

Capital Punishment and DNA Testing  
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## Introduction

The theme of my “Policy Paper” will investigate the Death Penalty and the importance of DNA testing. I will explore an across the board public policy that could be standardized and mandated by the Federal Courts. This policy could ensure that a person wrongly convicted would not be executed if DNA evidence could be introduced. This evidence could result in the exoneration of a person or persons who are wrongly convicted and sentenced to death.

Clark County’s Prosecutor’s office of the State of Indiana reported that:

“As of June 1, 2002, the Death Penalty was authorized by 38 states, the Federal Government, and the U.S. Military. Those jurisdictions without the Death Penalty include 12 states and the District of Columbia. (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin).”<sup>1</sup>

The death penalty was reinstated by the U.S. Supreme Court in 1976. DNA testing only arrived in the 1980’s. Until this scientific testing had arrived and became a tool for criminal investigators, the advocates against the death penalty would argue just how many innocent people were wrongfully convicted and executed before DNA.

Deoxyribonucleic Acid or (DNA) is one long sequence of a biochemical code, which contains many thousands of genes. Our genes are located at points that are intermittent along the DNA. These structures are neatly packaged and called chromosomes.

We have some gene sequences that we all share. For example, these sequences tell our bodies to develop feet instead of hooves or fins – other sequences vary and it is these variations that

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<sup>1</sup> The Clark County State of Indiana Prosecutor’s Office, (2002), *Death Penalty in the U.S. (1976-2002)*, <<http://www.clarkprosecutor.org/html/death/dpusa.htm>>

make us unique to each other. The aim of the DNA tests is to find these variations which have specific locations on our chromosomes.<sup>2</sup>

The overview of this product will examine DNA testing and the significant impact it has had on the death penalty since Dr. Alec Jeffries of England started using it in the 1980's. We can trace the

scientific advancement of DNA from its early development of RFLP or (Restriction Fragment Length Polymorphism) to PCR or (Polymerase Chain Reaction) which is used in today's criminal investigations.

This author will also bring to light the Innocence Project at Benjamin N. Cardozo Law School created by Barry C. Scheck and Peter Neufeld in 1992, and the project's impact it has had on the death penalty.

In conclusion, recent legislation will be analyzed and its very important role by certain politicians for and against capital punishment. Former Governor George Ryan, originally a hardliner Republican from the State of Illinois, placed a moratorium on the death penalty on January 31, 2000. In his state he initiated a Commission on Capital Punishment to examine concerns and mistakes made in capital cases.

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<sup>2</sup> Podger, C. (2002), *The Complexity of DNA testing*, BBC News, p-1  
< <http://news.bbc.co.uk/1/hi/sci/tech/1994195.stm> >

Three days prior to Governor Ryan leaving office, Governor Ryan delivered the greatest attack on America's death penalty since the U.S. Supreme Court overturned the practice in 1972. He cleared Illinois death row of all 167 inmates, making the declaration that, "Each and every one of those cases had raised questions of those people on death row that the possibility of innocence existed."<sup>3</sup>

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<sup>3</sup> Rall, T. (2003), George Ryan, American Hero, Yahoo News, p-1  
<<http://story.news.yahoo.com/news?tmpl=story2&cid=127&ncid=742&e=13&u=/030116/7/31t35.html>>

## **Define the Problem:**

Undeniably, the Death Penalty is one of the most controversial issues of our day. There are individuals who hold human life above justice, and there are individuals who hold justice above human life. Those who are against the death penalty consider it to be barbaric. They consider this form of punishment as an indication of just how low society has sunk. These advocates consider that personal bloodlust is held above the moral ideologies and use the example of people who cheer the murdering of prisoners during the execution process.<sup>4</sup>

In the landmark 1972 case of Furman versus Georgia, the death penalty was struck down by the United States Supreme Court on the following four grounds:

1. It was imposed arbitrarily
2. Used unfairly against minorities and the poor
3. Its infrequent use made it an ineffective deterrent
4. The state sanctioned killing was no longer acceptable behavior

The decision had rendered tremendous uncertainty. Each justice had filed a separate opinion. This was an unprecedented move in 20<sup>th</sup> century jurisprudence. This decision by the Supreme Court had yielded the longest written decision in Supreme Court history. This decision is very indicative of this complicated rationale. The motivation of the justices' five votes varied. This left the door open for the uncertainty for the states to write new death penalty laws which could pass constitutional muster.<sup>5</sup>

Abolition was never popular by the reflection of the polls that were taken in March of 1972, shortly before the case of Furman was decided in the courts which showed an approval rating of 50% for capital punishment. That number jumped to 57% by November that year. Nineteen state legislatures passed a

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<sup>4</sup> The Death Penalty, Fleeting Thoughts, < <http://home.earthlink.net/~hannaj/>>

<sup>5</sup> Green, J. Deadly Compromise, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-2, < <http://search.epnet.com/direct.asp?an=2436924&db=afh>>

retooled death penalty statute which hoped to meet the vague standard that was constitutionally hinted in Furman. The modern death penalty was allowed by the court by upholding Gregg vs. Georgia in 1976. Thirty six states had passed new death penalty laws. These laws have been in dispute ever since, and the end result is today's beleaguered system.

After Gregg, the court acceded to the opponents of the death penalty by outlawing mandatory death sentences and instituting safeguards which are very complex. The courts are still hampered by this problem. Defense lawyers are unable to abolish capital punishment in the legislature and sought to institute a de facto halt to execution which stalls the courts by filing spurious last-minute appeals and repeatedly seeking reversal on obscure technical grounds. These types of activist lawyers, and even some judges, could bring the system to its knees.<sup>6</sup>

The legislature's reforms have also failed to improve the system at the federal level. In the mid 1980's it was reported that federal judges couldn't find qualified lawyers to handle death penalty cases. The attorneys who were assigned by the court, were expensive, and not necessarily made competent counsel. At the behest of federal judges, in 1988, Congress created legal resource centers that processed and defended the poor. These centers, for the most part, served their purpose on the tough-on-crime attitude which surfaced in the 1990's. Those resource centers became a political football. Republican Congressman, Bob Inglis, from the State of South Carolina, branded them as, "think tanks for legal theories that would frustrate the implementation of all death sentences".<sup>7</sup> Congress, citing fiscal problems, eliminated federal funding for the resource centers in 1996 which consisted of \$20 million for 21 centers which were nationwide. This won a double victory for the budget hawks who reasoned that by choking off those agencies that represent

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<sup>6</sup> Green, J. *Deadly Compromise*, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-2, < <http://search.epnet.com/direct.asp?an=2436924&db=afh> >

<sup>7</sup> *Ibid.*, p-3

death row inmates, they could rid themselves of an impediment to executions, while in the process of saving the taxpayers millions of dollars.

