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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 14, 1985

MEMORANDUM

TO: Representative Mike Navarre

ATTN: Pat Malone

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Capital Punishment: Costs and the Effect on the Murder Rate
Research Request 85-185

You requested the following information relating to capital punishment:

- a comparison of the murder rates in states which authorize capital punishment and states which do not authorize capital punishment;
- the effect on the murder rate in states which have changed their stance on capital punishment;
- the normal court costs in a capital punishment case;
- a comparison of the costs of incarceration on death row and the costs of life imprisonment in a standard penitentiary; and
- the average, longest and shortest time on death row; who, when and where.

The Controversy Over Studies of the Effect of Capital Punishment

Numerous studies have attempted to establish whether or not capital punishment deters the crimes for which it is threatened. Most of these studies have produced ambiguous results, often rendered more ambiguous by faulty procedures and research methods.¹ First, many studies of the murder rate do not adequately control for influences other than the death penalty. The murder rate depends on population variables such as the

¹Ernest van der Haag, The Death Penalty: A Debate, Plenum Press, New York, 1983, p. 64.

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racial mix, proportion of young males, income distribution, education, local cultural traditions, the legal definition of murder and on other factors which vary among states and within the same state over time. Second, studies which correlate the murder rate and the status of capital punishment are also criticized for evaluating the legal availability of executions rather than their frequency. Third, studies are unable to assess whether prospective murderers are aware whether or not the death penalty is in effect, and under what circumstances.

The Chief Justice of the U.S. Supreme Court, Warren E. Burger, characterized the controversial and inconclusive statistical evidence as amounting to an "empirical stalemate" because the courts (and the general public) have no expertise to rate the many implicit and explicit assumptions on which experts can reasonably differ.

The Murder Rate in States With and Without the Death Penalty

Professor Thorsten Sellin, a preeminent criminologist, compared the homicide rates in Michigan, Ohio and Indiana from 1920 to 1974. Michigan does not have a death penalty, while Ohio and Indiana together executed 302 persons during the period studied.² If capital punishment were an effective deterrent of murder, one would expect that the homicide rates in Ohio and Indiana would have been consistently lower than the rate in Michigan.³ However, the homicide rates in Michigan from 1920 to 1964 were generally as low or lower than those in Ohio and Indiana. From 1964 to 1974, the rates rose substantially in Michigan, while the rates in Ohio and Indiana made much more modest gains. Yet, the existence of the death penalty does not reasonably explain the differential increase in murders because court rulings produced a moratorium on the death penalty from about 1960 to 1974.

Professor Sellin has made numerous other comparisons of the murder rate in contiguous states.⁴ (See graphs in Attachment A.) None has shown a significant difference over time in favor of either a retentionist state or an abolitionist state. Minnesota and Rhode Island, states with no

²Michigan prohibited the death penalty except for treason since 1847, and for all offenses since 1963.

³According to abolitionist Joseph Conrad, these states are of about the same size in population, about the same distribution among residents of very large cities, smaller towns, and rural districts, about the same distribution of racial minorities, and about the same distribution of wealth.

⁴Thorsten Sellin, Capital Punishment, Harper & Row Publishers, New York, 1967, pp. 135-138.

death penalty, had proportionately as many killings as their respective neighbors, Iowa and Massachusetts, which had capital punishment. In 1939, South Dakota adopted and used the death penalty, and its homicide rate fell 20 percent over the next decade; North Dakota got along without capital punishment during the same ten years and homicides dropped 40 percent.⁵ Sellin maintains that within each group of contiguous states it would be impossible to identify the abolitionist state, were it not designated as such and that the trends of the rates of the states compared are similar.

If the average murder rate for all death penalty states is compared to the average murder rate for abolition states, the death penalty states have, in recent years, experienced a significantly higher murder rate. For example, in 1982, the 37 states with capital punishment recorded 7.9 murders per 100,000 population, while the 13 states without capital punishment recorded 5.0 murders per 100,000 population.⁶

Additional Comparisons of Death Penalty and Abolitionist Jurisdictions

Several studies have analyzed the rates of murder of police officers, prisoners and prison personnel because some states apply the death penalty only for these instances of murders and because murder data on police, prisoners and prison officials is generally considered more reliable than data on other murders (see Attachment B).

