

# THE DEATH PENALTY IN 2007: YEAR END REPORT

Death Penalty Information Center  
December 2007

## Execution Chambers Silent as Supreme Court Considers Next Step

### *Groundbreaking New Jersey Abolition Vote May Signal New Direction*

<b>Death Penalty Statistics*</b>	<b>2007</b>	<b>2006</b>	<b>1999</b>
Executions	42	53	98
New Inmates Received Under Death Sentence**	110	115	284
Death Row population (as of Jan. 1)^	3,350	3,373	3,549
Percentage of executions by region:			
South	86%	83%	75%
Midwest	12%	11%	12%
West	2%	6%	12%
Northeast	0%	0%	1%
TEXAS	62%	45%	36%
<b>Exonerations</b>			
In 2007	3		
Since 1973	126		
<b>Executions Since 1976</b>	1099		
Texas	405		
Virginia	98		
Oklahoma	86		
*As of Dec. 17, 2007 with no more executions scheduled for this year.			
**1999 and 2006-Bureau of Justice Statistics; 2007-DPIC projection			
^NAACP Legal Defense Fund, "Death Row USA"			

## Overview

Two dramatic events this year symbolized the broad changes that have been occurring in the death penalty around the country. Executions halted after September 25 when the U.S. Supreme Court agreed to hear a challenge to the constitutionality of the mixture of chemicals used in lethal injections in Kentucky (*Baze v. Rees*). This *de facto* moratorium on lethal injections contributed to the fewest number of executions in 13 years.

On December 13, the New Jersey Assembly joined the state Senate in voting to abolish the death penalty,

replacing it with a sentence of life without parole. New Jersey's governor, Jon Corzine, signed the legislation on December 17, making the state the first jurisdiction to legislatively abolish the death penalty in over 40 years. The legislative votes followed recommendations from a bi-partisan commission including victims' families and law enforcement officials, and which were endorsed by the state's Prosecutors' Association. New Jersey's action follows the removal of the last person from New York's death row in 2007, the final step in removing New York from the list of death penalty states, which now numbers 36. New York's high court overturned the death penalty in 2004, and after public hearings, the legislature rejected attempts to restore the punishment.

The current temporary moratorium may give policy-makers an occasion to reconsider the death penalty with a more critical eye. Courts, legislatures, and the public are increasingly looking at the death penalty through the prism of public policy, revealing its growing costs alongside its delays, frustration and mistakes. While the case now pending in the Supreme Court presents only a narrow challenge to a specific method of lethal injection, it is symptomatic of the many problems surrounding this punishment which are constantly being exposed and, once exposed, prove difficult or impossible to resolve. Meanwhile, the "closure" that proponents of capital punishment have argued it will bring to victims' families appears more and more illusory.

## Broader Death Penalty Changes Underway

Executions by State	2007	2006
Texas	26	24
Alabama	3	1
Oklahoma	3	4
Indiana	2	1
Ohio	2	5
Tennessee	2	1
Arizona	1	0
Georgia	1	0
South Carolina	1	1
South Dakota	1	0
California	0	1
Florida	0	4
Mississippi	0	1
Montana	0	1
Nevada	0	1
North Carolina	0	4
Virginia	0	4
<b>TOTALS</b>	<b>42</b>	<b>53</b>

DPIC research indicates that the number of inmates received under sentence of death in 2007 is at its lowest point since the death penalty was reinstated in 1976. The Bureau of Justice Statistics recorded 115 new inmates sent to death row in 2006, down from 138 in 2005 and from 284 in 1999. While official numbers are not yet available for 2007, DPIC projects that the number will be approximately 110, continuing the trend of historically low death sentences that have dropped 60% since 1999.

The 42 executions in 2007 was the lowest number since 1994, when there were 31. Executions in the country reached a highpoint of 98 executions in 1999. Since then, there has been a 57% decline over eight years. Executions are affected by many factors besides public sentiment, and the moratorium resulting from the lethal injection case before the Supreme Court has certainly limited the number of executions. Over 40 cases received stays of execution because of lethal injection challenges this year. If this issue is resolved in a way that allows many executions to occur in 2008, there may be a spike in executions. But ultimately the consistently lower

number of death sentences should produce a proportionately smaller number of executions.

The isolation of the death penalty to relatively few states became more apparent this year. **Forty out of the 50 states** in the U.S. had no executions this year, making the death penalty arguably "unusual" and largely irrelevant in a country with 15,000 murders. Almost all (86%) of the executions this year were in the south, and 62% of the country's executions took place in one state—Texas. Together, the northeast and the west were responsible for 1 execution. There were 11 commutations of death sentences in 2007, including one in Texas and 8 in New Jersey as the death penalty was abolished. Last year, there were none.

