

THE DEATH PENALTY IN 2003: YEAR END REPORT

Death Penalty Information Center
December 2003

Doubts Continue As Death Penalty Numbers Decline in 2003

More Exonerations Are A Catalyst for Change

Death Penalty Numbers* - 2003

Executions in 2003 (71 in 2002)	65
Executions since 1976	885
Death Row population - as of Oct. 1, 2003	3,504
Exonerated and freed from death row in 2003	10
Exonerated and freed since 1973	112
Commutations in 2003**	174
<u>Leading Execution States in 2003:</u>	
Texas	24
Oklahoma	14
North Carolina	7
<u>Leading death row states:</u>	
California	632
Texas	451
Florida	381
<u>Percentage of executions by region in 2003:</u>	
South (regions by federal breakdown)	89%
Midwest	11%
West	0%
Northeast	0%

*As of December 18, 2003, with no more executions scheduled for this year.

** Includes 4 pardons and 167 commutations in IL

The death penalty continued its recent attrition in 2003, with executions, death sentences, and the death row population all lower than a few years ago. Public support for the death penalty dropped to its lowest level in 25 years. At the same time, exonerations from death row helped spur legislative reforms in the capital punishment system.

The use of the death penalty declined by a variety of measures:

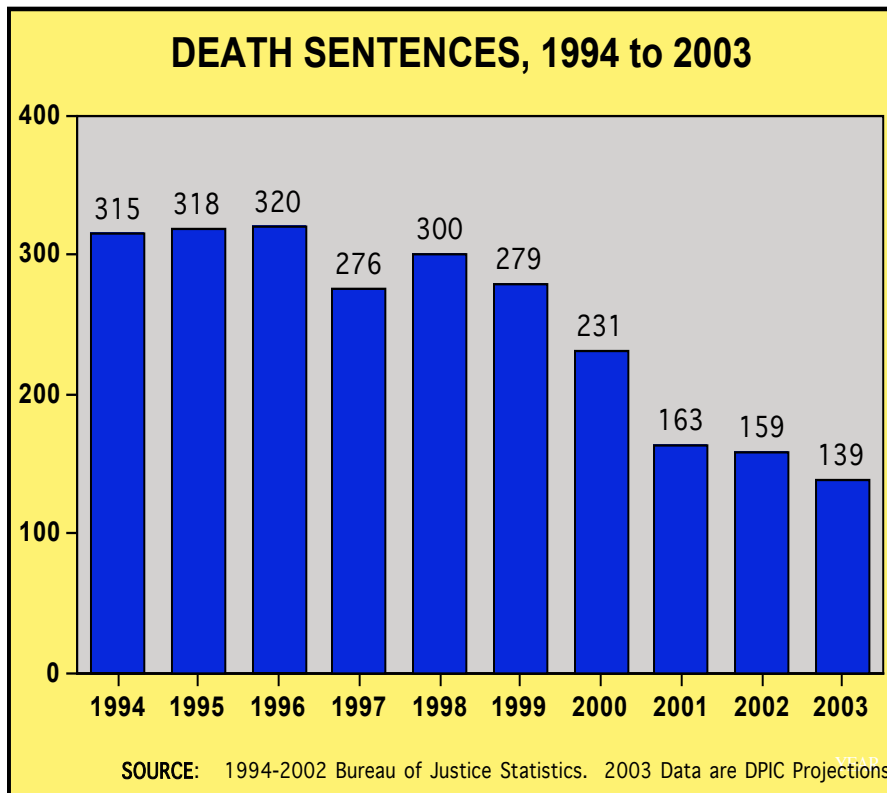
- **EXECUTIONS:** The number of executions dropped by 8% from 71 last year to 65 this year. Executions are down 34% when compared to 98 executions in 1999.
- **DEATH ROW:** The size of death row is smaller than it was a year ago by 5%. As of October 1 of this year, the number of inmates on death

row stood at 3,504. A year before the count was 3,697. The size of death row had been increasing steadily after the death penalty was reinstated in 1976, but the numbers have declined since 2001.