Police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death penalty states. Between 1928 and 1948 for instance, the rates of homicide and of assault on police in Chicago were half again greater than in Detroit; yet during these years 55 executions were carried out in the county surrounding Chicago and none in Michigan. The most recent study finds "no evidence that either provision for capital punishment or its actual level of use is an effective deterrent to police killings".⁷

Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death penalty states. A study by Sellin showed that in 1965, ten abolition states reported eight prison homicides (0.8 homicides per

⁵Hugo Adam Bedau, after Sellin, The Penalty of Death, 1980.

⁶U.S. Department of Justice, Uniform Crime Reports, 1982.

⁷Hugo Adam Bedau, "The Case Against the Death Penalty", Capital Punishment Project, American Civil Liberties Union, 1984.

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state) while 37 death penalty states reported 53 prison homicides (1.4 homicides per state). More recent research shows that the percentage of convicted murderers who kill again in prison is about the same in death penalty and in abolitionist jurisdictions.⁸

Murder Rate in States Where The Status of The Death Penalty Has Changed

States that have reinstated the death penalty after abolishing it have not shown a decreased rate of criminal homicide. In Delaware, where the death penalty was abolished between 1958 and 1961, the annual average homicide rate increased after restoration by 3.7 persons per 100,000 population.⁹

In addition, states that abolish the death penalty do not show an increased rate of criminal homicide after abolition:

In Oregon, which had no death penalty between 1915 and 1920, the homicide rate was 4.0 persons per 100,000 population in 1918, 4.9 in 1919, 4.1 in 1920--and rose to 7.7 in 1921, the first year after the death penalty was restored, and then subsided so that by 1925-1926 it was where it had been in 1919-1920.¹⁰

The effect of capital punishment within a single jurisdiction has also been assessed by comparing the rate of murder before and after an execution. Again, results are controversial and contradictory.

A recent study of England during the years from 1857 to 1921 correlated "notorious" executions (i.e. those which received a large amount of column-space in the London Times) to a drop in homicides. This study showed that "there is a statistically significant tendency for the number of homicides to drop below the number expected in the week of the publicized execution" and "in the two weeks following the execution...the frequency of homicides drops by 35 percent".¹¹

⁸Wolfson, in Bedau, ed.; The Death Penalty in America, 3rd. ed. (1982).

⁹Hugo Adam Bedau, after Sellin, The Penalty of Death, 1980.

¹⁰Bedau, after Sellin.

¹¹Ernest van den Haag, after David P. Phillips, "The Deterrent Effect of Capital Punishment: New Evidence on an Old Controversy," American Journal of Sociology 86, July 1980, pp. 139-148.

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On the other hand, Bowers and Pierce, two sociologists at Northeastern University, demonstrated with New York data that homicides may actually increase above the expected levels on the days preceding and the day of an execution and again several weeks after an execution. They suggest a "brutalization" effect of capital punishment, resulting in two to three additional murders for each execution.¹²

Only one major study claims that the death penalty deters crime. Isaac Ehrlich, an economist with the University of Chicago, conducted a study in 1975 that purported to demonstrate that a 1 percent increase in the execution rate will reduce murders by 0.06 percent; thus each execution will save eight lives.¹³ Ehrlich's finding that capital punishment has a deterrent effect on crime has not been confirmed by other statisticians who have used his methods; in fact, Ehrlich's findings, as well as his methods, have been refuted by many subsequent studies. Criticism of his findings is extensive:

- the reliability of crime data used in the study is questionable;
- Ehrlich's multiple regression analysis techniques relies on very specific mathematical relationships;
- Ehrlich's formula doesn't work if data from the period 1965 to 1969 is omitted;
- the formula doesn't factor in many important social changes, like the unrest of the Vietnam War or the increase in handgun ownership; and
- the study doesn't compare the deterrent effect of the death penalty to the deterrent effect of various prison terms.

