

THE DEATH PENALTY IN 2004: YEAR END REPORT

Death Penalty Information Center
December 2004

Historic Five-Year Decline in Death Penalty Continues in 2004

- New York's Law Overturned
- Calls for a Moratorium in Texas
- Supreme Court Weighs Juvenile Executions

Death Penalty Numbers*	2004	2003	1999
Executions	59	65	98
Death Row population (as of Oct. 1)	3,471	3,504	3,625
Death Sentences	130**	144	282
Public Support: Death Penalty/LWOP#	50/46	53/44	56/38
Percentage of executions by region:			
South	85%	89%	75%
Midwest	12%	11%	12%
West	3%	0%	12%
Northeast	0%	0%	1%
Other Death Penalty Statistics	Since 1973		
Total Executions	944		
Texas Executions	336		
Virginia Executions	94		
Oklahoma Executions	75		
Exonerated and freed from death row	117		
*As of December 15, 2004, with no more executions scheduled for this year.			
**Projected, based on 3/4 of year.			
#Gallup Poll comparing death penalty with a sentence of life-without-parole			

By every measure, the death penalty in the U.S. has been in decline since 1999 and the evidence from 2004 continues that trend. Whether examining death sentences, executions, the size of death row or public support, capital punishment numbers have dropped in a way not seen in over 30 years.

In addition to the numerical decline in the use of the death penalty, there were other significant indications of change:

- In **New York**, the state's highest court found the death penalty statute to be unconstitutional, likely clearing its death row. The legislature has not enacted any remedy to the flawed statute, and future hearings will consider whether the death penalty should be restored at all.
- In **Texas**, Houston's Police Chief, Harold Hurtt, called for a moratorium on executions on cases from his county, where the police crime lab has been declared unreliable: "I think it would be very prudent for us as a criminal justice system to delay further executions until we have had time to review the evidence." Judge Tom Price, a 30-year veteran Republican jurist on Texas's highest criminal court, former FBI Chief William Sessions, and former Texas appellate judge Charles Baird all concurred with Hurtt's recommendation. *The Dallas Morning News, Austin-American*

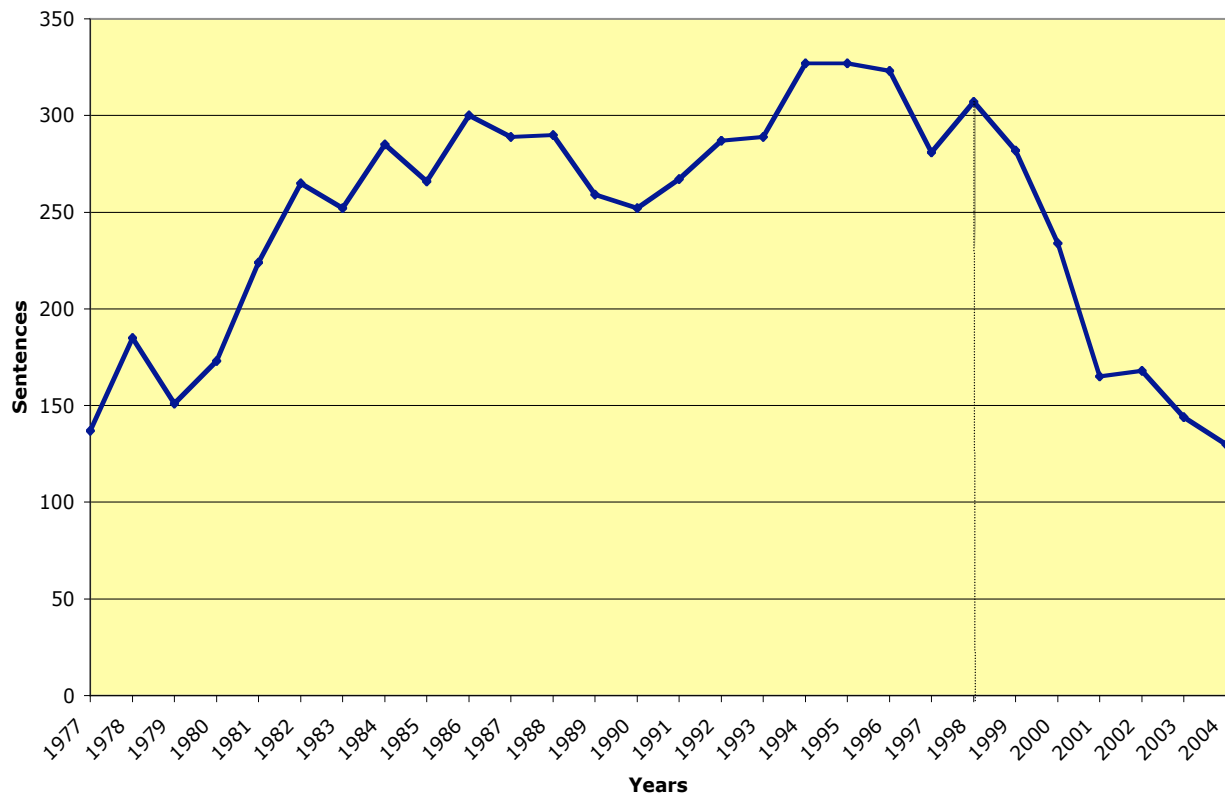
Statesman, *Houston Chronicle*, and *San Antonio Express* editorialized in favor of such a moratorium.