- **DEATH SENTENCES:** The number of new death sentences is also declining, though the numbers for 2003 are still preliminary. The Bureau of Justice Statistics reported in November of this year that the number of death sentences for 2002 was 159, marking the fourth straight year of decline in death sentencing. DPIC's assessment of death sentences

for 2003 (based on data through Oct. 1) projects that the number of death sentences will be approximately 139, continuing the downward trend. The contrast is more pronounced (nearly a 50% drop) when compared to death sentences in the late 1990s, which averaged about 300 per year.

- **REGIONALIZATION:** The practice of the death penalty became more isolated in 2003. Only three states outside of the south conducted executions in 2003: Indiana, Missouri, and Ohio. Three states in the south, Texas, Oklahoma and North Carolina, accounted for 69% of the executions in 2003. All together, the south was responsible for 89% of the executions this year. Only 11 states carried out an execution in 2003, the fewest states in a decade. Two of the five states with the largest death rows had no executions in 2003: California and Pennsylvania.



- **RACE:** As has been the case for many years, those executed were almost exclusively guilty of murdering a white victim—only 18% 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 2003, no white person was executed exclusively for the murder of a black person.

- **INNOCENCE:** In one area related to the death penalty, however, the

numbers reached a highpoint since its reinstatement: ten people were exonerated and freed from death row in 2003, equaling the most exonerations in a single year since states began enacting new death penalty laws in 1973, and more than twice as many as last year. More cases are undergoing final review and may soon result in additional exonerations in Louisiana, Tennessee, North Carolina and other states.

- **PUBLIC OPINION:** Public support for the death penalty as measured by the Gallup Poll reached its lowest level in 25 years. Support dropped from 70% one year ago in October to 64% in October of this year, despite the media focus on the trials of two men accused of serial killings in Virginia and Maryland and continuing concern about terrorism. The last time support for the death penalty was lower was in 1978 when it measured 62%.

171 Death Sentences Lifted in Illinois

In a dramatic gesture that was both historic and emblematic of the new concerns about the death penalty, Illinois Governor George Ryan removed the death sentences of every one of the 171 inmates on death row in January. Four inmates were completely pardoned based on their innocence and the remaining inmates had their death sentences commuted. Despite concerns

raised by some of the victims' families, the governor believed that the system was so flawed that even the death sentences of the guilty were not the product of a reliable system. Following Ryan's departure from office, the new governor, Rod Blagojevich, promised to continue the moratorium on executions, and the legislature overwhelmingly enacted significant death penalty reforms.

Innocence Issues Spurs Legislative Action

The **Illinois** legislature passed sweeping reforms to the criminal justice process, including required videotaping of interrogations, prohibiting the seeking of the death penalty in cases that rely solely on the testimony of a single eyewitness, a jailhouse informant or an accomplice, greater access to DNA databanks, and allowing appellate courts to overturn death sentences that are "fundamentally unjust," regardless of procedural bars to such review. The most recent set of reforms passed the Illinois House by a unanimous vote.

In **North Carolina**, the state senate voted 28-21 to impose a moratorium on all executions while the state's system is examined for flaws that could lead to mistakes or unfairness. The bill will likely come up for a vote in the house in 2004. Around the country, 100 municipalities have passed resolutions calling for a moratorium on executions, including New York City and 18 city councils in North Carolina. The most recent resolution was passed unanimously in Eutaw, Alabama. Both North Carolina and Alabama are leading death penalty states.

In the **U. S. Congress**, a modified version of the Innocence Protection Act, first introduced in the year 2000, was passed overwhelmingly by the House of Representatives in a bipartisan vote, thereby paving the way for complete passage of the bill next year. The bill proposes funding for DNA testing and the improvement of legal representation in death penalty cases.

In a scathing report issued in November by the **House Committee on Government Reform**, the FBI was cited for deliberately allowing six men to be convicted of murder based on false testimony. Four of the men were sentenced to death in Massachusetts in 1968. Official resistance to the Committee's investigation continued until very recently. The report called the government's actions "**one of the greatest failures in federal law enforcement history**," and lays out the "disastrous consequences" of the Justice Department's actions in a 150-page analysis. Two of the wrongly convicted men died in prison; two others, Peter Limone and Joseph Salvati, were recently freed and exonerated after 30 years of confinement. The men who were condemned to death were spared only because the death penalty was found to be unconstitutional in 1972. To date, there have been no adverse consequences for those who allowed the false testimony.