This thinking had backfired because the resource centers played a critical function which was intended by the federal judges to keep the appellate system functioning smoothly. These death row cases were kept tabs on by the full-time lawyers with the organizational support. Their appeals were able to be filed promptly and they were able to steer their capital defendants through the complicated legal system. Indigent defendants didn't require the court's help because they received qualified representation. The flood of trained lawyers for the capital cases had offset the cost of the inexperienced lawyers who were court appointed and handled the capital cases prior to the inception of the resource centers. These resource centers funded by the government programs worked. The elimination of these centers had the opposite of the intended effect---it increased the likelihood of error and slowed down the pace of the appeal process.<sup>8</sup>

Numerous studies have shown that some of the problems began with the public defenders. These lawyers lacked the skills, resources, and the lack of commitment in defending the capital cases. It is reported that 90% of the current death row inmates didn't have a private attorney. David Lazarus a prosecutor noted that:

**“Clients of the world’s great defense attorneys (and even the good ones) don’t receive death sentences. Almost without exception, a prerequisite for receiving a death sentence is the inability to hire a lawyer sufficiently talented or motivated to mount a credible defense.” He continues that, “Public defenders will substantially increase the probability that a defendant will be convicted of capital murder as opposed to some appropriate lesser offense.”<sup>9</sup>**

Studies show that states need to institute minimum standards for defense lawyers. It is discovered that often the worst lawyers draw the death sentence not the worst criminals - a fact illustrated in a death penalty case of George Mc Farland in Texas. It was reported that his lawyer kept falling asleep during the trial. “It’s

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<sup>8</sup>Green, J. Deadly Compromise, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-3 and 4, < <http://search.epnet.com/direct.asp?an=2436924&db=afh>>

<sup>9</sup> Ibid., p-4 and 5



boring”, he explained to the Houston Chronicle. By a reform of this magnitude, the justice department concluded last fall, that it would reduce the time and the cost of a death penalty trial significantly.<sup>10</sup>

Another major problem is overzealous prosecutors. A belief shared by a career-minded prosecutor is the position of “get tough on crime”. Prosecutors who are ambitious and tout their death penalty convictions never question if many of their cases are cost effective or even necessary. The sentences that are later reversed suggest that these capital cases are grossly unfair: in the appeal process, 40% of death row cases are vacated at some point. This is at an enormous cost to the taxpayers and to the defendants who are incarcerated 10 or even 15 years down the line. A federal judge, Alex Kozinski has pointed out that:

**“While 80-90 percent of all criminal cases end in plea bargains, capital cases almost always go to trial. There is little justification for this discrepancy, given that plea-bargaining death penalty cases would limit costs and nullify the issue of protracted appeals.”<sup>11</sup>**

An inconsistency exists between states which vary drastically from states like Ohio, which only executed one person since the death penalty reinstatement. States like Virginia and Texas have executed 247 people between them since the reinstatement.<sup>12</sup>

Another problem that studies show is the continued racial disparity patterns of discrimination in the implementation of capital punishment. The modern post Furman death penalty is pervaded by racial discrimination based on the race of the victim, and also in certain places, the race of the defendant. This kind of racial disparity pattern was reported in a study by the U.S. General Accounting Office in (1990). In over 80% of the studies it was reported by the (GAO) that in (23 of 28), the race of the victim, when correlated, received the death penalty. For example, homicides that were similarly committed, under circumstances that were similar where the defendants’ criminal history was similar, the defendant was

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<sup>10</sup> Green, J. Deadly Compromise, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-4,5 and 6 < <http://search.epnet.com/direct.asp?an=2436924&db=afh>>

<sup>11</sup> Ibid., p-4 and 5

<sup>12</sup> Ibid., p-4

several times more likely to receive the death penalty if his victim was white, than if his victim was an African American. These studies were remarkably consistent with time periods, data sets, and analytic techniques. In these studies it was also determined that race impacted the prosecutors' decisions whether or not to seek the death penalty.

Subsequent to the GAO analyses, it was discovered that the Philadelphia District Attorney's office used a training video to teach their prosecutors how to keep African Americans off juries.<sup>13</sup>

Later it was also revealed that Cornell Law Review did a study that they had published on a revealing pernicious pattern of racial discrimination in capital cases when based on the race of the defendant and on the race of the victim.<sup>14</sup>

This controversial problem became even more complicated during the 1980's when Dr. Alec Jeffries introduced the use of DNA fingerprinting. These tests would become a standard part of the criminal investigation process. Police agencies all across the country would have access to DNA testing, and some agencies would even have their own laboratories.<sup>15</sup> The problem was that a great deal of biological material was required to get results with tests called RFLP (Restriction Fragment Length Polymorphism). This problem was noted in the Marion Coakley case when Barry Scheck and Peter Neufeld, Coakley's defense attorneys, used this biological evidence from the rape, and used the RFLP test which consumed all the evidence in the DNA test and were unable to get any results.<sup>16</sup>

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<sup>13</sup> Tabak, R. Racial Discrimination In Implementing The Death Penalty, *Human Rights Journal of the Section of Individual Rights & Responsibilities*, 00468185, Summer99, Vol. 26, Issue 3, p-1and 2 <<http://search.epnet.com/direct.asp?an=2116160&db=afh>>

<sup>14</sup> *Ibid.*, p-2

<sup>15</sup> Long, A (2000) Actual Innocence- case studies of DNA testing freeing the wrongfully convicted in the US, p-2, <[http://www.wsws.org/articles/2000/sep2000/inno-s14\\_prn.shtml](http://www.wsws.org/articles/2000/sep2000/inno-s14_prn.shtml)>

<sup>16</sup> *Ibid.*, p-2

The problem with the DNA fingerprint test, known as RFLP, was that it only works when there is a lot of DNA available. In a controlled setting, like a laboratory, the RFLP worked fine. In the reality of a messy crime scene, DNA is a scarce commodity.<sup>17</sup>

In 1983 a new process was developed by Kary Mullis, who at the time was a bio-chemist for Cetus Corporation. Mullis worked out the cycles when he realized that he could replicate DNA by adding the right chemicals. The little section of DNA could keep reproducing itself automatically and exponentially the first fragment would double, creating four, then those four would double to eight, and so on. Mullis determined that this process was a replica of cell reproduction. In practical terms, Mullis determined that with this process, within three hours, he could have over a billion copies of a single gene. His process would create a bottomless vat of DNA. This process is called PCR or (Polymerase Chain Reaction).<sup>18</sup>

A significant aspect of prosecutorial power and abuse that was highlighted in **Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted**, by Barry Scheck, Peter Neufeld and Jim Dwyer these crime labs that are used by the investigators' office to investigate forensic evidence are subordinate in their capacity. In almost every state, these labs are not regulated. The federal LEAA, or Law Enforcement Assistance Administration, across the country tested 240 laboratories that provided evidence for criminal prosecution. This investigation found a disturbingly high error rate in the identification and matching of the following substances: <sup>19</sup>

- 1) Paint
- 2) Glass
- 3) Rubber
- 4) Fibers

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<sup>17</sup> Dwyer, Neufeld, Scheck( 2000) **Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted**, p-36