### Legislation

The decline in the use of the death penalty has been mirrored in state legislatures, where capital punishment narrowly escaped abolition in a number of states. The unicameral legislature in Nebraska came within one vote of abolition. In New Mexico, a bill to abolish the death penalty passed the House by a vote of 41-28, but fell just short in the Senate. In Montana, a similar bill passed the Senate by a vote of 27-22, but ultimately did not become law. In Colorado, a bill to replace the death penalty with a sentence of life without parole passed out of the Senate Judiciary Committee. Under the bill, the funds saved by not prosecuting expensive death penalty cases would have been used to help solve cold cases. In Maryland, the governor appeared before the legislature and argued for abolition of the death penalty. The bill to accomplish that goal may have had majority support among senators and representatives but failed to pass out of a committee after a 5-5 vote.

A bill to reinstate the death penalty in Massachusetts was defeated by the strongest majority in 10 years. Bills to broadly expand the death penalty or make it easier to apply were defeated in

Georgia, Utah, Missouri, and Virginia. However, a bill allowing the death penalty for repeat child sex offenders, even where no death occurred, was passed in Texas.

## Public Opinion

Overall, public support for the death penalty remained about the same in 2007 as in 2006. The Gallup Poll this year indicated that 69% of the American public supports the death penalty for murder, on par with the 67% support measured in 2006. However, a national poll by RT Strategies sponsored by DPIC probed more deeply into the public's sentiments on the death penalty. Nearly 40% of the public believes they would be disqualified from serving on a jury in a death penalty case because of their moral beliefs. Over two-thirds (68%) of African-Americans in this survey, 48% of women, and 47% of Catholics believed they would be excluded as capital jurors. While these latter numbers are based on sub-samples with a larger margin of error than the whole poll, they point to a potential problem of unrepresentative capital juries that do not reflect the country's true diversity.



Few citizens believe the death penalty serves as a deterrent. Only 38% of respondents in this recent poll believed the death penalty is a deterrent; 60% said it was not. A strong majority of 75% of those polled believed that we need a higher standard of proof for guilt in death penalty cases.

Most Americans have been affected by the news of so many mistaken convictions leading to exonerations in death penalty cases. Sixty percent (60%) of Americans said these wrongful convictions had either lessened their support for the death penalty or strengthened their already existing opposition. Only 37% said such news had no effect on their position on the death penalty.

## Other Developments

### SUPREME COURT

Although the lethal injection case will not be decided until 2008, the Court's agreement in September to hear *Baze v. Rees* has had a profound effect as all executions have temporarily been put on hold. On January 7, the Justices will hear the challenge filed by two death row inmates who sued Kentucky in 2004, claiming that the state's lethal injection process amounts to cruel and unusual punishment. Recent evidence has shown that performing lethal injections is actually quite complicated and problematic. Almost all states use essentially the same 3-drug protocol and the Court will hear about the dangers in each step: the haphazard procedures for administering the first drug, sodium pentathol, make it virtually inevitable that some inmates will be inadequately anesthetized. This means that the third drug, potassium chloride, will be felt as an agonizing burning in the veins and the heart, but the inmate will be unable to express his torment because of the muscular paralysis produced by the second drug, pancuronium bromide.

Kentucky itself has had only one execution by lethal injection, and it apparently did not show any of the dramatic effects seen in some other states such as Florida and Ohio. The Kentucky courts focused on that single execution and upheld the state's practice. The U.S. Supreme Court's review will likely be a broader search into the possible torturous effects of this protocol.

Among the significant Supreme Court decisions in its recent term was a series of reversals of Texas cases, sending a signal that the leading execution state must review its cases with stricter guidelines. In *Panetti v. Quarterman*, the Court (5-4) blocked the execution of the defendant, ruling that the lower court's standard for mental incompetence was too restrictive and Texas courts had not given him an adequate hearing. Panetti suffers from schizophrenia and believed he was to be executed for preaching the gospel.

In *Smith v. Texas*, *Abdul-Kabir v. Quarterman* and *Brewer v. Quarterman*, the Court overturned the death sentences of three Texas inmates in separate 5-4 rulings. In all three cases, the juries had been prevented by the Texas statute (since changed) from fully considering the defendants' mitigating evidence, such as their low IQ or other mental deficiencies. The Supreme Court made clear "sentencing juries must be able to give meaningful consideration and effect to all mitigating evidence that might provide a basis for refusing to impose the death penalty on a particular individual, notwithstanding the severity of his crime or his potential to commit similar offenses in the future."