Juvenile Offenders

On the issue of the execution of juvenile offenders, states took various actions. In Missouri, the state Supreme Court declared such executions to be unconstitutional, making Missouri the 17th state to ban the practice. In Kentucky, Governor Paul Patton commuted the death sentence of Kevin Stanford to life in prison without parole, stating that the death penalty for juveniles was excessive. Coincidentally, when the U.S. Supreme Court last upheld the death penalty for juvenile offenders in 1989, it reviewed cases from Missouri and Kentucky, including Stanford's. Now the defendants in both of those cases have been spared execution. One juvenile offender was executed in 2003: Scott Hain in Oklahoma.

Significant attention has been given this year to the on-going trial in Virginia of Lee Malvo, who was 17 at the time of a series of shootings in Maryland and Virginia. While a death sentence is certainly possible in that case, numerous articles in the media and research journals have pointed to recent medical and psychological studies delineating the distinct developmental differences between juveniles and adults and emphasizing juveniles' susceptibility to adult

influence. It is plausible that the U.S. Supreme Court will one day reconsider this issue, as it did with the execution of the mentally retarded in 2002.

Innocence Cases

Ten people were freed from death row in 2003, equaling the record of ten exonerations in 1987. The ten included four inmates granted a complete pardon by Governor George Ryan of Illinois. All four had been tortured by the police and then made statements implicating themselves in a crime. Once these statements were discounted, the cases against **Aaron Patterson, Madison Hobley, Leroy Orange, and Stanley Howard** fell apart and they were freed by the governor. The other six inmates exonerated this year were:

Nicholas Yarris (Pennsylvania) – The most recently exonerated inmate had his conviction overturned this year after 3 DNA tests from the crime scene excluded him. In December, the prosecution announced it was dropping all charges, making Yarris the 112th death row inmate to be exonerated and the 13th as a result of DNA testing.

Rudolph Holton (Florida) - In 2001, a Florida Circuit Court held that the state withheld exculpatory evidence from the defense that pointed to another perpetrator. The court also found that new DNA tests contradicted the trial testimony of a state's witness. Holton's conviction was overturned and he was finally freed in January after 16 years on death row.

States with executions	2003	2002
Texas	24	33
Oklahoma	14	7
North Carolina	7	2
Georgia	3	4
Florida	3	3
Ohio	3	3
Alabama	3	2
Virginia	2	4
Missouri	2	6
Indiana	2	0
U.S. Gov't	1	0
Arkansas	1	0
South Carolina	0	3
Mississippi	0	2
California	0	1
Louisiana	0	1
Totals	65	71

John Thompson (Louisiana) - Just five weeks before his scheduled execution, Thompson's attorney discovered crucial blood evidence that undermined information the jury used to send Thompson to death row. A Louisiana court reversed Thompson's conviction and sentence, ordering a new trial. He was released from prison on May 9 after a jury acquitted him at his retrial.

Timothy Howard and Gary Lamar James (Ohio) -

Howard and James were arrested in December 1976 for a bank robbery in which one of the bank guards was killed.

With funding from Centurion Ministries, Howard and James were able to uncover new evidence, including conflicting witness statements and fingerprints.

James passed a state-administered polygraph test, prompting the prosecutor to dismiss all charges "in the interest of justice."

Howard had been freed earlier on April 23 when a judge

overturned his conviction, citing evidence not disclosed or available at trial. The state dropped its appeal of the judge's ruling, thereby clearing Howard of the same charges.

Joseph Amrine (Missouri) - Amrine was sentenced to death for the murder of a fellow prisoner. Amrine was convicted on the testimony of fellow inmates, three of whom later recanted their testimony, admitting that they lied in exchange for protection. During arguments before the Missouri Supreme Court, the state argued that new evidence of innocence should have no bearing on the case. The Court found clear and convincing evidence of Amrine's actual innocence and overturned his conviction. On July 28, the prosecution announced that it would not seek a new trial and Amrine was thereafter released.