- The U.S. **Congress**, after 4 years of debate, passed a modified version of the **Innocence Protection Act**, and it was signed into law, thereby providing additional protections for the wrongfully convicted and greater resources for those facing the death penalty.
- The U.S. **Supreme Court** heard arguments in *Roper v. Simmons* concerning the execution of juvenile offenders. If this practice is found unconstitutional, 72 inmates will be spared execution, and in the future such offenders will receive life sentences instead of death. In a series of cases from Texas, the Court admonished lower courts for failing to afford defendants due process and to follow the Court's prior rulings. However, many people have already been executed after proceedings the Court would now find unconstitutional.
- In **California**, the state with the largest death row, the legislature has commissioned a study of the death penalty to uncover risks and flaws in the system.
- In **Illinois**, the moratorium on executions put in place in 2000 remains in effect.
- In **New Jersey**, questions about the method of execution have put all cases on hold, and the governor has voiced his support for a moratorium on executions.

Numerical Trends

DEATH SENTENCES: One of the best measures of public support for the use of the death penalty is the number of death sentences meted out annually. In the late 1990s, the number of death sentences in the country averaged about 300 per year. That rate has dropped by 50%. The Bureau of Justice Statistics reported 144 death sentences in 2003, the lowest number in 30 years. DPIC's projections based on three quarters of this year indicate that the number of sentences will be even lower. If the current rate continues, there will be 130 death sentences in 2004.

DEATH SENTENCES HAVE DECLINED SINCE 1998



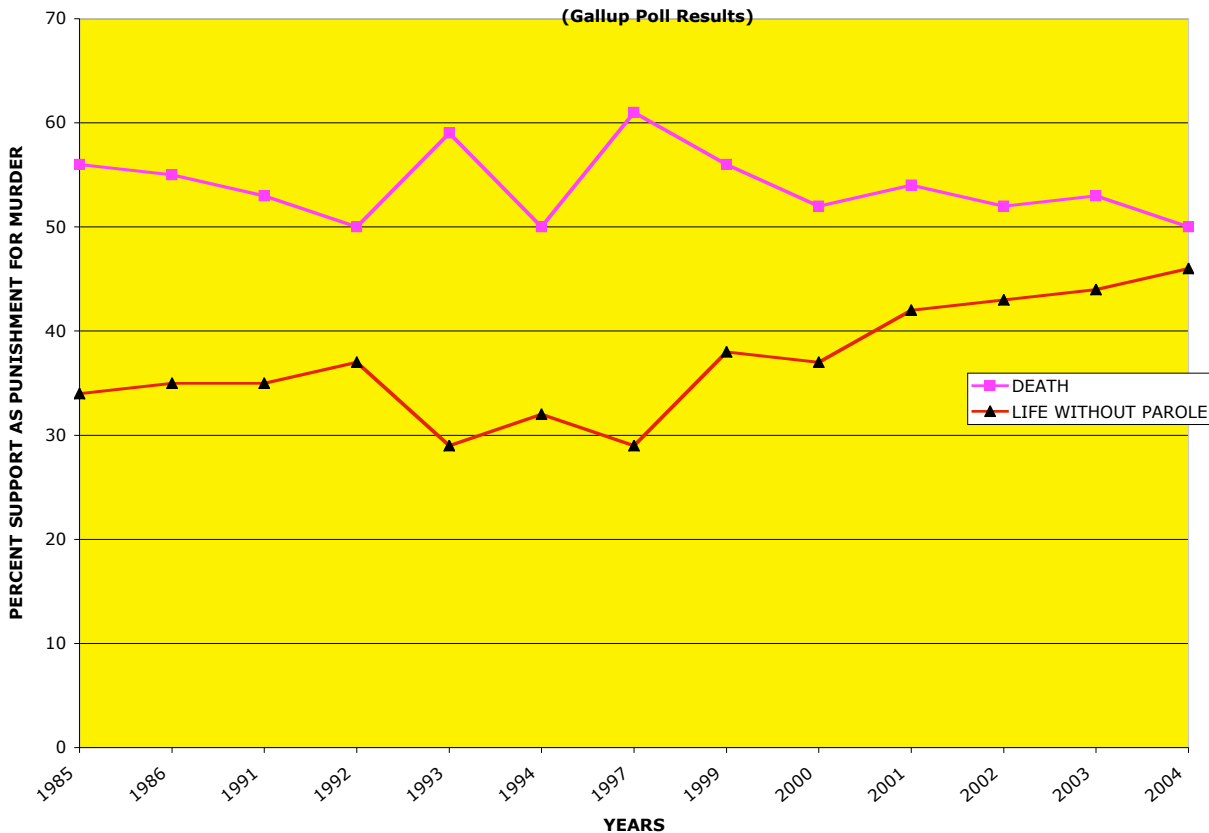
DEATH ROW: The size of death row is dependent on many factors. It had increased steadily from 1976 until 2001, but since then it has been in decline. One year ago, the NAACP Legal Defense Fund reported 3,504 people on death row; at the same time this year, the total was down to 3,471. The decline this year occurred even without a large number of commutations as occurred in Illinois in 2003.