The U.S. Supreme Court also upheld death sentences in cases from California, Florida, Washington, and Arizona on a variety of issues.

### **INNOCENCE**

Three more cases of innocence were added to the list of those who have been exonerated and freed from death row since 1973. **Curtis McCarty** of Oklahoma had been sentenced to die three times and spent 21 years on death row before he was exonerated. He was released in May after a state district judge ruled the case against him was tainted by testimony of police chemist Joyce Gilchrist. She falsely testified that hairs and other biological evidence showed McCarty could have been the killer. In Gilchrist's original notes, hairs from the crime scene did not match McCarty. She then changed her notes to say the hairs did match him. When the defense requested retesting, the hairs were reported lost. The judge said Gilchrist either destroyed or willfully lost the hairs. Recent DNA testing showed another person raped the victim.



Photo by the Innocence Project

On December 5, a Tennessee jury acquitted **Michael Lee McCormick** of the 1985 murder of Donna Jean Nichols, a crime for which McCormick spent 16 years on death row. In his first trial, the prosecution introduced hair evidence from Nichols' car that the FBI said matched McCormick. DNA testing later revealed the hair did not match McCormick and this evidence was excluded. His attorney remarked, "We have been living with this case for years, and we are immensely relieved. I can't imagine what Michael McCormick is feeling."

On December 11, the state of North Carolina dismissed all charges against **Jonathon Hoffman** who was originally sent to death row for a murder committed in 1995. No physical evidence linked him to the crime. It was later revealed prosecutors made undisclosed deals with their star witnesses against Hoffman. Hoffman's conviction was overturned in 2004. The prosecutors were investigated but not charged with wrongdoing. Hoffman is black, the victim was white, and he was convicted by an all-white jury.



### **INTERNATIONAL**

As the number of countries with no death penalty increased, a resolution for a global moratorium on executions was passed on November 15 by the UN General Assembly's Third (Human Rights) Committee by a vote of 99-52,

with 33 abstentions. The General Assembly is expected to endorse the decision in a plenary session in December. Similar resolutions were introduced in 1994 and 1999 but were either narrowly defeated or withdrawn. The resolution calls on countries to:

- Progressively restrict the use of the death penalty and reduce the number of offenses for which it may be imposed;
- Establish a moratorium on executions with a view to abolishing the death penalty;
- Not reintroduce the death penalty where it has been abolished.

## **New Voices**

In 2007, many victims, law enforcement officials and newspaper editorial boards moved to a position opposing capital punishment as it is presently practiced. Research from organizations like the American Bar Association and various media outlets also revealed continuing problems in the quality of representation and the uneven application of the death penalty in many jurisdictions. Several quotations follow:

### **VICTIMS**

#### **Jim O'Brien, whose daughter was murdered in 1982**

O'Brien detailed his experiences with the legal system as the father of a murder victim. His daughter Deidre was murdered in 1982, and the capital trials and appeals for the man convicted of the crime lasted another 8 years. O'Brien stated, "I've lived through the state's process of trying to kill [a murderer], and I can say without hesitation that it is not worth the anguish that it puts survivors through...." Because of the "horrendous toll" the process took on his family and the little closure it gave them, O'Brien asked the New Jersey legislature to abolish the death penalty. (New Jersey Daily Record, Nov. 25, 2007.)

#### **Timothy Scanlon, whose father was murdered in Pennsylvania**

Nearly two decades after the 1988 robbery and murder of James Scanlon, his family now says a sentence of life without parole for his killer - Ronald Rompilla - will end years of emotional strain resulting from the death penalty and will help them to start the healing process. "It's time to start remembering my dad for the good person he was and not always affiliating it with Ronald Rompilla and the death penalty. . . . [I]t was time. I didn't think going after it again would be good for us as a family. A life sentence is as much closure as we can hope for," said Timothy Scanlon, James' son. (The Morning Call, Aug. 14, 2007.)

### **LAW ENFORCEMENT OFFICIALS**

#### **Norm Stamper, a 35-year veteran police officer from San Diego,**

Stamper recently wrote that from his experience, "the death penalty is inefficient and extravagantly expensive." Instead of spending millions of dollars on the death penalty, Stamper suggests, "Spending scarce public resources on after-school programs, mental health care, drug and alcohol treatment, education, more crime labs and new technologies, or on hiring more police officers, would truly help create safer communities." (The Mercury News, Nov. 19, 2007.)