<sup>18</sup> *Ibid.*, p-36 and 37

<sup>19</sup> Long, A (2000) **Actual Innocence- case studies of DNA testing freeing the wrongfully convicted in the US**, p-3, <[http://www.wsws.org/articles/2000/sep2000/inno-s14\\_prn.shtml](http://www.wsws.org/articles/2000/sep2000/inno-s14_prn.shtml)>

The worst work conducted by these labs in identification and matching for criminal prosecution were hair samples, where the error rate in hair matching tests often approached 50 percent probability.<sup>20</sup>

### **Goals and Objectives:**

#### **Goals:**

In all capital cases, the goal is to insure that justice is served. The overall goal will guarantee that the defendant will receive the opportunity, if wrongly convicted, to prove his or her innocence by having the ability to introduce DNA evidence. This goal could be accomplished by a mandated federal law through the implementation of a proper public policy. This law would eliminate a lot of doubt in the criminal justice system that such problems do not exacerbate by having many prisoners wrongly convicted and sentenced to death without the opportunity of post conviction DNA testing. Therefore, through this analysis, this analyst will envisage the following objectives in the attainment of this ultimate goal.

#### **Objectives:**

1. An immediate moratorium to be imposed on the death penalty, until the following objectives can be mandated by law.
2. By 2005, any person or persons sitting on death row where there is DNA evidence available from their case and, for virtually any reason, they were unable to introduce it during their trial, the evidence should be made available for DNA testing.
3. By 2005, Legal Resource Centers will be reestablished so qualified lawyers can handle death penalty cases and post conviction DNA testing.
4. By 2005, all labs must be regulated by federal guidelines to ensure that DNA evidence is intact and not contaminated for pre and post conviction hearings.
5. By 2005, DNA testing costs should be deferred to the State if that inmate is indigent. Any inmate should have the opportunity of exonerating him or herself.

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<sup>20</sup> Long, A (2000) Actual Innocence- case studies of DNA testing freeing the wrongfully convicted in the US, p-3, <[http://www.wsws.org/articles/2000/sep2000/inno-s14\\_prn.shtml](http://www.wsws.org/articles/2000/sep2000/inno-s14_prn.shtml)>

6. By 2005, DNA could also lend the evidence to the guilty party and assure that justice is righted.
7. By 2005, all law enforcement agencies should have proper storage for the preservation of DNA evidence which can guarantee the safe delivery for trial or for a person who has already been convicted and sitting on death row.

### **Establish The Evaluation Criteria:**

The evaluation criteria that this analyst will be using for this policy analysis will be Technical Feasibility, Economic Efficiency, Political Viability, and Administrative Operability. The technical feasibility criterion is used as a measure for a specific program as to whether it will be able to work or not, and if the program will be effective. The political viability of the specific program will be measured as acceptable to relevant political groups. Administrative operability measures the bureaucracy of specific program implementation. Finally, economic efficiency is a cost benefit analysis which determines when the program is rendered whether the benefits outweigh the costs incurred to produce the program.<sup>21</sup>

### **Evaluating Alternative Policies**

#### **Status Quo**

Refer to Tables -1 and 2, located in the Appendix Sections A and B for statistics according to the U.S. Department of Justice, Office of Justice Program Bureau of Statistics. Table - 1 illustrates that there were 3,581 inmates on death row in 2001.<sup>22</sup> Table - 2 reflects how many inmates were executed during the years 2000 through 2002.<sup>23</sup> There are currently 38 states with the death penalty, and 12 without the death penalty (refer to the map illustrated in the Appendix C Section).<sup>24</sup>

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<sup>21</sup> Gaynor, M. (2001) School Violence, Evaluation Criteria, p-5, University of Pittsburgh, Graduate School of Public and International Affairs

<sup>22</sup> U.S. Department of Justice – Office of Justice Programs, Bureau of Justice Statistics <<http://www.ojp.usdoj.gov/bjs/glance/tables/drracetab.htm>>

<sup>23</sup> U.S. Department of Justice – Office of Justice Programs, Bureau of Justice Statistics, <<http://www.ojp.usdoj.gov/bjs/cp.htm>>

<sup>24</sup> De Amicis, A, Presenter, (1992-2002), Arc View GIS 3.3 Mapping Software, Environmental Systems Research Institute, Inc., <<http://www.esri.com/>>

The current alternative to the present status quo is to go through the legal process that exists today. The federal government devolves the authority to the state and the legal process is determined by the prosecuting body.

Currently, the states of Illinois and New York have passed a law giving death row inmates a right to DNA testing in cases where the identity is an issue and the DNA test results could potentially prove innocence.<sup>25</sup>

Barry Scheck, co-director of the Innocence Project at the Cardozo School of Law in New York says that:

**“In 33 states new evidence can’t be introduced in a criminal case more than 6-months after the final judgment in state court. In cases the Innocence Project handled, more than 2/3 tested had results in their favor. Crucial evidence often destroyed, but in 70% of the cases in which inmates asked for help, evidence that would help determine innocence is claimed to be lost or destroyed, though sometimes it turns up later.”<sup>26</sup>**

According to Joshua Green of the Washington Monthly, dilatory tactics in the judicial process implements strict time limits. Thirty-six out of the 38 death penalty states impose strict deadlines such as the strictest law of Virginia’s notorious 21–Day Rule, which places the limit of introduction of new evidence to 21 days after trial. Other states have similar limits that range from 30 days to a year. Virginia’s 21-Day Rule, for example, forbids new DNA evidence from being introduced more than three weeks after trial. Strangely enough, the law doesn’t make provisions for illegally suppressed evidence. Such evidence is considered “new” in Virginia and this evidence is considered inadmissible. A defense attorney stated as testimony in front of a legislative committee that in the State of Virginia, after 21 days, no judicial forum afterwards can save you from execution, even if the proof was presented that you were innocent.<sup>27</sup>

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<sup>25</sup> CNN. (1999) Death Row Exonerations inspire debate over death penalty. , p-4 and 5  
< <http://www.cnn.com/US/9908/15/death.row/> >

<sup>26</sup> Ibid., p-5

<sup>27</sup> Green, J. Deadly Compromise, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-3, < <http://search.epnet.com/direct.asp?an=2436924&db=afh>>

The fact exists that many prisoners can't find attorneys to represent them for post-conviction hearings. The legislatures' reforms have also failed to improve the system at the federal level. In the mid 1980's it was reported that federal judges couldn't find qualified lawyers to handle death penalty cases. The attorneys who were assigned by the court were expensive, and not necessarily made competent counsel. At the behest of federal judges, in 1988, Congress created legal resource centers that processed and defended the poor. In the 1990's these centers became a political football and were eliminated.<sup>28</sup> Now the poor and indigent inmates are at the mercy of the prosecuting authority, if a capital charge of 1<sup>st</sup> degree murder should be lodged against the defendant. As the criminal process proceeds and goes to trial, a jury of the defendant's peers is charged, and if convicted, it is also the jury that decides on the convicted one's fate to either hand down a life sentence or death warrant of execution. If execution is deemed as punishment, the condemned will be placed on death row until all appeals are exhausted and ultimately the execution will be carried out by the state,<sup>29</sup>