EXECUTIONS: Executions in 2004 were down 10% from last year (from 65 to 59), and they have dropped 40% since 1999. Again this year, the great majority (85%) of the executions took place in the South. Only 2 states outside of the South (Ohio and Nevada) carried out executions this year. Seventeen percent of those executed this year waived their appeals.

PUBLIC OPINION: Public support for the death penalty has also declined. This is shown most clearly in opinion polls that offer a choice between the death penalty and life without parole as the appropriate sentence for first-degree murder. When those options are considered, support for the death penalty has dropped and support for life without parole has steadily increased, so that they are now within a few percentage points. The Gallup Poll of May 2004 reported that 50% of respondents favored the death penalty while 46% favored life without parole, a difference close to the 3-point margin of error in the poll. In 1997, the difference between these two choices was 32 percentage points.

PUBLIC ALMOST EVENLY SPLIT BETWEEN DEATH AND LIFE SENTENCES

(Gallup Poll Results)



Reasons for Decline

Innocence

The reasons for the attrition in death penalty use are many, but certainly the number of high profile cases of innocent people freed from death row in recent years has had a profound effect on

the system. Last year, 12 people were freed from death row, more than in any other year since the death penalty was reinstated. This year, 5 people have been exonerated. A brief description of this year's cases follows:

Since 1999:

**Death Sentences
Down 54%**

**Executions
Down 40%**

**Death Row
Down 4%**

**Alan Gell North Carolina
Convicted 1998 Acquitted**

Alan Gell was arrested for the 1995 robbery and murder of Allen Jenkins. The state's two key witnesses were Gell's ex-girlfriend and her best friend, both teenagers. The girls were at Jenkins' house, pleaded guilty to involvement in the murder, and testified that they saw Gell shoot Jenkins. However, in the initial trial, prosecutors withheld crucial evidence that might have cleared Gell including an audiotape of one of the girls saying she had to "make up a story" about the murder. In 2002, a state judge found that the prosecutors withheld evidence about the actual time of the victim's death and vacated his conviction. When Gell was re-tried in February 2004, the defense presented evidence that he was away at the time of Jenkins' murder, and the jury found him not guilty on all counts.

**Gordon "Randy" Steidl Illinois
Convicted 1987 Charges Dismissed**

Gordon Steidl was freed from an Illinois prison in 2004, 17 years after he was wrongly convicted and sentenced to die for two murders in 1986. In 2000, an Illinois State Police inquiry found that local police had

severely botched their investigation, resulting in Steidl's wrongful conviction. In 2003, a federal judge overturned Steidl's conviction and ordered a new trial, stating that if all the evidence that should have been investigated had been presented at trial, it was "reasonably probable" that Steidl would have been acquitted by the jury. The state reinvestigated the case, including DNA evidence, and found no link to Steidl.