#### **Former Tennessee Attorney General W.J. Cody**

"It is clear that the current system is not working --not for victims' families who wait decades for closure, not for defendants whose lives are at stake in an imperfect system, and not for society at large. It is in everyone's best interest that Tennessee move toward a more fair and accurate system. If the work of the committee is open, detailed and broad in scope, as it should be, it could lead to real improvements in the fairness and reliability of the death penalty system. In a society of laws governing issues of life and death, an improved system is imperative if we are to be true to Tennessee's ideals of justice." (The Tennessean, October 15, 2007.)

#### **State's Attorney, Warden, and Police Commissioner Endorse Abolition in Maryland**

"It is a human system, and because it is fallible and because it is human, it makes mistakes. Executions make those mistakes irreversible," said Matthew Campbell, a former deputy state's attorney for Montgomery and Howard counties. Gary J. Hilton, a former warden at the Trenton State Prison in New Jersey, added that at one time he was a "vigorous supporter" of capital

punishment, but then he came to believe the money it costs to carry out a death sentence would be better spent on improving prison equipment, updating facilities, and training staff. He said life without parole is the toughest punishment, noting, "Nothing in this world could be more horrible than growing old and dying in jail." Patrick V. Murphy, a former police commissioner of Detroit, Washington and New York, added, "The risk of mistake in administering the death penalty is frightening." In all, about 50 law enforcement officials signed a public statement backing the repeal measure. (Baltimore Sun, March 14, 2007.)

<b>DEATH ROW INMATES BY STATE (Jan. 1, 2007)</b>	
California	660
Texas	393
Florida	397
Pennsylvania	226
Ohio	191
Alabama	195
N. Carolina	185
Arizona	124
Georgia	107
Tennessee	107
Oklahoma	88
Louisiana	88
Nevada	80
S. Carolina	67
Mississippi	66
Missouri	51
U. S. Government	44
Kentucky	41
Arkansas	37
Oregon	33
Indiana	23
Virginia	20
Idaho	20
Delaware	18
New Jersey*	11
Illinois	11
Nebraska	9
U.S. Military	9
Utah	9
Washington	9
Connecticut	8
Kansas	9
Maryland	8
Montana	2
South Dakota	4
Colorado	2
New Mexico	2
Wyoming	2
New York*	1
<b>Total death row</b>	<b>3,350</b>
-7 inmates sentenced in 2 states	
*States now without the death penalty	

**Montana Assistant Attorney General John Connor**

Connor voiced support for a legislative measure that would abolish capital punishment in his state. Stating his belief that the death penalty does not deter crime and is expensive, Connor told the Montana House Judiciary Committee, "It seems to me to be the ultimate incongruity to say we respect life so much that we're going to dedicate all our money, all our resources, our legal expertise and our entire system to try and take your life. . . . Frankly, I just don't think I can do it anymore." (Associated Press, March 10, 2007.)



**Reggie Wilkinson, former Director of the Department of Corrections in Ohio** (pictured) Wilkinson, who witnessed 19 executions during his 33 years with the Ohio Department of Corrections, recently said he would like to see executions ended in the state. He noted, "I would not oppose the abolition of the death penalty. The United States is the only industrialized nation in the world with the death penalty --on the books in 38 states. . . .

It's not so much related to morality as it is related to the administration of justice. To quote an over-used saying, 'Why should you kill people who kill people to show that killing is wrong?'" (Dayton Daily News, Jan. 15, 2007.)

**JUDGES**

**Judge Boyce F. Martin, Jr. (pictured) of the U.S. Court of Appeals for the 6th Circuit**

Judge Martin called the death penalty "arbitrary, biased, and so fundamentally flawed at its very core that it is beyond repair." Judge Martin dissented in the case of *Getsy v. Mitchell* and said it made no sense that the defendant received a death sentence for his role in a murder-for-hire conspiracy, while the other two triggermen and the mastermind of the crime, all escaped a death sentence. (*Getsy v. Mitchell*, No. 03-3200, U.S. Ct. of Appeals, 6th Cir. (July 25, 2007) (Martin, J., dissenting)).



**Former New Jersey Supreme Court Justice Peter G. Verniero**

Justice Verniero said that the state should replace its flawed death penalty with the sentence of life without parole. Justice Verniero is a former supporter of the death penalty, who now believes that the current statute is "ineffective," and "consumes enormous energy and resources," and that the state "lacks the collective will to carry out capital punishment." (New York Times, Jan. 14, 2007.)

**OTHERS****League of Women Voters of Florida**

"Dear Governor Crist: We believe, as do many in the developed world, that the death penalty is a violation of human rights, and our state should not participate in this process. . . .We respectfully request that you as Governor declare a permanent moratorium and make use of other sentencing methods to ensure public safety." (League of Women Voters of Florida, Letter to Gov. Charlie Crist, May 28, 2007.)