Costs of Litigation in a Capital Punishment Case

The most complete study of the costs of litigating a capital punishment case was conducted in 1982 by the New York State Defenders Association. (See Attachment B.) This study, "Capital Losses: the Price of the Death Penalty for New York State," concludes that the state would spend a

¹²William J. Bowers and Glenn L. Pierce, "What Is The Effect of Executions: Deterrence or Brutalization," Center for Applied Social Research, Northeastern University.

¹³Isaac Ehrlich, "The Deterrent Effect of Capital Punishment: A Question of Life of Death," American Economic Review 65, 1975.

minimum of \$1.8 million for the prosecution, defense and court costs of a capital litigation through only the first three stages--trial, appeal, and Supreme Court decision.

The study identifies a minimum of ten levels of judicial review which are a permanent and indispensable feature of capital litigation:¹⁴

- 1) the guilt and penalty phases of trial;
- 2) review by the highest state court of a sentence of death and the underlying conviction;
- 3) writ of certiorari to the United States Supreme Court;
- 4) post conviction proceedings including evidentiary hearings to vacate judgment or set aside hearings or both;
- 5) review by the highest state court of adverse determinations in such post conviction proceedings;
- 6) writ of certiorari to the United States Supreme Court;
- 7) petition for writ of habeas corpus to the United States District Court;
- 8) appeal of a negative determination of a writ of habeas corpus to the Federal Court of Appeals for the circuit encompassing the district wherein the writ was brought;
- 9) a petition for rehearing en banc from a negative determination of the Court of Appeals; and
- 10) a writ of certiorari to the United States Supreme Court to review a negative determination of either the Court of Appeals or a rehearing en banc.

After the final judicial review, the defendant applies to the executive branch for commutation. Because stays at each level or stage of litigation are routine, the normal litigation process may last eight to ten

¹⁴New York State Defenders Association, "Capital Losses: The Price of the Death Penalty for New York State", April 1, 1982.

years.¹⁵ At each stage of the case, the state must pay for the prosecution and very often the defense of the accused, the operation of the courts, corrections costs and other costs including the actual execution.

Specific costs cited in the New York report are listed below:¹⁶

- During the determination of guilt and penalty, (the first stage of a capital litigation), defense costs would conservatively total \$176,350; \$106,350 for attorneys, \$40,000 for investigators and \$30,000 for experts.
- Prosecution costs at the trial level for the guilt and penalty phase of the average capital case in New York are \$845,000.
- Court costs in a recent death penalty case in Texas, counting only court time, employees' time and jury sequestration, amounted to over \$300,000.¹⁷
- The New York report cited the California Public Defender's estimate that a death penalty appeal on the state level exceeds \$30,000 per case. In California, nine of the first 11 death judgment appeals under California's death penalty statute resulted in either reversals or retrials.
- Private attorneys with expertise in felony defense may charge initial retainers of \$15,000 to \$50,000. Fees thereafter range from \$100 to \$200 per hour, excluding expenses.
- Experts, such as forensic scientists, juristic psychologists, psychiatrists, crime scene reconstructionists, criminalists and polygraph experts charge from \$500 to \$1,500 per day.

¹⁵New York State Defender's Association, Capital Losses, p. 7.

¹⁶New York State Defenders Association. All figures represent costs in 1982.

¹⁷This court cost did not include appeal, and the defendant in that case did not receive a sentence of death. New York State Defenders Association., p. 18.

- The cost of maintaining an inmate on death row in New York State would exceed the normal prison cost of \$15,050 per year by 100 percent.¹⁸
- The costs of an actual execution generate "almost uncontrollable expense". Georgia spent more than \$250,000 solely for the anticipated, but aborted, electrocution of Jack Howard Potts in 1980. Among the costs were special telephone lines connecting the prison with the U.S. Supreme Court and the Governor's office, extra police personnel for crowd control, helicopter security and the shutdown of federal airspace over the prison.
- The complexity of capital litigation is illustrated by a recent appeal to the U.S. Supreme Court, Eddings v. Oklahoma (1982). The petition for certiorari was 26 pages long and the brief for the petitioner on the merits of the case was 68 pages long. It argued three points of law, cited 81 cases, discussed 95 domestic statutes, and reviewed the statutes of eleven countries. Seventy-seven other authorities were cited in the brief. Five appendices containing in-depth social research were filed. "The Eddings case is not an unusual effort on behalf of a capital defendant."¹⁹