Dan Bright Louisiana Convicted 1996 Charges Dismissed

In 1996, Dan Bright was convicted of first-degree murder in Louisiana and sentenced to death. In 2004, the state Supreme Court reversed Bright's conviction and remanded for a new trial, holding that the State had suppressed material evidence regarding the criminal history of the prosecution's key witness, Freddie Thompson. The court noted that Thompson's testimony was the only evidence to convict Bright, and that there was no physical evidence against him. Thompson was drunk on the day of the crime. Moreover, the prosecution failed to disclose that he was a convicted felon and in violation of his parole. The court held that the specific facts of Thompson's criminal record and the fact that he was still on parole when he testified against Bright raised questions about the veracity of his trial testimony: "This conviction . . . is not worthy of confidence and thus must be reversed." The prosecution dismissed all charges.

Ryan Matthews Louisiana Convicted 1999 Charges Dismissed

Shortly after his 17th birthday, Matthews was arrested for the murder of a local store owner. Three individuals interviewed by police were unable to definitively identify Matthews, and witnesses described the murderer as short - no taller than 5-foot-8. Matthews is about 6-foot-1. Matthews' court-appointed trial attorney was unprepared, and unable to handle available DNA evidence. The case was given to the jury after only three days of trial. When they could not agree on a verdict after several hours, the judge ordered them to resume deliberations until a verdict was reached. Less than an hour later, the jury returned a guilty verdict. Matthews was subsequently sentenced to death. In March 2003, Matthews' new attorneys had physical evidence from the crime re-tested. The DNA results excluded Matthews and pointed to someone serving time for a murder

that happened a few months after the convenience store murder and only blocks away. In August, prosecutors dropped all of the charges against Matthews.

Ernest Ray Willis Texas Convicted 1987 Charges Dismissed

Ernest Ray Willis was sentenced to death for the 1986 deaths of two women who died in a house fire that was ruled arson. Seventeen years later, the Pecos County District Attorney revisited the case after a federal judge overturned Willis' conviction. The D.A. hired an arson specialist to review the original evidence. He concluded that there was no evidence of arson.

Prosecutors had used Willis' dazed mental state at trial (the result of state-administered medication) to characterize him as "coldhearted" and a "satanic demon." Willis' court-appointed lawyers, one of whom later surrendered his law license following drug charges, offered little defense. A federal judge held that the state administered medically inappropriate antipsychotic drugs without Willis' consent; that the state suppressed evidence favorable to Willis; and that Willis received ineffective representation at both the guilt and sentencing phases of his trial. The State Attorney General declined to appeal, and prosecutors dropped all charges against Willis.

Texas, which has carried out 336 executions since the death penalty was reinstated, has executed only one white person for the murder of a black person, and in that case there was also a white victim.

Racial Bias

As has been the case for many years, the great majority of those executed in 2004 were guilty of murdering white victims. Only 12% of those executed were convicted of murdering a black person, despite the fact that blacks are victims in about 50% of murders in the U.S. In 2004, just as in 2003, no white person was executed exclusively for the murder of a black person. Eleven black defendants were executed for murdering white victims. Texas, which has carried out 336 executions since the death penalty was reinstated, has executed only one white person for the murder of a black person, and in that case there was also a white victim.

Arbitrariness

The arbitrariness of the death penalty has become increasingly apparent as defendants guilty of multiple murders were spared a death sentence, while mentally ill defendants and those guilty of far less egregious offenses were executed. In Washington in 2003, Gary Ridgway pleaded guilty to killing 48 women and received a life sentence. In New Jersey, nurse Charles Cullen admitted to killing 17 people and was given a life sentence. On the other hand, people like David Hocker, Kelsey Patterson, and James Hubbard were executed in 2004. Hocker was given a one-day trial in Alabama, during which little evidence was presented about his severe mental illness and suicidal desires. He had murdered his employer in 1998 and asked to be executed. Patterson was executed in Texas despite a highly unusual recommendation for clemency from the Board of Pardons and Paroles. He had spent much of his life in and out of state mental hospitals, suffered from paranoid schizophrenia, and rambled unintelligibly at his execution. Hubbard was 74 years old when he was executed in Alabama. He suffered from cancer, hypertension, and spasms of dementia. He had been on death row for 27 years.