#### Alternative One: **Former Governor George Ryan of Illinois**

When the then Governor of Illinois, George Ryan, heard that DNA testing had exonerated thirteen men on death row, he enacted Executive Order Number 4 in the year 2000. This executive order initiated a Governor's Commission on Capital Punishment. Governor Ryan first imposed a moratorium on the death penalty in the State of Illinois, until the commission's review was completed.<sup>30</sup>

This commission's purpose was to establish, study, and review the capital punishment process to determine why that process had failed in the past resulting in death sentences that were imposed upon innocent people. The commission's duty was to examine ways to provide safeguards and make

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<sup>28</sup> Green, J. *Deadly Compromise*, Washington Monthly, 00430633, Nov99, Vol. Issue 11, p-3, <<http://search.epnet.com/direct.asp?an=2436924&db=afh>

<sup>29</sup> *Ibid.*, p-3

<sup>30</sup> NCPA-Crime and Gun Control-Ryan's Moratorium on Illinois Executions a Shining,p-2 <<http://www.ncpa.org/bothside/krt/krt030200a.html>>

improvements to the criminal justice system, and to ensure that it carries out their responsibilities in the death penalty process---from investigation, through trial, judicial appeal and executive appeal.<sup>31</sup>

These recommendations and proposals were to be designed to further ensure that the death penalty's application in the State of Illinois is just, fair and accurate.<sup>32</sup>

On Sunday, January 12, 2003, Governor George Ryan lifted 167 death sentences of inmates who were housed on Illinois' death row and commuted them to life without parole. This historic commutation could have reaching implications for other U.S. states.<sup>33</sup>

Ryan's Rationale:

**“Our capital system is haunted by the demon of error and error in determining guilt, and error in determining who among the guilty deserves to die.”<sup>34</sup>**

The prosecutors were quick to denounce this action along with the incoming Governor Rod Blagojevich, Democrat, who also criticized Ryan's action calling blanket clemency, “a big mistake”.<sup>35</sup> “Each case should be reviewed individually, Blagojevich said. You're talking about people who committed murder”. The relatives of some murder victims stated that, “Ryan has killed them all over again”.<sup>36</sup> On the con side of the capital punishment argument, this decision was cheered with jubilation by anti-death penalty activists at Northwestern University who attended Ryan's speech.

Mr. Lawrence C. Marshall, who is the Director of the Center on Wrongful Convictions at Northwestern, the school whose journalism students helped exonerate some condemned inmates, stated the following:

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<sup>31</sup> Ryan, G. (2000) Executive Order Number 4 (2000) Commission on Capital Punishment, p-2  
<[http://www.idoc.state.il.us/ccp/ccp/reports/commission\\_report/executive\\_order\\_creating.pdf](http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/executive_order_creating.pdf)>

<sup>32</sup> Ibid., p-3

<sup>33</sup> Associated Press, (2003) Governor Ryan Clears Illinois' Death Row, p-1 and 2  
<<http://asia.news.yahoo.com/030112/ap/d7oge2rg0.html>>

<sup>34</sup> Ibid., p-2

<sup>35</sup> Ibid., p-5

<sup>36</sup> Ibid., p-5



**“This is greatness, my friends.”**<sup>37</sup>

Richard Dieter, Executive Director of the Death Penalty Information Center, is quoted as saying that:

**“The mass commutation by Ryan was the sharpest blow to capital punishment since the U.S. Supreme Court declared it unconstitutional in 1972, forcing states to redraw their laws to make them more equitable. About 600 sentences were reduced to life with that decision.”**<sup>38</sup>

### Alternative Two: **The Innocence Project**

The Innocence Project was conceptualized at the Benjamin N. Cardozo School of Law by Barry C. Scheck and Peter J. Neufeld in 1992. It remains a non-profit legal clinic. The project only handles post conviction DNA testing of evidence that can yield conclusive proof of innocence. As a clinic, all casework is handled by the students who are supervised by a team of attorneys and clinic staff.<sup>39</sup> The project handles clients that are the poor and forgotten who have used up all their legal avenues for relief. The biological evidence in their cases still exists and can be DNA tested. These clients go through extensive screening which determines whether or not their clients’ DNA testing of the evidence could prove their claims of innocence.<sup>40</sup>

The Innocence Project is the forerunner in the field of wrongful convictions. This project organizes and networks with other law schools, journalism schools, and public defender offices across the country that assists inmates who are attempting to prove their innocence, whether or not their cases involve biological evidence which can be subjected to DNA testing. The project also consults with legislators and law enforcement officials on the state, local, and federal levels and conducts research and training. Exonerations,

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<sup>37</sup> Associated Press, (2003) Governor Ryan Clears Illinois’ Death Row, p-2  
<<http://asia.news.yahoo.com/030112/ap/d7oge2rg0.html>>

<sup>38</sup> Ibid., p-2

<sup>39</sup> Innocence Project, Benjamin N. Cardozo School of Law, p-1  
<<http://www.innocenceproject.org/about/index.php>>

<sup>40</sup> Ibid., p-1

as reported by the Innocence Project, as of January 9, 2003 -- There have been 123 inmates from all across the country who were sitting on death row, who have been exonerated and released from incarceration.<sup>41</sup>

According to *Dwyer, Neufeld, and Scheck*, they give a short list of reforms how to protect the innocent. The following problems exist in our criminal justice system:

DNA testing on the state and federal levels should pass statutes modeling New York and Illinois legislation in allowing post conviction of inmates who were wrongly convicted. Their recommendation is to provide DNA testing within seven to fourteen days of a crime. By doing this, this protects the innocent suspects who are not incarcerated and it improves the chances of catching the guilty. Also, they recommend those DNA tests are performed on unsolved crimes, which includes 100,000 rape kits.<sup>42</sup>

Witnesses, for example, make mistakes when identifying the wrong person. The National Institute of Justice reported in 1999 that the following measures can be implemented by police policies without legislation. All lineups, photo spreads, and any other type of identification process should be documented by videotape. Trained identification independent examiners should run all lineups and photo spreads. Lineups and photo spreads should use a sequential method, where witnesses decide on each person before seeing the next one. This eliminates reactive judgments and causes the witness to dig deeper in making the determination.<sup>43</sup>

Informants and jail house snitches from inside the prison walls tell lies for reduction for their own sentences. In Canada, the Guy Paul Morin's Commission led the way on recommendations of jurisdictions by prosecutors who are a high level screening committee who examines with great care the jailhouse snitches/informants' testimony. This testimony should examine all attendant circumstances before it may be introduced into trial. Actually, this commission established a criterion of 14 points of considerations. The

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<sup>41</sup> Innocence Project, Benjamin N. Cardozo School of Law, p-1  
< <http://www.innocenceproject.org/about/index.php> >

<sup>42</sup> Dwyer, Neufeld, Scheck( 2000) *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted*, , Doubleday, New York, New York, p-255

<sup>43</sup> *Ibid.*, p-256

trial judge fits into this process and must presume that the testimony of the informant is unreliable and to overcome this presumption, the prosecutor is required to bring this testimony before the jury so they can hear the evidence.<sup>44</sup>

Another major problem is that sometimes confessions are coerced or fabricated. A simple rule could be in all interrogations, to video or audio tape so that there is no objective doubt.<sup>45</sup>

Sometimes lab results are rigged. Forensic fraud will find forensic scientists in total agreement. A standard of practice should be regulating crime laboratories that function independently. This third force within the criminal justice system is operated by professionals who are un beholden to prosecutors or defense attorneys. The results will not be skewed or tainted to slant data for either side.

