64% of Californians erroneously believe that those sentenced under life without parole would nevertheless be released.[59]

Interestingly, politicians mistakenly believe that their constituents strongly prefer the death penalty over its alternatives. In New York, for example, 70% of the legislators polled thought their constituents would prefer the death penalty over a variety of alternatives. In fact, over 70% of the people would choose the alternative of life without parole plus restitution.[60]

This research implies that a sentence which eliminates parole for a substantial period, especially if coupled with a restitution requirement, is an appropriate alternative. It is appropriate because people prefer such an alternative to capital punishment and it protects society as well as the death penalty. Under the present system people are being sentenced to death under the erroneous assumption that, otherwise, the prisoner would be released early. To the extent that jurors have been choosing the death sentence in past cases based on this assumption, the executions which resulted are tragic mistakes.

The Effects of a Life Sentence

The existence of a stringent life sentence can either partially or completely eliminate the imagined need for the death penalty. In some states, a life without parole sentence is used as an option when the death penalty is not selected; in other states, like Michigan and Massachusetts, it exists as a complete replacement to capital punishment. In Maryland, for example, the state added the sentence of life without parole in 1987 as a choice for the jury in capital cases. Jurors are specifically instructed that they can choose a sentence of life without parole instead of the death penalty. In the five years since then, only eight new defendants have been added to the state's death row. A similar reduction in death sentences has resulted since Oklahoma introduced life without parole in 1988. That year, Oklahoma sentenced 18 people to death. Last year, there were only five death sentences.[61] In contrast, Florida, which does not have life without parole, added 45 people to its death row in 1991.[62]

Sentences with significant minimum terms can also provide the public with the protection from repeat offenders that they want. An inmate released at the age of 55 or 60 years old is statistically far less likely to engage in crime than someone in their late 20s. Violent crime arrest rates peak at age 18 and then gradually decline to almost zero at age 60 and over.[63] As Louisiana's district attorney, Harry Connick, Sr., said: "When a guy gets to be 60, he's not gonna rip and run a lot. Not like he used to."[64] In addition, convicted murderers are among the least likely offenders to repeat their crime, even if released.[65]

Thus, if the death penalty were eliminated tomorrow, the capital defendants of most states would face life sentences with no possibility of parole. In other states, they would have to serve lengthy minimum sentences before even being eligible for parole. By the time they were released, they would be in an age group where crime is at its lowest.[66]

Prisoners Serving Life

Inside prison, a number of wardens report that those serving life sentences are the best-behaved prisoners in their entire system. Leo Lalonde of the Michigan Department of Corrections says of those serving life without parole sentences: "After a few years, lifers become your better prisoners. They tend to adjust and just do their time. They tend to be a calming influence on the younger kids, and we have more problems with people serving short terms."[67] Similarly, Alabama officials noted that their life without parole inmates commit 50% fewer disciplinary offenses per capita than all other types of inmates combined.[68]

Lifers can also make a significant contribution to society in the time given them. For

"When a guy gets to be 60, he's not gonna rip and run a lot. Not like he used to."

-Harry Connick, Sr., District Attorney in Louisiana

"We have taken a life and so we feel it's our responsibility to save a life now."

-Craig Datesman, coordinator of a Lifers program at Graterford Prison in Pennsylvania

example, Craig Datesman at Graterford Prison in Pennsylvania coordinates a Lifers project to help young people who have had some trouble with the law to go straight. "We have taken a life and so we feel it's our responsibility to save a life now," said Datesman.[69] Executions, of course, cut off the possibility of any restitution to society or the family of the victim.

It is true that lengthier sentences can add to the costs of imprisonment. But as a replacement for the death penalty, even a sentence of life without parole would not add significantly to the prison population, and would, in fact, be cheaper than the prolonged litigation associated with a death sentence. Approximately 250 inmates are added to death rows around the country each year. Spread over the entire country, that is not a significant addition to a prison population which now numbers over 1 million.[70]

Restitution

Requiring those who have committed murder to make some monetary restitution to the family of the victim is strongly supported by those choosing alternatives to the death penalty. However, this sanction has not yet been widely employed by states. Inmates generally receive little in the way of remuneration for work performed in prison, usually barely enough for cigarettes or candy. A requirement of restitution might mean raising the pay for prison work. Nevertheless, the various opinion polls discussed above show that a requirement of restitution is one of the most consistent demands by those preferring alternatives to the death penalty.