Supreme Court

The Supreme Court continued to exercise scrutiny in some areas of death penalty law in 2003. In an important decision on the quality of legal representation in capital cases, the Court ruled in *Wiggins v. Smith* that the trial attorneys failed to adequately investigate the severe abuse and mental health problems of their client, as recommended in the guidelines of the American Bar Association. Thus, they were unprepared to make an informed decision on what to present as mitigating factors when Wiggins was found guilty.



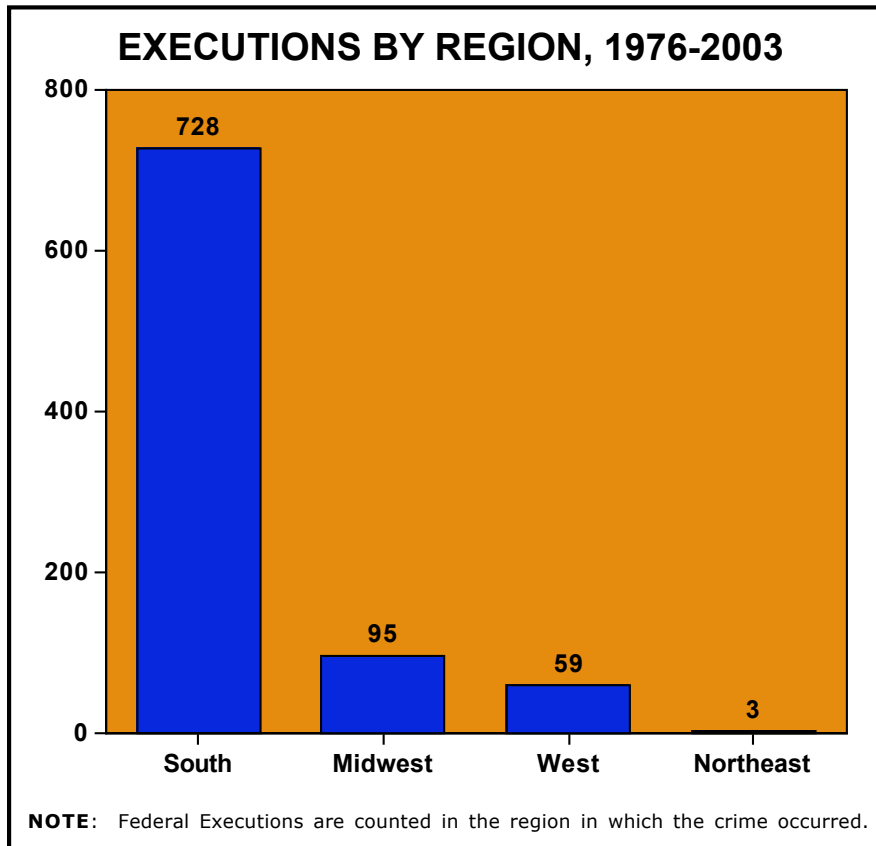
In another matter, the Court held that Thomas Miller-el of Texas should at least be given the opportunity to appeal a lower court's rejection of his allegations that the State of Texas used racial preferences in selecting juries.

In the coming year, the Court will decide another Texas case, *Banks v. Dretke*, where prosecutors put on false testimony and withheld exculpatory evidence. The Court will also decide whether its decision of 2002 in *Ring v. Arizona* is retroactive to everyone on the state's death row or just to those in their first round of appeals. In addition to Arizona, at least four other states (Colorado, Idaho, Montana and Nebraska) allowed judges, rather than juries, to decide the facts making a defendant eligible for a death sentence, a procedure *Ring* declared unconstitutional.