Also, according to *Dwyer, Neufeld, and Scheck*:

**“Crime laboratory budgets should be independent from the police, and police officials should not be able to exercise supervisor responsibility over the scientists. Complete discovery of underlying data from forensic tests should be provided in criminal cases. Reports from forensic tests should be comprehensible explanations of the work performed, not conclusory assertions, and must describe all potentially exculpatory inferences that could be drawn from the results.”<sup>46</sup>**

Racism sometimes trumps the truth. Sometimes prosecutors lie and defense lawyers sleep through trial proceedings when people’s lives weigh in the balance.<sup>47</sup>

To safeguard from poor defense lawyers, fees must be raised that will attract a level of more competent lawyers to take cases. In each jurisdiction which will ensure that the pay levels are adequate, the public defender and the prosecutor’s salaries should be equitable. The caseloads should be kept to a manageable level which is generally accepted by the National Legal Aid and Defenders Association. A complaint system should be filed with the states bar when the lawyers are forced in an unethical manner to

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<sup>44</sup> Dwyer, Neufeld, Scheck( 2000) *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted*, , Doubleday, New York, New York, p-256

<sup>45</sup> *Ibid.*, p-257

<sup>46</sup> *Ibid.*,p-257

<sup>47</sup> *Ibid.*, p-XV

proceed with too many cases. This will ensure that the performance standards will guarantee a high-quality defense service for the poor. Another recommendation should be that the federal money will assist that the defense services should be comparable funding to the prosecutor.<sup>48</sup>

### **Distinguishing Among Alternatives**

This following section is the assessment of the possible impact of all consequences of each alternative.

#### **Alternative One: Former Governor George Ryan of Illinois**

The technical feasibility of this policy was initiated by the former Governor George Ryan when he learned that 13 men on death row were exonerated by the accuracy of DNA testing. According to Dr. Bruce Weir, who is an authority of DNA forensics fingerprinting, or DNA profiling, as Dr. Weir prefers to call it, characterizes it as a small portion of our DNA. It is a way of identifying an individual of DNA content. We believe that the fingerprints of the individual are unique.<sup>49</sup> Dr. Weir also states that techniques used in forensic DNA testing are being used in laboratories that use both of the following methods --PCR or (polymorphism chain reaction) and RFLP or (restriction fragment length polymorphisms) or both. Dr. Weir states that PCR techniques have an advantage over RFLP since it requires only trace amounts of DNA where the opposite exists with RFLP which requires a relatively large amount.<sup>50</sup>

Finally, the technical feasibility of this policy does work and is evaluated in the high range. This criterion is further supported by Dr. Weir stating that from the scientific perspective, what these tests measure offer high level reliability and accuracy. He further states that the scientific literature where the

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<sup>48</sup> Dwyer, Neufeld, Scheck( 2000) *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted*, , Doubleday, New York, New York, p-259`

<sup>49</sup> Henahan, S. (1995), *An Interview With DNA Forensics Authority Dr. Bruce Weir*, p-1, Access Excellence, < [http://www.accessexcellence.org/WN/NM/interview\\_dr\\_bruce\\_weir.html](http://www.accessexcellence.org/WN/NM/interview_dr_bruce_weir.html)>

<sup>50</sup> *Ibid.*, p-, 1 and 2

science is discussed overwhelmingly, the published peer-reviewed in favor of this technology, protocols, and analytic methods used.<sup>51</sup>

In this policy, economic efficiency does work and is rated high. Mr. Richard C. Dieter, Executive Director of the Death Penalty Information Center, stated why capital punishment is not economically efficient. Mr. Dieter testified on April 18, 2002 in Las Vegas, Nevada before the Legislative Commission's Subcommittee to study the Death Penalty and Related DNA Testing.

Mr. Dieter stated that:

**“The studies differ widely in the states they cover, in their level of sophistication and in the assumptions they make. The surprising result, however, is that they have all come to the same conclusion, and their estimates of the costs are fairly close to each other. In fact, I am aware of no careful study that contradicts the conclusion that a death penalty system is considerably more expensive than a system in which life imprisonment is the most severe punishment.”**<sup>52</sup>

Importantly, the record reflects that since the death penalty was handed down 25 years ago, very few of those sentences were carried out. Roughly speaking, there have been 7,000 death sentences handed down and only 700 carried out. Mr. Dieter used Nevada as an example where 133 death sentences have been handed down and only 9 have been carried out. Only 10 % of death sentences result in executions, but the extra costs are incurred for all 100% of the cases.<sup>53</sup>

One of the most comprehensive studies presented by Mr. Dieter was the one in North Carolina where the death penalty costs for one execution was \$2.16 million over the costs of a non-death penalty system imposing a sentence which hands down a maximum sentence of life imprisonment.<sup>54</sup>

These costs can vary in other states. Some years ago, in Florida for example, the Miami Herald estimated that the cost for the death penalty per execution was \$3.2 million, which was based on the rate of

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<sup>51</sup> Henahan, S. (1995), An Interview With DNA Forensics Authority Dr. Bruce Weir, p-4, Access Excellence, < [http://www.accessexcellence.org/WN/NM/interview\\_dr\\_bruce\\_weir.html](http://www.accessexcellence.org/WN/NM/interview_dr_bruce_weir.html) >

<sup>52</sup> Dieter, R. (2002), Legislative Commission' Subcommittee to study the Death Penalty and Related DNA Testing, Assembly and Senate of Nevada, Las Vegas Nevada, p-3, <<http://www.deathpenaltyinfo.org/RDcostTestimony.html>>

<sup>53</sup> Ibid., p-5

<sup>54</sup> Ibid., p-6 and 7

those executions at that time. In Texas, it was reported by the Dallas Morning News that a death penalty case costs on an average \$2.3 million, based on imprisoning someone in a single cell at the highest maximum level for 40 years.<sup>55</sup>

In this policy, a cost benefit analysis would have to be performed on all of the 167 inmates whose death sentences were commuted to life without parole. In 1985, in the State of Illinois, an unidentified attorney with the Office of the State Appellate Defender or (OSAD) estimated that the cost in Illinois for a death penalty case ranged upwards from \$1 million to as high as \$3 million. Until a more thorough and competent study can be conducted in Illinois, the best estimates of the available costs are based on the following numbers, costs, and factors which were reported in other studies:

- **The estimated costs of a capital trial and 10 years are \$1.2 million or more.**
- **Subsequent appeals cost an average of \$600,000.**
- **The average cost of a capital case that does not end in a death sentence reaches almost \$900,000.**
- **The total cost in Illinois of 290 convictions in capital cases since 1977, plus 300 to 600 additional trials that ended with a sentence less than death has been estimated to be between \$800 million and \$ 1.1 billion. This is the net cost figure - the amount above what it would have cost to try the same cases as life-without parole cases rather than as capital cases.**
- **For that \$1 billion the state of Illinois has “purchased” some 290 capital convictions, more than 140 reversals of verdicts and vacations of death sentences, 12 executions and, to date, 13 wrongful convictions. Such expenditures waste scarce public resources, fail to protect public safety, and risk the lives of the innocent. The same amount spent on drug treatment, vocational training, victims’ assistance and other prevention programs would have been much more effective in enhancing public safety and pursuing justice.**<sup>56</sup>

This alternative is not politically viable and evaluated low. The moratorium on the death penalty was a responsible alternative to form a commission to study and review the capital punishment process. The duty of that commission was to provide controls and improvements to the criminal justice system. These safeguards were to ensure that these improvements were made to the death penalty process. These

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<sup>55</sup> I Dieter, R. (2002), Legislative Commission’ Subcommittee to study the Death Penalty and Related DNA Testing, Assembly and Senate of Nevada, Las Vegas Nevada, p-7, <<http://www.deathpenaltyinfo.org/RDcostTestimony.html>>

<sup>56</sup> Illinois Coalition Against The Death Penalty (2002), What’s Wrong With The Death Penalty, p-3 and 4. <<http://www.icadp.org/page17.html>>

recommendations were to further guarantee that the death penalty would be equitable, fair and adequate.<sup>57</sup> This alternative would not be politically viable. Following this report, Ryan granted a blanket clemency of all 167 death row inmates for the State of Illinois and had their death sentences commuted to life without parole. This criterion would not be acceptable because of the outcries of the entire criminal justice system, the victims' families, and the conservatives from all political entities, especially making reference to the Bush administration which is supported by a Republican Senate and the 108<sup>th</sup> Congress. This conservative agenda supports the death penalty and a policy such as Ryan's will never pass muster.

This policy is not administratively operable and rated low. Presently, a group from the Illinois State's Attorney Association of county prosecutors is investigating Ryan's actions and ways of challenging his actions. The current Democratic Governor, Rod Blagojevich, criticized Ryan's action calling blanket clemency "a big mistake." "Each case needs to be reviewed individually, Blagojevich said. You're talking about people who committed murder."<sup>58</sup>

#### Alternative Two: **The Innocence Project**

The technical and economic efficiency criterion applicable for this alternative is rated high. As explained in Ryan's alternative, the technical feasibility of DNA is rated high. This criterion is also applicable because DNA was supported in Ryan's alternative by Dr. Bruce Weir. Dr. Weir is recognized as one of the premier authorities of DNA forensics fingerprinting, or DNA profiling. To guarantee the evidence is not skewed or tainted, the regulation of these independent labs should be independent and un beholden to the prosecution or any defense lawyer. These labs need to meet certain standards and be licensed by the state. By the creation of these independent labs, this would almost guarantee the fairness,

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<sup>57</sup> Ryan, G. (2000) Executive Order Number 4 (2000) Commission on Capital Punishment, p-2  
<[http://www.idoc.state.il.us/ccp/ccp/reports/commission\\_report/executive\\_order\\_creating.pdf](http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/executive_order_creating.pdf)>

<sup>58</sup> Associated Press, (2003) Governor Ryan Clears Illinois' Death Row, p-1, 3 and 5  
<<http://asia.news.yahoo.com/030112/ap/d7oge2rg0.html>>

equity and the accuracy of collecting this evidence that would ensure the technical feasibility of this criterion.

Economic efficiency in the first alternative also reflects that a capital case in Illinois, for example, costs anywhere from \$1million to \$3 million per death penalty case. So far, the Innocence Project reported that there have been 123 inmates nationally exonerated from death row. If the following recommendations by **Dwyer, Neufeld, and Scheck** would have been implemented, DNA testing would've been accomplished within seven to fourteen days of the crime. This would have guaranteed that the innocent suspects would not have been incarcerated. If this recommendation would have been implemented, these 123 exonerations would have been tested, and would have never gone to trial. This outcome would have saved the taxpayers a staggering \$369,000,000 million.<sup>59</sup> This criterion is rated high in this area.

Another area of economic efficiency which must be evaluated is the cost of a DNA test. The San Diego County district attorney's office intends to offer inmates DNA testing for free. This district attorney's office is the very first effort of its kind for any inmate who feels that such evidence could clear them. This will be the first in the nation. According to San Diego prosecutors who presented their plan to a Justice Department Conference, they expect it to take them a year to review 560 convictions from before 1992, when authorities began testing regularly suspect's DNA. Each new test will cost the district attorney's office around \$5000.<sup>60</sup>

According to the Gannett News Service, it was reported on July 31, 2002 that government programs have offered free DNA tests to thousands of inmates to help them challenge their convictions. However, they have found few takers and, according to the prosecutors, have led to virtually no exonerations. The

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<sup>59</sup> Dwyer, Neufeld, Scheck( 2000) **Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted**, Doubleday, New York, New York, p-255.

<sup>60</sup> CBS News, (2000). **Free DNA Testing For Inmates**, Associated Press, p-1, <<http://www.cbsnews.com/stories/2000/07/27/national/main219466.shtml>>



economic efficiency is rated high in all areas for this alternative. DNA testing can be provided with government funding.<sup>61</sup>

The political viability criterion of this alternative is medium. In Ryan's alternative, it is the opinion of this analyst that the political viability was too far to the left by exonerating all 167 inmates from Illinois' Death Row. In this alternative, the recommendation is to have DNA testing passed on the federal level as in New York and Illinois which allows post conviction of inmates who were wrongly convicted. This recommendation should be accepted as a reasonable mandate by all political parties.

Administrative operability criterion is evaluated as medium for this alternative. This project works on networking with other law schools, journalism schools and public defenders offices across the country. In the colleges and universities and public defenders offices, the institutional support of the vision of the Innocence Project has the strong commitment and support of these actors who get involved with this project. The administrative problem, as I see it, is that the parties graduate and move onto the public and private sector. I am sure this is also applicable to the public defenders who also move onto private practices and even to the prosecutorial side. Replenishment of new group participants would then have to be trained. This process would have to be repeated for the organization to continue its viability.

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<sup>61</sup> Gannett News Service, (2002), Free DNA Tests Available, But Few Inmates Take Them, p-3  
< <http://psy.ucsd.edu/~eebbesen/psych16298/FreeDNA.htm> >

## Distinguishing Among Alternative Policies

To distinguish between the alternatives, this analyst will use the *Satisficing Method* developed by the late Professor Dr. Herbert Simon, Nobel Laureate from Carnegie Mellon University. This University is located in Pittsburgh, Pennsylvania. What is the accepted satisfactory level by the decision maker?