One measure of what might be a feasible form of restitution was included in a New York opinion poll. New Yorkers were about evenly split in saying that $150,000 in restitution to the family of the victim would be either "about right" or "too little." The $150,000 restitution figure was derived from a requirement that the prisoner work 40 hours per week, 50 weeks per year, over 25 years at $3 per hour.[71] While the details of a restitution plan need to be worked out, polls show that the concept is extremely important to many people and could be incorporated further into the correctional system.

Many states are becoming more conscious of the needs of victims in their criminal justice systems.[72] Although funds for

victim assistance are often provided directly from the state budget, some states are proposing restitution from the work of prisoners themselves. A bill before the 1993 Nebraska legislature would abolish the state's death penalty and instead impose a restitution requirement along with a sentence of life without parole. And in Arkansas, California, Wisconsin, Idaho, and Oregon, restitution to the victim's family can already be required of the offender in homicide cases.[73]

Other Alternatives: Decreasing the Amount of Crime

When considering the range of alternatives to the death penalty, the length of incarceration is not the only issue to be weighed. The discussion should also include alternatives which help reduce the risk of violence and murder. Crime prevention through community policing and gun control, employment opportunities, drug and alcohol rehabilitation programs, early intervention for abused and mentally handicapped children are all alternatives to capital punishment in that they lower the risk of crime in the first place.

Governments, of course, cannot fund every program that presents itself. Each program, including the death penalty, has its costs. If the death penalty were eliminated, there would be an immediate savings of millions of dollars for counties and states which could be transferred to other programs with proven records for reducing crime.[74] In the final analysis, it is these alternatives which actually address the rise in violence that prompted this country's return to the death penalty.

"Crime prevention through community policing and gun control, employment opportunities, drug and alcohol rehabilitation programs, early intervention for abused and mentally handicapped children are all alternatives to capital punishment in that they lower the risk of crime in the first place."

Families of Murder Victims

It is sometimes argued that the death penalty is necessary to assuage the grief suffered by the family of the murdered victim. For some families that may be true. However, in a country with 25,000 murders and 25 executions per year, only one in a thousand families will actually receive such a "benefit." The rest may be left to wonder why their loss did not merit the same distinction. In fact, as many family members attest, neither the death penalty nor its alternatives can substitute for the tremendous loss of a loved one. A life sentence, on the other hand, does offer a sense of finality, rendered relatively quickly, as well as an opportunity for some restitution or reconciliation in the future.

Marietta Jaeger's seven year old daughter, Susie, was kidnapped and murdered, but she has never thought the death penalty offered any solace:

> The death penalty causes family members more pain than other sentences. The continuous sequence of courtroom scenes inherent in death penalty cases only serve to keep emotional wounds raw and in pain for years.... Actually, the memory of the victim is grossly insulted by the premise that the death of one malfunctioning person will be a just retribution for the inestimable loss of the beloved.
>
> In my case, my own daughter was such a gift of joy and sweetness and beauty, that to kill someone in her name would have been to violate and profane the goodness of her life; the idea is offensive and repulsive to me.[75]

In many ways, of course, the death penalty is no benefit at all: the threat of an execution means that there will almost always be a lengthy trial and years of appeals. Over forty percent of death penalty cases are turned back for reconsideration.[76] Once a family becomes caught up in the quest for an execution, they are likely to follow a path of disappointment and failure.

Many families of victims are totally opposed to the death penalty. They echo the thoughts of Odine Stern, former director of Parents of Murdered Children, that no sentence can ever "equate to the loss of your child's life and the horrors of murder."[77] Frequently, victims' families recognize that the death penalty will inflict the same pain they have felt on the accused's family. As one mother replied when asked at the funeral of her murdered son if she wanted the death penalty: "No, there's been enough killing."[78]

Murder Victims Families for Reconciliation, another organization which deals with the grief of families, is planning a major national conference and educational program for June of 1993 around the theme of moving from violence to healing.