**Author John Grisham**

"I think the system is so badly flawed that all executions should be stopped.... Let's start with the basic concept of a fair trial. We are so far away from that in every state in this country," said Grisham, an attorney whose views on capital punishment started to shift when he wrote "The Chamber," a novel that deals with an execution. Grisham's most recent best-selling book, "An Innocent Man: Murder and Injustice in a Small Town," relates the wrongful conviction and freeing of death row inmate Ron Williamson of Oklahoma. (The Kansas City Star, May 11, 2007.)

**NEWSPAPERS AND JOURNALISTS****The Chicago Tribune**

"One of the core tenets of this newspaper since its founding has been that the extraordinary power of government must be wielded carefully and sparingly--particularly when that power weighs on the life and liberty of citizens.

"It has, as well, long been the position of this editorial page that the government should have the legal right to impose capital punishment--the death penalty.

...

"We have learned much, particularly with advances in DNA technology, about the criminal justice system's capacity to make terrible mistakes. These revelations--many stemming from investigations by this newspaper--shake the foundation of support for capital punishment.

...

"The evidence of mistakes, the evidence of arbitrary decisions, the sobering knowledge that government can't provide certainty that the innocent will not be put to death--all that prompts this call for an end to capital punishment. It is time to stop killing in the people's name." (March 25, 2007.)

**Dallas Morning News**

"[W]e believe the state of Texas should abandon the death penalty -- because we cannot reconcile the fact that it is both imperfect and irreversible.

"This board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder. We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder.

...

"The state holds in its hands the power of life and death. It is an awesome power, one that citizens of a democracy must approach in fear and trembling, and in full knowledge that the state's justice system, like everything humanity touches, is fated to fall short of perfection. If we are doomed to err in matters of life and death, it is far better to err on the side of caution. It is far better to err on the side of life. The state cannot impose death -- an irrevocable sentence -- with absolute certainty in all cases. Therefore the state should not impose it at all." (April 15, 2007.)



### The (Pennsylvania) Sentinel

"So we are left with a grueling process that in the end only guarantees more suffering for victims' families and society at large as faith in the justice system erodes. Beyond the emotional reasoning for capital punishment, many argue the death penalty as a deterrent is too important to let go. As compelling an argument that might be, a look at the record pace of homicides in Pennsylvania's cities casts a shadow of doubt on that theory.



know the pendulum is swinging away from Pennsylvania's position on a law it cannot even execute." (April 3, 2007.)

"And doubt is what is developing about capital punishment in general. One of *The Sentinel's* stories Sunday pointed to a Gallup poll last year that found for the first time in decades a majority of Americans prefer prison without parole over the death penalty in cases of murder. Whether this opinion results from frustration with the system or revulsion at the punishment, we don't know. We do

### The Wichita Eagle

"At some point, given the legal problems and the lack of executions, a death penalty stops making sense for Kansas." The paper said the law has cost taxpayers millions of dollars without the benefit of deterring crime. Moreover, the state has not had a single execution since capital punishment was reinstated in 1994, and the "care and caution" warranted to protect against wrongful convictions could mean the state's first execution is more than a decade away. (Sept. 13, 2007.)

## Conclusions

The year 2007 may be remembered as the year the U.S. Supreme Court called a temporary nation-wide halt to executions and the year that the first state legislature successfully abolished capital punishment in 40 years. But the death penalty has been in a period of decline for many years. The public's concerns about innocence and fairness have been melded with the concerns of victims who find no solace in waiting for an execution that is unlikely to occur and of law enforcement officials who see better ways to use the state's limited time and resources in fighting crime.

The death penalty is likely to continue for some time, especially in states like Texas, which alone accounted for over three-fifths of the country's executions in 2007. But even there sentiment is changing, as evidenced by the reversal of position by the *Dallas Morning News* and a decline in death sentences. Across the country the death penalty is being scrutinized in terms of its costs and the credibility of its promises. The results of that evaluation will likely decide whether the recent decline in the use of the death penalty will accelerate into a more widespread abandonment of the practice, as has occurred in many parts of the world.

### Death Penalty Information Center

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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 capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion and serves as a resource to those working on this issue. Richard C. Dieter, DPIC's Executive Director, wrote this report with assistance from the DPIC staff. Further sources for facts and quotes in this report are available upon request. The Center is funded through the generosity of individual donors and foundations, including the J. Roderick MacArthur Foundation, the Open Society Institute, and the JEHT Foundation. The views expressed in this report are those of DPIC and should not be taken to reflect the official opinion of its donors.