Costs

The high cost of the death penalty may also be contributing to fewer death sentences. Those costs are getting even higher. The Bureau of Justice Statistics reported that the length of time between sentencing and execution grew longer in 2003, and now exceeds 10 years. The U.S. Supreme Court's decision last year in *Wiggins v. Smith* will require more thorough investigations into mitigating factors in capital cases. If courts want to minimize the embarrassing mistakes that have led to 117 exonerations since 1973, cases cannot be rushed through the appeals process.

California, the state with the largest death row in the country, is pressing ahead with plans to build a new \$220 million death row capable of housing 1,000 inmates. The state already has over 600 people on death row, and has conducted 10 executions in the last 37 years.

Effectiveness

Even though the South is responsible for 85% of the executions in the country, it has consistently been the region with the highest murder rate. According to the latest FBI Uniform Crime Report, the South was the only region of the country with a murder rate above the national rate, and its rate increased in 2003. The two states responsible for the most executions in 2003 were Texas and Oklahoma; the murder rate *increased* in both of those states last year. Non-death penalty states have consistently had lower murder rates than states that use the death penalty. The gap between these two groups grew in 2003: the rate in non-death penalty states went down further, while the rate in death penalty states went up. A Gallup Poll in 2004 found that 62% of the public does not believe that the death penalty is a deterrent.

Supreme Court

In October, the Supreme Court heard arguments in *Roper v. Simmons* to decide the constitutionality of executing those who were under 18 years of age at the time of their crime. Simmons' attorneys pointed out the similarities between this case and *Atkins v. Virginia* in 2002, where the Court barred the use of the death penalty against mentally retarded persons. Medical research regarding brain development in adolescents indicates that teenagers are physically different from adults in ways that should lessen their culpability in capital crimes.



The case is also notable for the broad array of organizations filing legal briefs supporting an exemption for juvenile offenders, including: the American Medical Association, American Psychiatric Association, Juvenile Law Center, Children's Defense Fund, American Bar Association, NAACP Legal Defense Fund, a group of Nobel Peace Prize winners, including President Jimmy Carter, National Council of Churches, and many countries concerned about this issue.

In February, the Supreme Court overturned the death sentence of Delma Banks, Jr. because the prosecution had withheld evidence at his original trial. Banks had been granted a stay of execution by the Supreme Court just minutes before his lethal injection was to take place in Texas (*Banks v. Dretke*). Shortly after beginning its new term, the Court summarily sent two more Texas death sentence cases back to lower courts because of failure to follow the Court's holdings.

In *Schriro v. Summerlin*, the Supreme Court ruled that even though the Constitution requires that defendants be allowed to have juries (rather than judges) determine the existence of factors that make them eligible for the death penalty, and even though Mr. Summerlin had raised this precise issue 20 years ago in his appeal, he could not benefit from the Court's 2002 ruling in *Ring v. Arizona* establishing this principle.

New Voices

As in previous years, a number of prominent individuals came forward to voice their concerns about the death penalty in 2004. For some, the process has simply become unworkable:

- **James Strillacci**, president of the Connecticut Police Chiefs Association: "It is a practical issue. We have a death penalty law on the books, but we haven't executed anyone since 1960, and it doesn't look like anyone will be executed. The process is long, labor intensive and expensive. Now, any money we've put into death penalty cases has really been wasted." Strillacci said death penalty funds would be more wisely spent on other aspects of the

criminal justice system, such as forensics and cataloguing DNA evidence. (New Haven Register, February 29, 2004).

- Former appeals court **Judge Rudolph Gerber**, author of Arizona’s death penalty law: “We should not be surprised then that law enforcement officials as well as criminological scholars regularly conclude that capital punishment offers no prospect of deterrence....To capital punishment enthusiasts and economic theorists alike who urge deterrence as a realistic goal of

States with executions	2003	2004
Texas	24	23
Ohio	3	7
Oklahoma	14	6
North Carolina	7	4
Virginia	2	5
South Carolina	0	4
Georgia	3	2
Florida	3	2
Alabama	3	2
Nevada	0	2
Arkansas	1	1
Maryland	0	1
Missouri	2	0
Indiana	2	0
U.S. Gov't	1	0
Totals	65	59

capital punishment, our execution history from colonial days to the present shows deterrence falling so far below these requirements as to be not only illusory but beyond recapture.” (18 Notre Dame Journal of Law, Ethics & Public Policy 437, 449-50 (2004)).