**Application of the Satisficing Method - Table-3**

**Dr. Herbert Simon**

<b>Alternatives</b>	<b>Technical Feasibility</b>	<b>Economic Efficiency</b>	<b>Political Viability</b>	<b>Administrative Operability</b>
<b>Alternative One</b> <b>Former Governor George Ryan of Illinois</b>	High Medium Low *	High Medium Low *	High Medium Low *	High Medium Low *
<b>Alternative Two</b> <b>The Innocence Project</b>	High Medium Low *	High Medium Low *	High Medium Low *	High Medium Low *

## Monitoring and Implementation of Policies

This analyst set the following goal:

**In all capital cases, the goal is to insure that justice is served. The overall goal will guarantee that the defendant will receive the opportunity, if wrongly convicted, to prove his or her innocence by having the ability to introduce DNA evidence. This goal could be accomplished by a mandated federal law through the implementation of a proper public policy. This law would eliminate a lot of doubt in the criminal justice system that such problems do not exacerbate by having many prisoners wrongly convicted and sentenced to death without the opportunity of post conviction DNA testing.**

The Innocence Project Policy fits this goal. One of the objectives of this policy product was to enact a national moratorium on the death penalty until this law's outcome can be decided. This moratorium would

guarantee that until the law is decided on, a person who, in the meantime, is sitting on death row and has DNA evidence to introduce, could ultimately exonerate himself or herself from death row. I believe this approach is equitable, fair and an accurate means of assuring that the wrong person is not placed on that gurney and executed. If one person is wrongly convicted and executed, that is one too many. We must ensure that we do everything in our power to see that this does not happen. If this policy is enacted and mandated federally, the monitoring of those inmates who were exonerated and placed back in the mainstream of society should be tracked. Regarding the inmates who are released back into society, do they recidivate, or do they become a productive citizen? This has to be monitored.

### **Summary**

When researching and collecting the data for this policy product, it was discovered that on November 29, 1990, Gov. Robert P. Casey signed legislation changing Pennsylvania's method of execution from electrocution to lethal injection. The electric chair and all of its associated equipment were removed from the capital punishment complex at SCI Rockview, Pennsylvania in December, 1990. It was subsequently turned over to the Pennsylvania Historical and Museum Commission. Facilities at SCI Rockview were renovated, and the Department of Correction's policy was revised to accommodate the new method of capital punishment. On May 2, 1995, Keith Zettlemyer became the first person executed by lethal injection in Pennsylvania. Since that date, one additional man has been executed by lethal injection.<sup>62</sup>

I had the opportunity to tour the State Correctional Institution of Rockview's "Injection Room" in Center County, Pennsylvania (please refer to Appendix E).<sup>63</sup> This process is truly larger than life. The execution chamber appears to be hospital-like. A viewing room is adjacent to the execution chamber. The execution is viewed through the glass. There are two sections, one for witnesses and the other section for the

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<sup>62</sup> Death Penalty <<http://www.cor.state.pa.us/death.html>>

<sup>63</sup> 8: No cruel and unusual punishment (2002), U.S. News, <[http://www.postgazette.com/nation/20021127amendment\\_8p9.asp](http://www.postgazette.com/nation/20021127amendment_8p9.asp)>

family members of the victim. The curtain opens and the condemned is laying there on the gurney secured with leather restraining devices with intravenous tubing attached to the condemned's arms. The death warrant is read and, if there are no final remarks by the condemned or stays of execution, the signal is given and the death sentence is carried out. The doctor on hand determines the time of death and it is announced over the speaker. The witnesses and family members of the victims exit the building. The execution is immutable. As responsible citizens, we must assure that we eliminate as much doubt that is within our power to resolve. As the policy dictates, post conviction DNA testing is the resolve that must be instituted.

On March 6, 2003, I had the opportunity to interview Cyril H. Wecht, MD., JD, and the Allegheny County Coroner located in his office in Pittsburgh, Pennsylvania.

As we know, Dr. Wecht is one of the most distinguished forensic pathologists in the nation. This analyst proposed the question as to whether he concurs with a mandate of a federal law for post conviction DNA testing. He stated that DNA is an excellent science which can prove that a person can be wrongly convicted and be ultimately exonerated due to the DNA test.

Dr. Wecht was also asked whether DNA should be taken when a criminal is arrested. He thought certain felons should have DNA taken.

In addition, Dr. Wecht was asked his thoughts of independent DNA Testing Labs. He is in favor of objectivity because, as an independent lab, you are not beholden to the prosecution or the defense attorney, although, the cost is relatively high and not realistic. Presently, there are state statutes that pay for indigent inmates to have those tests performed.<sup>64</sup>

After the interview with Dr. Wecht, I then went to the Allegheny County Coroner's Division of Laboratories Forensic Sciences Branch, and spoke to Mr. Thomas C. Meyers, who is the Serologist/Criminalist Supervisor/DNA Technical Leader. I asked Mr. Meyers how DNA profiles the Combined DNA Index System or CODIS, the FBI's national DNA database.

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<sup>64</sup> (Wecht, C. H., personal communication, March 6, 2003)

The following is the description taken from the CODIS web page:

**“A Combined DNA Index System (CODIS) generates investigative leads in crimes where biological evidence is recovered from the crime scene using two indexes: the forensic and offender indexes. The Forensic Index contains DNA profiles from crime scene evidence. The Offender Index contains DNA profiles of individuals convicted of sex offenses (and other violent crimes) with many states now expanding legislation to include other felonies. Matches made among profiles in the Forensic Index can link crime scenes together; possibly identifying serial offenders. Based on a match, police in multiple jurisdictions can coordinate their respective investigations, and share the leads they developed independently. Matches made between the Forensic and Offender indexes provide investigators with the identity of the perpetrator(s). After CODIS identifies a potential match, qualified DNA analysts in the laboratories contact each other to validate or refute the match.**

**NDIS Profile Composition (as of November 2002) Forensic Profiles in NDIS: 44,140 Convicted Offender Profiles in NDIS: 1,224,034”.**<sup>65</sup>

Mr. Meyers stated that when a person is convicted and sent to a state correctional facility, the very first day, a DNA sample is taken from that person and sent to the state’s CODIS laboratory and the genetic profile of that sample is recorded in the CODIS database. This authority is under the charge of the State Police.

A probative DNA sample is kept refrigerated for 5-years then under room temperature. This sample is kept indefinitely. The method for RFLP or Restriction Fragment Length Polymorphism is obsolete. The method used is PCR-STR or Polymerase Chain Reaction-Short Tandem Repeat.<sup>66</sup>

In conclusion, the science of DNA testing has really revolutionized criminalist investigations and impacted the way we have to address the death penalty and a national public policy which makes us more responsible, and accountable in dispensing with the machinery of death.