"The death penalty causes family members more pain than other sentences. The continuous sequence of courtroom scenes inherent in death penalty cases only serve to keep emotional wounds raw and in pain for years."

-Marietta Jaeger, mother whose daughter was murdered

As an organization, they are opposed to the death penalty. William Pelke, one of the organizers of the conference and the grandson of a murder victim, summed up his belief in alternative sentences:

> "A simple life sentence without the possibility of parole can ease the pain much sooner and enable the victim's family to begin the process of healing.... As long as the thought remains that justice has not yet been carried out, the healing process that must take place is put on hold."[79]

The Politics of Death

In some states, politicians who favor the death penalty have resisted stiffer sentences which eliminate parole because they fear that with real alternatives in place there will be no more need for the death penalty. In New York, for example, the politicians who have succeeded in derailing Gov. Cuomo's alternative of life without parole are those who favor the death penalty. They do not hide their manipulation of the issue: they would rather have criminals get out sooner than give up the death penalty as a cheap symbol for being tough on crime. This is what Gov. Cuomo called "the politics of death:"

> Life without parole is achievable immediately. The Legislature could enact it Monday. I would sign the measure Tuesday. It would apply to crimes committed the next day. In fact, the only thing preventing the next cop killer from spending every day of the rest of his life in jail is the politics of death.[80]

The perennial sponsor of the death penalty in New York, Vincent Graber, Democratic Assemblyman from Erie, admitted that his Senate colleagues opposed the life without parole bill because its passage would make the death penalty "less of a campaign issue."[81] The New York Daily News, long a supporter of the death penalty, became tired of

this blatant manipulation and editorialized for a life without parole alternative:

> Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy.[82]

Recently, even Graber has acknowledged that he might have to accept the life without parole sanction as the New York legislature moves further away from overriding Cuomo's veto.[83]

As in New York, some South Carolina politicians are afraid that the passage of life without parole would result in less support for capital punishment. Death penalty advocate Sen. John Drummond (D-Greenwood), for example, strongly opposed life without parole legislation:

> If we pass this, you can't tell me that you will ever be able to seat a jury that will vote for the death penalty. In essence, what you're doing is asking us to vote against the death penalty.[84]

A similar scenario has been followed in Texas, where a number of state prosecutors have opposed Gov. Richards' life without parole proposal. Harris County District Attorney John Holmes stated simply: "Those who ought to be confined forever ought to be executed."[85]

In the end, however, people will select politicians who conform to their opinions. For years, the myth that Americans love the death penalty has fueled an expansion of capital punishment and politicians' cry for more executions. But as the public's preference for alternative sentences becomes more widely known, and as those sentences become incorporated into law, the justifications for the death penalty will have finally disappeared.

"Life without parole is achievable immediately. The Legislature could enact it Monday. I would sign the measure Tuesday. It would apply to crimes committed the next day. In fact, the only thing preventing the next cop killer from spending every day of the rest of his life in jail is the politics of death."

-Mario Cuomo, Governor of New York

Conclusion

America may now be ready to abandon the death penalty. People strongly prefer alternative sentences to the death penalty once they are given the choice. The lengthy sentences which people prefer and which guarantee that convicted murderers will stay behind bars are now in place in almost every state in the country. To the extent that support for the death penalty continues, it is because the public in general, and jurors in capital cases in particular, are still unaware of this fundamental change in U.S. sentencing practice.

Adequate alternatives are indeed in place throughout the country. Almost every state now severely restricts even the possibility of parole so that convicted murderers will not be released to the community for literally decades. The public wants to be sure that murderers will not, in fact, be released after a few years and that the families of victims are compensated for their tragedy. As these ingredients become standard in the country's sentencing schemes, the death penalty may once again become a minority position in this country.

APPENDIX

Methodology Used in Poll

The latest poll results cited in this Report are based on a nationwide telephone survey of 1,000 registered voters conducted between February 28 and March 1, 1993 by Greenberg/Lake and the Tarrance Group. The sample was distributed based upon voter turnout in the last three presidential elections. A sample of this type is likely to yield a margin of error of +/-3.1%.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center prepares in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is a project of the MacArthur Justice Center.