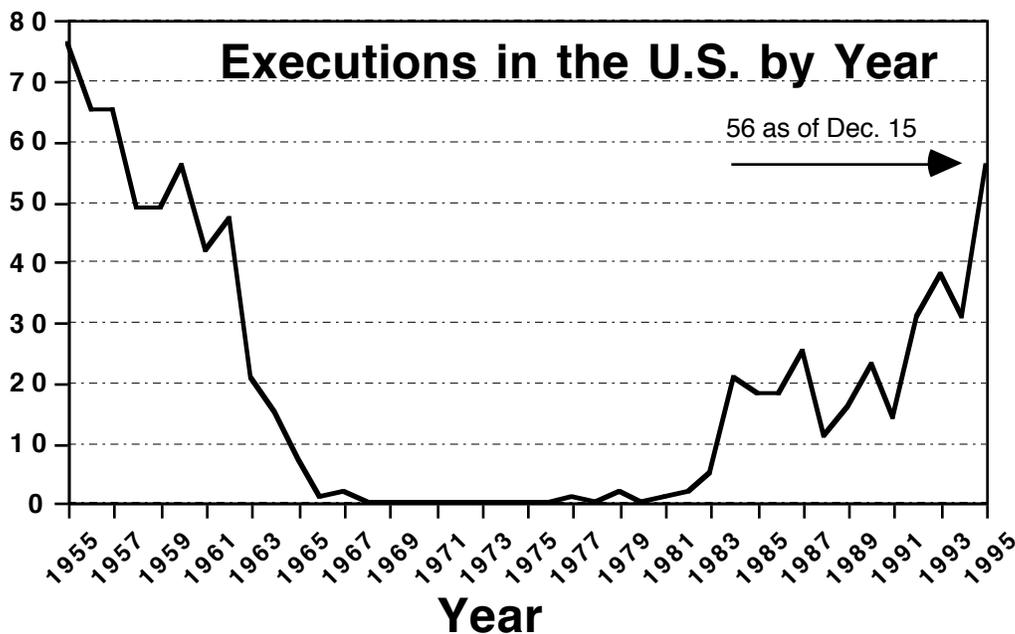


The Death Penalty in 1995: Year End Report

Death Penalty Information Center
December 1995

Overview

Executions in the United States are reaching record numbers. Even without the most recent wave of attempts to curtail death row appeals, the number of people put to death has been steadily rising. Contrary to the popular misconception that death row inmates are granted "endless appeals," there have been 313 executions since the death penalty was reinstated in 1976. This year alone there have been 56 executions, more than any other year in the modern era.



Moreover, the pace of executions is also quickening. It took 12 years after the Supreme Court allowed executions to resume to reach the first 100 executions, 5 years to execute the next 100 inmates, and less than two and a half years to achieve the third 100 executions. The prospect of over 100 executions per year appears likely in the near future.

This acceleration in carrying out the death penalty has been accompanied by a "deregulation of death" -- that is, a dismantling of the legal protections traditionally afforded those facing the state's ultimate punishment. As the year closes, this erosion

of the safeguards against mistaken executions is itself accelerating as Congress prepares to drastically cut the opportunity for death row defendants to obtain federal review and as it completely defunds the death penalty resource centers which had been commissioned to assure death row representation.

Death Penalty Developments in 1995

Many of the problems which have marked the practice of capital punishment in America continued or worsened in 1995:

Race: The death penalty continues to operate very differently for the African-American population than it does among whites. The murder of a white person is far more likely to result in the death penalty than the murder of a black person. Seventy percent of the cases resulting in executions in 1995 involved murders with white victims, even though generally, whites constitute just half of all murder victims. Forty-five percent of those executed this year were members of minorities, almost all of them African-Americans. Even the relatively new federal death penalty appears aimed at minorities. Since the resurgence of the federal death penalty in 1988, 65% of the defendants against whom the Attorney General has authorized death penalty prosecutions have been African-Americans, and another 12% have been Hispanic. This includes prosecutions under the 1994 Crime Bill's expansion of the federal death penalty.