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<sup>65</sup> CODIS, Combined DNA Index System, < <http://www.fbi.gov/hq/lab/codis/national.htm>>

<sup>66</sup> (Meyers, T.C. personal communication, March 6 2003)

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(Wecht, C. H., personal communication, March 6, 2003)



**APPENDIX A**

**U.S Department of Justice – Office of Justice Program  
Bureau of Statistics**

**Table - 1**

**Prisoners on Death Row**

<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Other</b>	<b>Total</b>
<b>1992</b>	<b>1,511</b>	<b>1,031</b>	<b>38</b>	<b>2,580</b>
<b>1993</b>	<b>1,575</b>	<b>1,111</b>	<b>41</b>	<b>2,727</b>
<b>1994</b>	<b>1,653</b>	<b>1,203</b>	<b>49</b>	<b>2,905</b>
<b>1995</b>	<b>1,732</b>	<b>1,284</b>	<b>48</b>	<b>3,064</b>
<b>1996</b>	<b>1,833</b>	<b>1,358</b>	<b>51</b>	<b>3,242</b>
<b>1997</b>	<b>1,864</b>	<b>1,408</b>	<b>56</b>	<b>3,328</b>
<b>1998</b>	<b>1,917</b>	<b>1,489</b>	<b>59</b>	<b>3,465</b>
<b>1999</b>	<b>1,960</b>	<b>1,515</b>	<b>65</b>	<b>3,540</b>
<b>2000</b>	<b>1,989</b>	<b>1,541</b>	<b>71</b>	<b>3,601</b>
<b>2001</b>	<b>1,969</b>	<b>1,538</b>	<b>74</b>	<b>3,581</b>

**APPENDIX B**

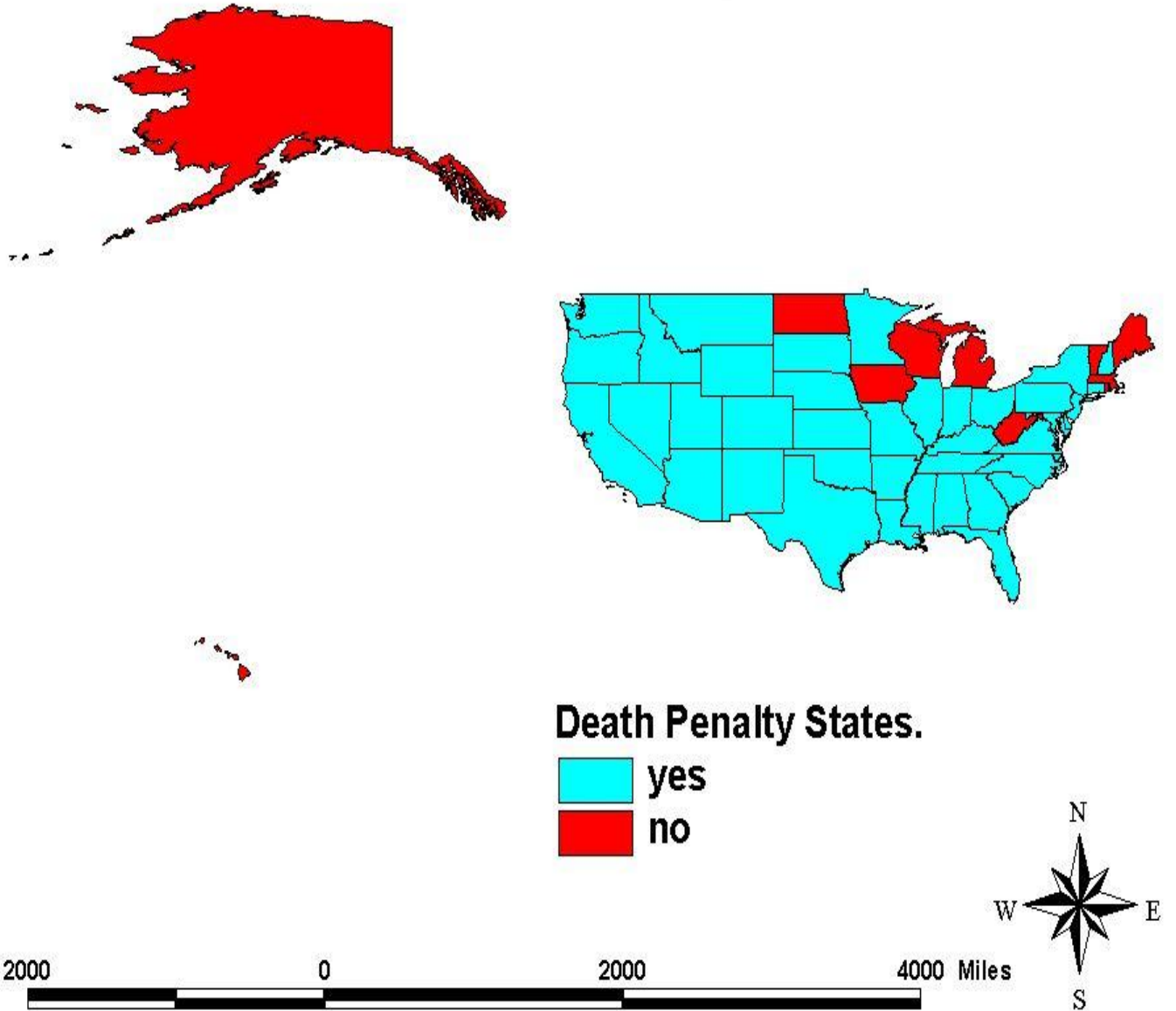
**U.S Department of Justice – Office of Justice Program  
Bureau of Statistics**

**Table - 2**

**Prisoners Executed**

<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Other</b>	<b>Total</b>
<b>2000</b>	<b>49</b>	<b>35</b>	<b>1</b>	<b>85</b>
<b>2001</b>	<b>48</b>	<b>17</b>	<b>1</b>	<b>66</b>
<b>2002</b>	<b>53</b>	<b>18</b>	<b>0</b>	<b>71</b>

# Death Penalty States



**APPENDIX D**

**Application of the Satisficing Method – Table - 3**

**Dr. Herbert Simon**

<b>Alternatives</b>	<b>Technical Feasibility</b>	<b>Economic Efficiency</b>	<b>Political Viability</b>	<b>Administrative Operability</b>
<b>Alternative One</b> <b>Former Governor George Ryan of Illinois</b>	High Medium Low *	High Medium Low *	High Medium Low *	High Medium Low *
<b>Alternative Two</b> <b>The Innocence Project</b>	High Medium Low *	High Medium Low *	High Medium Low *	High Medium Low *

## APPENDIX E



The "injection room" at the Pennsylvania State Correctional Institution at Rockview, Centre County, opened for business in 1995, replacing the electric chair last used in 1962. Later, the room was moved to a former hospital a quarter-mile from the main prison building. Three men, all convicted of murder and all "volunteers" who gave up further appeals, have been put to death on this table since capital punishment returned to the state. The Pennsylvania Department of Corrections, however, still refuses to say what chemicals are used.