The Costs of Incarceration in Alaska

Felony offenders who are sentenced to life imprisonment are currently sent to maximum security federal prisons in the lower forty-eight states. At the current cost of \$38 per day to the State of Alaska, a felony offender could be imprisoned in a federal prison from age 30 to age 70 for \$554,800.²⁰

According to statistics provided by the the Alaska Department of Corrections, the lifetime imprisonment of a convicted felon in an Alaska prison would total approximately \$1,236,920. This figure is based on the present per diem incarceration cost of \$84.72, and an anticipated

¹⁸New York's prison cost per inmate was calculated at \$15,050 in 1978. According to representatives of the Florida Clearinghouse on Criminal Justice, the cost of special death row security would require an additional \$15,000 per year for each defendant facing capital punishment.

¹⁹New York State Defenders Association, p. 22.

²⁰The Federal Bureau of Prisons will accept a maximum of 200 Alaska inmates and may return or refuse to accept prisoners who are extreme security risks.

40-year period of incarceration, from age 30 to age 70. The average age of Alaska prisoners at the time of sentencing was not available, but Florida reports the average age at admission to its death row is 30.8 years.²¹

An important consideration in balancing the costs of executing a prisoner versus imprisoning him for life is that prison costs can be expected to inflate over the life span of the prisoner, while the costs leading to execution are affected by inflation for a maximum of eight to ten years while the case is litigated.

Cost of Death Row Incarceration

Most states do not distinguish the cost of death row from the cost of other prison units. The Mississippi corrections department has calculated death row costs to exceed average prison unit costs by 50 percent.²² New York currently would pay 100 percent more to house death row inmates than other inmates. When New York established a prison unit for two condemned prisoners in 1970, the state hired seven additional security guards in order to isolate the death row prisoners from the general prison population at all times.²³

The Florida Department of Corrections reports that their annual costs for death row incarceration of \$7,694.20 per prisoner in 1981-82 were slightly less than incarceration costs for other prisoners in major correctional facilities. The cost of Florida's death row operations may reflect the economy of scale: Florida has the largest death row of any state with 189 prisoners in 1982, compared to 37 death row prisoners in Mississippi and none in New York. Four other states contacted could not provide information on the costs of operating a condemned unit.

Operation of a condemned unit in the Alaska corrections system, based on the estimated costs in New York and Mississippi, would cost the State between \$46,400 and \$61,800 per prisoner per year. Over the course of an eight-year capital litigation, the costs of keeping a prisoner on death row could total \$371,200 to \$494,400.

²¹The average age of Alaska inmates is 25 years.

²²Dallas Brown of the Mississippi Penitentiary calculated the costs of housing inmates on death row at slightly over \$30 per inmate per day in 1984. The daily cost per inmate of the prison population as a whole was \$18.91 per day.

²³Robert Mitchell, statistician for the New York Department of Correctional Services.

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The extra cost of death row has been a fact of corrections for many years. Justice Marshall stated in Furman v. Georgia,²⁴

As for the argument that it is cheaper to execute a capital offender than to imprison him for life, even assuming that such an argument, if true, would support a capital sanction, it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row...the defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long it takes...Since no one wants the responsibility for the execution, the condemned man is likely to be passed back and forth from doctors to custodial officials to courts like a ping-pong ball. The entire process is very costly. When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life.

Length of Stay on Death Row

The length of a prisoner's stay on death row cannot be determined until he or she is removed from death row. In 1982, 70 inmates left death row, after a median stay of 43 months. The median stay has increased steadily since 1976, when it was 13 months. Only two of the seventy inmates (three percent) who left death row were executed. Nearly eighty percent of those who left had their convictions vacated. Fifteen percent had their sentences commuted (see table).²⁵

REASONS FOR DEPARTURE FROM DEATH ROW, 1982

34 had their sentences and convictions vacated
20 had their sentences lifted but convictions upheld
10 had their sentences commuted
2 died by suicide
2 were murdered by another inmate
2 were executed.