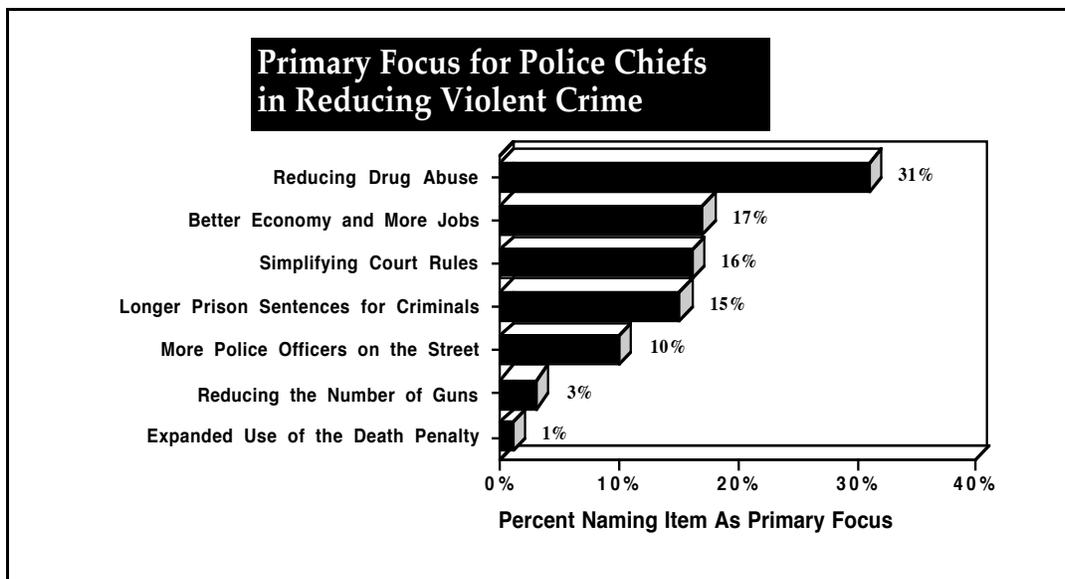
Innocence: Five inmates were released from death row in 1995 after being acquitted at re-trial or after charges were dropped: Robert Cruz (Arizona), Adolph Munson (Oklahoma), Rolando Cruz (Illinois), Alejandro Hernandez (Illinois) and Sabrina Butler (Miss.). This brings the total number of death row inmates released since 1973 because of evidence of their innocence to 59. In addition, Jesse Jacobs was executed in Texas this year even though the prosecution had recanted its theory of the case presented at Jacobs's trial. In Missouri, a federal judge found that no reasonable juror would have found Lloyd Schlup guilty of murder if his new evidence had been presented at trial. Schlup had been scheduled for execution. The cases of Rolando Cruz, Jesse Jacobs and Lloyd Schlup are discussed more thoroughly below.

Costs: Based on the best available estimates, the cost to taxpayers of the 56 executions so far this year is a staggering \$121 million.¹ This is equivalent to the salaries for 3,000 additional police officers at \$40,000 each. The same amount could provide bullet proof vests for approximately 200,000 officers.

¹ This is a conservative estimate based on a Duke University study of the costs of the death penalty. (P. Cook & D. Slawson, *The Costs of Processing Murder Cases in North Carolina* (1993)). This study concluded that the extra costs to North Carolina attributable to the death penalty amounted to \$2.16 million per execution. Not all of the expense occurs within the year of the execution. Other estimates have been higher: \$3.2 million per execution in Florida (Miami Herald, July 10, 1988); \$2.3 million per case in Texas (Dallas Morning News, March 8, 1992); and \$90 million per year in California alone (Sacramento Bee, March 28, 1988).

Arbitrariness: Who is executed depends on a number of arbitrary factors. Seventy-three percent of the executions so far this year occurred in the South. Texas alone accounted for over one-third of the country's executions. Moreover, as the descriptions below illustrate, the death penalty continues to be imposed upon the most disadvantaged populations: minorities, the poor, the mentally ill and retarded, and those afforded the worst lawyers. On the other hand, recent defendants like O.J. Simpson and Susan Smith illustrate that those with good representation are unlikely to receive the death penalty.

Effectiveness: A 1995 national poll by Peter Hart Research Associates of the nation's police chiefs revealed that the police do not believe the death penalty is effective in fighting crime.² Two-thirds of those polled did not believe that the death penalty significantly reduces the number of homicides, and most said it was not an effective law enforcement tool. The death penalty was at the bottom of their list for reducing violent crime. Similarly, a poll of the nation's top city officials by the National League of Cities placed the death penalty *last* in a long list of measures most likely to reduce crime.³ Still, that wisdom did not stop New York this year from becoming the 38th state with the death penalty, even while their murder rate was falling considerably without capital punishment.