New Voices

As in previous years, a number of prominent individuals voiced concerns about the death penalty in 2003. For some, the dangers and injustices of capital punishment have now become intolerable:

- **Federal Judge Mark Wolf**, a former prosecutor and official in the Justice Department, stated in the course of an opinion in a capital case that "innocent individuals are sentenced to death, and undoubtedly executed, much more often than previously understood." (N.Y. Times, Aug. 12, 2003).
- After U.S. Attorney General John Ashcroft authorized a federal death penalty prosecution against two Massachusetts men accused of a gang murder, the local **Suffolk County District Attorney, Daniel F. Conley**, objected to using capital punishment to end urban violence, stating, "I do not believe the death penalty is a deterrent or appropriate punishment for inner-city homicide. The death penalty runs counter to the strategies for preventing and prosecuting urban crime -- which include sensitivity to the neighborhoods we serve -- that have proven successful in Boston over the last decade." (Boston Globe, September 19, 2003).
- After years of supporting capital punishment, **former San Francisco prosecutor Bill Fazio** changed his position on the death penalty. Fazio, who now serves as a defense attorney, stated, "Life without parole is a viable alternative." He noted that he began to reconsider his stance on capital punishment after the U.S. Court of Appeals reversed his sole death penalty conviction. Fazio noted, "It was an error by the trial judge, and it made me realize that after 21 years there was still no closure in the case. If Coleman had gotten life without parole, it would have been over in 1981." (San Francisco Daily Journal, July 10, 2003).



- **Charles B. Blackmar**, senior judge of Missouri's Supreme Court from 1982-1992, recently called for abolishing the death penalty:

Most nations that share our political and cultural traditions have done away with the death penalty. The nations that still have capital punishment include China, North Korea, Iran, Saudi Arabia, Syria and, before the American invasion, Iraq. I am not aware of any nation of our tradition that did away with capital punishment that

has a worse crime problem than we have.

Nothing would be lost if death penalty statutes were repealed.
(Kansas City Star, July 1, 2003).

- When **Aba Gayle's 19-year-old daughter was murdered in 1980**, she found herself seeking revenge and consumed by bitterness. Although the district attorney assured her that she would feel better when the murderer was convicted and executed, Gayle was not convinced that the death penalty would quell her anger and lead to the healing she desired. "I knew that I didn't need the State of California to murder another human being so I could be healed," she noted. "It's time to stop teaching people to hate and start teaching people to love. The whole execution as closure idea is not realistic." (Silverton Appeal Tribune, March 12, 2003).
- **Mary Jo White, former United States Attorney in Manhattan**, attended a showing of the play "The Exonerated," which portrays the lives of individuals who were wrongly convicted in capital cases and then freed. Ms. White had prosecuted federal death penalty cases. In her remarks after the show, she said:

"My personal view on the death penalty has evolved several times in my life, most of it against the death penalty, because it demeans the state," she said. "From a pure law enforcement perspective, it doesn't work."
(N.Y. Times, Feb. 15, 2003).

- **Legendary North Carolina basketball coach Dean Smith** stated that executions are a communal act, and one that he does not believe to be moral or effective. "I do not condone any violence against any of God's children, and that is why I am opposed to the death penalty," Smith stated in his autobiography "A Coach's Life." (Chicago Tribune, February 9, 2003).

DEATH ROW INMATES BY STATE (NAACP Legal Defense Fund, Oct. 1, 2003)	
California	632
Texas	451
Florida	381
Pennsylvania	241
Ohio	209
North Carolina	207
Alabama	194
Arizona	126
Georgia	116
Oklahoma	105
Tennessee	104
Louisiana	92
Nevada	89
South Carolina	74
Mississippi	69
Missouri	67
Arkansas	40
Indiana	39
Kentucky	38
Oregon	31
Virginia	27
U.S. Government	26
Idaho	21
Delaware	21
New Jersey	15
Maryland	14
Washington	11
Utah	11
Illinois	8
Connecticut	7
Nebraska	7
U.S. Military	7
Kansas	7
New York	6
Colorado	6
Montana	5
South Dakota	4
New Mexico	2
Wyoming	1
Total death row (7 inmates sentenced in more than one state)	3,504

- **Novelist and attorney Scott Turow**, who was initially undecided about the death penalty, published a new book about his struggles with the issue, *Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty*. He ended up an opponent of capital punishment: "There will always be cases that cry out to me for ultimate punishment. That is not the true issue. The pivotal question instead is whether a system of justice can be constructed that reaches only the rare, right cases, without also occasionally condemning the innocent or the undeserving."