70 inmates left death row in 1982.

Median stay since sentencing: 43 months.

²⁴New York State Defenders Association, after Marshall, Furman v. Georgia 408 U.S. 238, 357-8 (1972).

²⁵U.S. Department of Justice, Capital Punishment 1982, A National Prisoner Statistics Report, August 1984.

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The American Civil Liberties Union is reviewing the cases of the 38 persons executed since the end of the death penalty moratorium in 1976 to determine the longest, shortest and average stay on death row of those executed. We will forward this information to you. Of the twelve persons executed in Florida since the lifting of the moratorium, John Spenklink spent the shortest time on death row (5-1/2 years) and Johnny Witt, executed last week, spent the longest time (just over 11 years).²⁶

Persons remaining on death row at the end of 1982 had been there an average of 26 months. State averages ranged from 9 months in Idaho to 56 months in Georgia. Of the 1,050 condemned prisoners on death row at the end of 1982, 111 (or eleven percent) had been on death row for 6 years or longer.²⁷ The Florida Corrections Department has held Howard Douglas on death row since his condemnation on December 4, 1973--over 11 years. Florida's newest death row inmate is David Jore, sentenced to death on February 4, 1985.²⁸

Henry Schwarzchild, Director of the ACLU Capital Punishment Project, notes that new court rulings on capital punishment may foreshorten the litigation time of pending and future cases by eliminating grounds for appeal.

* * *

We hope this information is useful. If you have further questions, please let us know.

NP

Attachments

²⁶According to Glenn Hodges, Florida Corrections, Planning and Research Division, John Senkelink was sentenced December 20, 1973 and executed in May, 1979. Johnny Witt was sentenced February 21, 1974 and executed March 6, 1985.

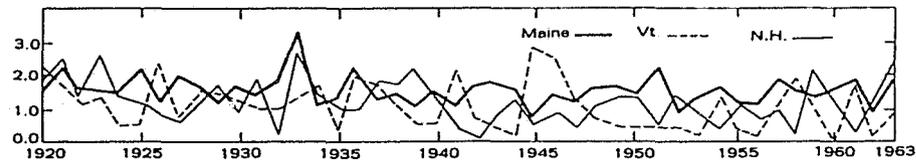
²⁷U.S. Department of Justice, Capital Punishment 1982, p. 7.

²⁸Florida Corrections, Planning and Research Division.

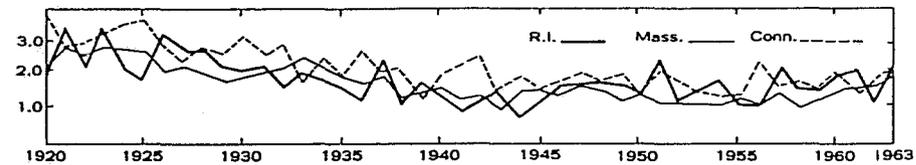
ATTACHMENT A

Homicide Death Rates

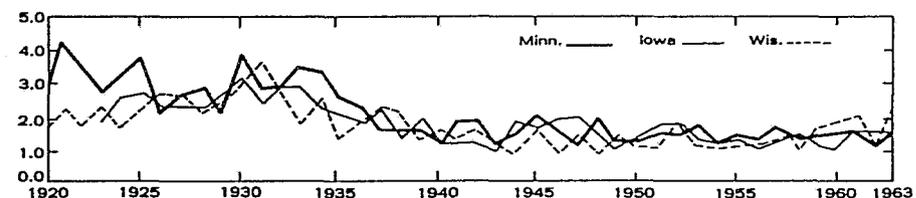
Homicide Death Rates (per 100,000 Population) in Contiguous Abolitionist and Retentionist States, 1920-1963.