International Trends: More than half of the world's countries have now abolished the death penalty in law or in practice.⁴ South Africa, a country which the

² See P. Murphy, *Death Penalty Useless*, USA Today, Feb. 23, 1995 (former NY Police Commissioner); see also *Sourcebook of Criminal Justice Statistics--1994*, Bureau of Justice Statistics (1995), Tables 2.61 & 2.62.

³ National League of Cities, *The State of American Cities*, at 14 (Jan. 1995).

⁴ Amnesty International reports that 54 countries have abolished the death penalty for all crimes, 16 countries have abolished it for ordinary crimes, and 30 countries have abolished it in practice because they have not had an execution in 10 years or have

U.S. had vehemently chastised for human rights' violations in the past, abolished the death penalty in 1995, citing the unjust application of capital punishment in places like the U.S. Speaking to a world-wide audience, Pope John Paul II continued to take an increasingly critical view of the death penalty, saying that improvements in the organization of the penal system rendered cases justifying the death penalty "very rare, if not practically non-existent."

Who Was Executed?

The large number of executions this year might leave the impression that the death penalty worked smoothly, putting to death the most reprehensible criminals who were clearly guilty of the nation's worst crimes. An actual look at many of the cases paints a different picture:

- **Jesse Dewayne Jacobs** was the first person executed this year. After Jacobs's death penalty trial at which he was accused of firing the murder weapon, the prosecution reversed itself and claimed that Jacobs did not do the shooting and did not even know that his co-defendant had a gun. The Vatican, the European Parliament, and some members of the U.S. Supreme Court protested the execution. Justice Stevens wrote: "I find this course of events deeply troubling."⁵
- **Mario Marquez** was the second person executed this year. Marquez was one of 16 children; a grade-school dropout who suffered from mental retardation with an IQ of 65. Marquez killed his ex-wife and niece in a jealous rage. He had been repeatedly horse-whipped by his father and abandoned to the streets at age 12. Unfortunately, the jury heard nothing of his childhood and mental problems which his appellate lawyer described as a life of "sadness from beginning to end."
- Despite Missouri's use of a military-style protocol and a \$30,000 computerized lethal injection machine, the killing of a human being is never routine. **Emmett Foster** was strapped to the gurney and injected with lethal chemicals, but he didn't die. The executioners had to pull the curtain on those witnessing the execution. After tinkering with the machinery for a half-hour, the curtains were again pulled back to show the witnesses that Foster had now been killed. Some of the witnesses refused to sign their witness form because they had not seen the execution.
- **Leon Moser** in Pennsylvania was also executed by lethal injection. Moser, a former mental patient, wanted to die but it was not clear that he was mentally competent to make that decision. A federal judge had ordered a competency hearing and stayed the execution. That stay was appealed by the state and was lifted by a higher court. But the order for the competency hearing remained. Nevertheless, the state pushed ahead with the execution before the scheduled hearing. As the execution

made an international commitment not to carry out further executions. Ninety-four countries retain the death penalty. (Sept. 1995).

⁵ See L. Greenhouse, *Justices Deny Execution Stay for Man Conceded to be Innocent*, The New York Times, Jan. 3, 1995, at A13 (quoting, *Jacobs v. Scott*, No. 94-7010, Stevens, J., dissenting).

approached, the federal judge called the state's attorney to see if there was a cellular phone at the prison. He was told there was none. He was not told, however, that there was a standard phone in the execution chamber. The judge had wanted to determine Moser's competency before the execution occurred. By the time he was able to get through to the chamber, the lethal chemicals were already flowing into Moser and it was too late.