Public Opinion

Numerous polls recorded a decline in support for the death penalty in 2003. After a rise in support following September 11, 2001, the Gallup Poll in October of this year recorded a support of only 64%, returning to just below the level in 2001 before the attacks. This finding is in line with other polls this year, including the Pew Research Center Poll and an ABC News poll, both of which recorded declines in support to 64%. (Support for the death penalty peaked at 80% in 1994 according to Gallup.) When the issue is probed further, and respondents are offered two sentences for those convicted of murder, death or life without parole, even fewer support the death penalty: the ABC News poll showed 49% supported the death penalty while 45% would choose life without parole. In a May, 2003 Gallup Poll, 53% preferred the death penalty and 44% would choose life without parole. Similar results have been found in state polls.

Jury concerns about the death penalty may be playing a role in federal trials. While many states have cut back on their use of capital punishment, Attorney General John Ashcroft has pursued the death penalty in many states that have rejected this punishment and he has sought it over the recommendations of local U.S. Attorneys. Nevertheless, only three of the past 26 federal capital cases have resulted in death sentences.

Death Penalty Trumped by Other Concerns

It was not only concern about mistakes that prompted a curtailment in the death penalty. In the state of Washington, prosecutors allowed Gary Ridgway to plead guilty to 48 murders and avoid the death penalty because he could provide information about some of the victims. Despite going back on his promise to seek the death penalty, the prosecutor was largely supported for his actions. In a federal case, Stephen "the Rifleman" Flemmi was also allowed to plead guilty to 10 murders and avoid death penalty prosecutions in exchange for his cooperation.

Nevertheless, such glaring inconsistencies in the use of the death penalty demonstrate its arbitrary quality. In response to the Ridgway plea, Washington State Superior Court Judge David A. Nichols stated that the "death penalty as a response to any criminal behavior no longer has validity and should be repealed, because it is impossible to administer with justice and fairness." (Seattle Times, November 8, 2003).

International Developments

As the U.S. struggled with the problems of capital punishment, countries around the world took formal steps to eliminate the death penalty:

- The British Privy Council declared that mandatory death sentences in Trinidad and Tobago are unconstitutional.
- Kenyan government officials are working to abolish the nation's death penalty and replace the punishment with life in prison. Kenya has not had an execution since 1987, but 2,618 people remain on the nation's death row. Kenya's assistant minister for home affairs, Wilfred Machage, noted, "The practice has been used worldwide in the past but latest trends show that it is an abuse of an individual's right to life"
- Armenia abolished the death penalty and commuted existing death sentences in compliance with its status in the Council of Europe and Turkey joined an international treaty excluding the death penalty in peacetime.

During a speech hosted by the Southern Center for International Studies in Atlanta, **Supreme Court Justice Sandra Day O'Connor** stressed the importance of international developments for American courts and the need for the United States to create a more favorable impression abroad. She cited recent Supreme Court cases, including the Court's ruling to ban the execution of those with mental retardation, that illustrate the increased willingness of U.S. courts to take international law into account. "I suspect that over time we will rely increasingly, or take notice at least increasingly, on international and foreign courts in examining domestic issues." O'Connor noted that doing so "may not only enrich our own country's decisions, I think it may create that all important good impression." (World Net Daily, October 31, 2003).

Conclusions

By most measures, the death penalty is declining in use and popularity in the United States. Fewer death sentences and executions, smaller death rows, and declining public support are signs of concern and doubt about the legitimacy of capital punishment. Exonerations from death row continue to erode public support. In many states, executions are either rare or non-existent. Executions are almost exclusively in the south and mainly for the murder of white victims. In 2003, prominent new voices emerged to challenge the death penalty, some urging major overhauling of the system, others concluding that it cannot be repaired and should be ended.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information regarding 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. This report was written by Richard C. Dieter, Executive Director, with assistance from the DPIC staff. We gratefully thank the J. Roderick MacArthur Foundation and the Open Society Institute for supporting this work. Further sources for facts and quotes in this report are available upon request.