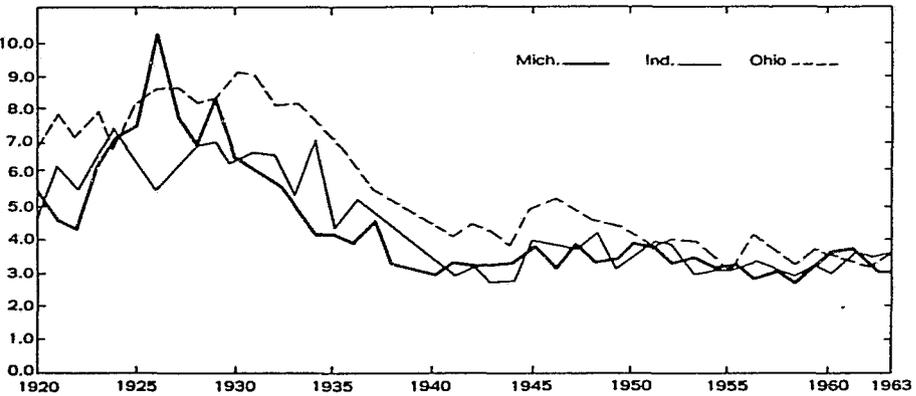
Maine is an abolitionist state.



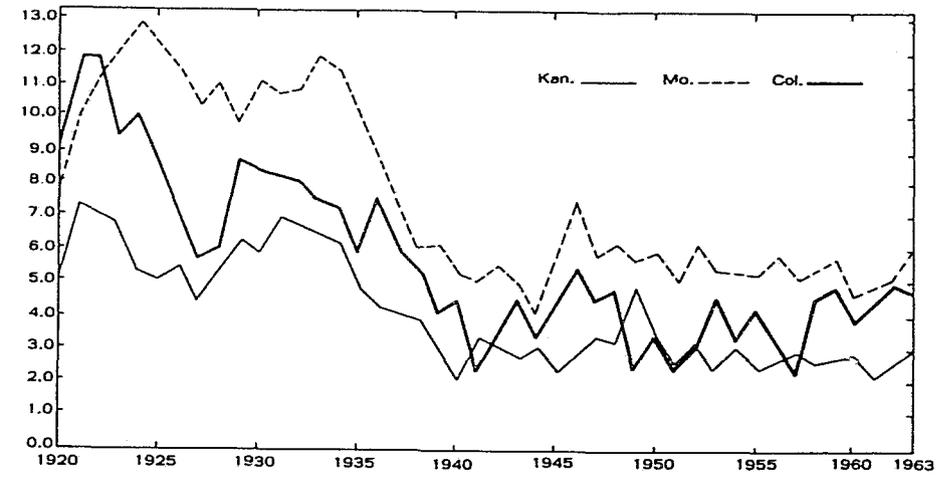
Rhode Island is an abolitionist state.



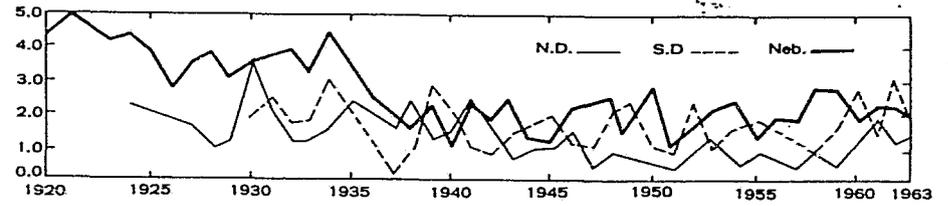
Minnesota and Wisconsin are abolitionist states.



Michigan is an abolitionist state.



Kansas was an abolitionist state until 1935.



North Dakota is considered an abolitionist state. South Dakota was abolitionist until 1939.

TABLE 2. Cases of Police Homicide, by Cities Grouped According to Size; and Rates per 100,000 Population in Each Group of Cities, by State