- **Robert Brecheen** was scheduled to be executed in Oklahoma just after midnight on August 11. But when the guards came to get him, they couldn't rouse him. Brecheen was rushed to the hospital where his stomach was pumped as a response to a probable drug overdose. Brecheen was then returned to the prison, strapped to a gurney, and executed with lethal chemicals. The prison reported that his last words were inaudible.
- **Varnall Weeks** was a severely mentally ill black man executed by Alabama on May 12. (Seventy-five percent of the executions in Alabama since 1976 have been of black men.) Shortly before his execution, an Alabama judge had found that Weeks was insane according to "the dictionary definition of insanity." Weeks believed he was God and that after his execution he would be transformed into a tortoise and would rule the world. The major mental health organizations in Alabama pleaded for his death sentence to be commuted, but to no avail.
- **Sylvester Adams** was poor, mentally ill and retarded. His defense lawyer presented no mitigating evidence and the jury never heard of Adams's mental problems. Later, one of the jurors stated that had she known of Adams's retardation she never would have voted for a death sentence. That vote would have been enough to spare his life, but instead he was executed in South Carolina on August 18. Adams's lead trial attorney was later disbarred and was serving time in federal prison when the execution occurred.
- **Barry Lee Fairchild** was a poor, retarded black man accused of raping and killing a young white woman in Arkansas. After a coercive interrogation, Fairchild confessed to the rape. Two police officers later testified that they saw and heard other lawmen hitting Fairchild on the night of his confession. His head was also bandaged as a result of an attack by a police dog. Thirteen other black men testified that they too had been abused when they were arrested as suspects in the same crime. People suffering from mental retardation are more likely to be cooperative with authorities and to say things the police want to hear, especially when intimidated. Fairchild's statement to the police, which he later denied, was the key to the prosecution's case. He was executed on August 31.
- **Rolando Cruz** was not executed this year, though Illinois had set his execution date in 1993. Now he is a free man, having been acquitted at a re-trial in November of this year. He was originally convicted on circumstantial evidence in a community that was outraged at the rape and murder of a little girl. The conviction was overturned and another man confessed to the crime. But the state, led by a politically ambitious prosecutor, refused to back down. They used a prison snitch to obtain a second conviction, while the man who confessed to the crime never testified. Despite the resignation of an assistant attorney general and the protests of a number of law enforcement officials familiar with the case, the state pushed for a third trial of Cruz.

He was quickly acquitted and freed after more than ten years on death row. At least four other inmates who had been sentenced to death were also found to be innocent this year.

- **Lloyd Schlup** also was not executed this year, thanks to the intervention of the Missouri Capital Punishment Resource Center (which has recently closed due to imminent Congressional funding cuts). Schlup was scheduled for execution but obtained review in the U.S. Supreme Court which directed the lower courts to reconsider his claims of innocence. Now a federal judge has found that no reasonable juror would find Schlup guilty of the murder he was charged with. This is just the first step in obtaining a new trial, but this case perfectly illustrates the dangers in deregulating the death penalty. Without the resource centers, the impressive array of evidence pointing to Schlup's innocence would never have been discovered. And the standard for establishing a claim of innocence which the Supreme Court found proper in Schlup's case would be jettisoned by Congress's proposed dismantling of federal review. Lloyd Schlup would not even get a hearing on his new evidence under Congress's plan to speed up the death penalty.

Commentary: Cruel and Usual Politics

Politics continued to play a dominant role in the application of the death penalty in 1995. States like Virginia, Pennsylvania and Texas sought to demonstrate their toughness by accelerating the pace of death warrants and executions. Many states sought ways to shorten the appeals process. House Speaker Newt Gingrich proposed a mandatory death penalty for drug smugglers, promising 35 executions at one time.

There are numerous signs that this politicization of the death penalty is going to get worse. Both Houses of Congress recently voted to eviscerate the right of state defendants to seek federal habeas corpus relief, the time-honored remedy for prejudice and injustice. If finally approved, this change would strip the federal courts of their primary role in protecting a capital defendant's rights under the U.S. Constitution.

Likewise, both Houses of Congress have voted to eliminate all funding for the death penalty resource centers around the country. These centers provided legal assistance to indigent death row inmates. Many former death row inmates owe their lives to the excellent representation which the resource centers provided. Without experienced attorneys to represent them and without meaningful federal review, innocent people will surely be executed.

Meanwhile, there is no sign that all of this killing and the attendant costs is doing anything to address the crime problem. Many law enforcement experts have concluded that the way to lessen the tragedy of violent crime is to prevent it beforehand. A number of cities in the U.S. have experienced a drop in murders over the past two years. Lawmakers should look at the success stories in places like New York, Boston, Detroit, and other cities to see how the expansion of the police force, community policing, drug programs, and other measures are working to reduce murders *without the death penalty*.

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