- **Thomas F. Kelaher, president of the County Prosecutors Association** of New Jersey, said that it is time to start rethinking the use of the death penalty. Although a supporter of the death penalty, he noted: “If the death penalty hasn’t been used in 20 years, society should ask if it should be continued. It was supposed to act as a deterrent. If it hasn’t been used in 20 years, you really can’t say it’s a deterrent.” (Asbury Park Press, Sept. 11, 2004).

- **Kamala Harris, the newly-elected San Francisco District Attorney:**

“The dialogue about public safety in San Francisco and across the country is usually dominated by one simplistic question -- are you ‘tough’ on crime, or are you ‘soft’ on crime? As we start a new era in the district attorney’s office today, it’s time to put an end to that false choice. Let’s start today by being smart on crime... We also need to reject simplistic, reactive public policies. It takes more than building prisons and locking away prisoners to keep our city safe. As district attorney, I will not use 3-strikes enhancements unless the 3rd strike is a violent or serious felony; nor will I ever ask for the death penalty.” (San Francisco Chronicle, Jan. 8, 2004).

- **Margaret Breeden**, a victim’s family member, remarking on the agony for families in death penalty cases, said her family is "tired of reliving the memories of [the victim’s] death every time a new hearing is scheduled." The prosecutor, Stephen Bailey, noted that the Breeden family is among a growing number of victims' families who have dropped their pursuit of a death sentence. "Fewer people, though very supportive of the death penalty, are willing to put themselves through a process that many of them see as never ending and not necessarily guaranteeing the results that the system promises," Bailey stated. (Baltimore Sun, February 6, 2004).
- **Supreme Court Justice John Paul Stevens:** "I think this country would be much better off if we did not have capital punishment. . . . We cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated." (Chicago Sun-Times, May 12, 2004).

DEATH ROW INMATES BY STATE (Oct. 1, 2004)	
California	638
Texas	455
Florida	384
Pennsylvania	232
Ohio	206
N. Carolina	201
Alabama	199
Arizona	128
Georgia	114
Tennessee	108
Oklahoma	97
Louisiana	91
Nevada	86
S. Carolina	74
Mississippi	69
Missouri	58
Arkansas	39
Indiana	37
Kentucky	35
<i>U. S. Government</i>	34
Oregon	31
Virginia	23
Idaho	20
Delaware	19
New Jersey	15
Washington	11
Utah	10
Illinois	9
Maryland	9
Connecticut	8
Kansas	7
Nebraska	7
<i>U.S. Military</i>	7
Montana	4
South Dakota	4
Colorado	3
New Mexico	2
New York	2
Wyoming	2
Total death row	3,471
7 sentenced in 2 states	

International Developments

Around the world, the abolition of the death penalty is spreading in major areas. Among the 55 participating states that comprise the Organization for Security and Cooperation in Europe (OSCE), only a handful retain the death penalty, and only three carry out executions: Belarus, the United States, and Uzbekistan.

In Africa, where the death penalty has been widely used, there is a movement away from executions. Almost half of the Commonwealth African countries have abandoned the practice. Five Southern African Development countries have abolished capital punishment, and the number of countries stopping the death penalty in the Economic Community of West African States and Mauritania jumped from one to 10 in just one decade. In addition, presidents from several nations, including Zambia, Nigeria and Kenya, have taken significant steps toward commuting death sentences and working toward abolition. According to Amnesty International, only Guinea, Liberia, Nigeria, and Sierra Leone have carried out executions in the last decade.

Forty-eight countries signed an amicus brief to the U.S. Supreme Court in *Roper v. Simmons* calling for an end to the death penalty for juvenile offenders.

Conclusions

Information drawn from government statistics, courts, opinion polls, and the statements of national leaders reveals a five-year pattern of fewer death sentences, fewer executions, and greater public skepticism about the death penalty in the U.S. A handful of states carry out the majority of executions, and the crimes of those who are executed often are indistinguishable from the crimes of those who are spared. In many states, the process has slowed to the point where even supporters of capital punishment are questioning its practical value to society.

Despite sporadic oversight by the Supreme Court, problems such as racial bias, arbitrariness, and the unreliability of many convictions, mean that the public's skepticism about the death penalty is well founded. A national review of the system could begin to address some of these problems.

Death Penalty Information Center

(202) 293-6970 • www.deathpenaltyinfo.org

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 European Community. The views expressed in this report are those of DPIC and should not be taken to reflect the official opinion of the European Commission or other donors.