	10,000-30,000				30,000-60,000				60,000-100,000			
	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate
Abolition states												
Maine	4		54,280	0.0	1		31,558	0.0	1		77,634	0.0
Michigan	24	8	419,904	1.9	4	1	189,609	0.5	2	3	187,912	1.6
Minnesota	14	4	259,461	1.5								
North Dakota	3	1	51,369	1.9								
Rhode Island	3		46,084	0.0	3	1	116,463	0.9				
Wisconsin	13	2	207,940	0.9	7	4	252,580	1.6	1	3	96,056	3.1
Total	61	15	1,039,038	1.3	15	6	590,210	1.0	4	6	361,602	1.6
	100,000-350,000				500,000-650,000				All cities			
	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate
Abolition states												
Maine											163,472	0.0
Michigan	1	1	176,515	0.6					31	13	973,940	1.3
Minnesota									14	4	259,461	1.5
North Dakota									3	1	51,369	1.9
Rhode Island									6	1	162,547	0.6
Wisconsin					1	5	637,392	0.8	22	14	1,193,968	1.2
Total	1	1	176,515	0.6	1	5	637,392	0.8	82	33	2,804,757	1.2
	10,000-30,000				30,000-60,000				60,000-100,000			
	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate
Capital punishment states												
Connecticut	11		190,746	0.0	5	1	212,213	0.5	1		74,293	0.0
Illinois	14	4	206,214	1.9	6	1	225,701	0.4	1	1	92,927	1.1
Indiana	10	3	170,785	1.7	4	7	171,048	4.1				
Iowa	6		85,429	0.0	2	2	64,244	3.1	1		72,296	0.0
Massachusetts	31	6	499,841	1.2	5	1	221,877	0.4	1	1	66,112	1.5
Montana	1	1	17,581	5.7								
New Hampshire	4		59,809	0.0	1	1	34,469	2.9	1		82,732	0.0
New York	24	3	426,631	0.7	7		290,304	0.0	2	4	171,546	2.3
Ohio	21	7	371,623	1.9	7	3	223,303	1.3	2	1	146,379	0.7
South Dakota	2		24,920	0.0								
Vermont	1		12,411	0.0								
Total	125	24	2,065,990	1.2	37	16	1,443,159	1.1	9	7	706,285	1.0
	100,000-350,000				500,000-650,000				All cities			
	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate	No. cit.	No. cases	Popu-lation	Rate
Capital punishment states												
Connecticut	2	3	263,186	1.1					19	4	740,438	0.5
Illinois									21	6	524,842	1.1
Indiana	1	1	133,607	0.7					15	11	475,440	2.3
Iowa	1	6	177,965	3.3					10	8	399,934	2.0
Massachusetts	1		203,486	0.0					38	8	991,316	0.8
Montana									1	1	17,581	5.7
New Hampshire									6	1	177,010	0.5
New York	2	3	434,019	0.7	1	8	580,132	1.4	36	18	1,902,632	0.9
Ohio	3	14	635,389	2.2	1	13	503,998	2.6	34	38	1,880,692	2.2
South Dakota									2		24,920	0.0
Vermont									1		12,411	0.0
Total	10	27	1,847,652	1.5	2	21	1,084,130	1.9	183	95	7,147,216	1.3

ATTACHMENT B

Capital Losses: The Price of the Death Penalty for New York State

Capital Losses: The Price of the Death Penalty for New York State

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING - PLEASE DO NOT REMOVE CARBON

STATE OF NEW YORK

STANDARD VOUCHER

AC 92 Rev. (4/82)

1) Originating Agency

2) Contract

3) Payment Date (MM) (DD) (YY)

4) Payee Name (Limit to 30 spaces)

5) Cash Discount %

6) Payee Address (Limit to 30 spaces)

7) Ref/Inv. No. (Limit to 20 spaces)

8) State Type

9) City (Limit to 20 spaces)

10) State

11) Zip Code

12) Date

13) Amount

14) Quantity

15) Unit

16) Price

17) Amount

18) Description of Material/Service

19) Direction of Material/Service

20) If items are too numerous to be incorporated into the block below, use form AC 93 and carry total forward.

21) Payment Certification: I certify that the above bill is just, true and correct; that no part thereof has been paid or is to be paid and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded.

22) Payee's Signature in Ink

23) Date

24) Title

25) Name of Company

26) FOR AGENCY USE ONLY

27) I certify that this voucher is correct and just, and payment is approved.

28) Authorized Signature

29) Date

30) Title

31) Amount

32) Merchandise Received

33) Date

34) Paper No.

35) By

36) Dept.

37) CDR Center

38) Vol

39) Yr

40) Object

41) Expense

42) Account

43) Amount

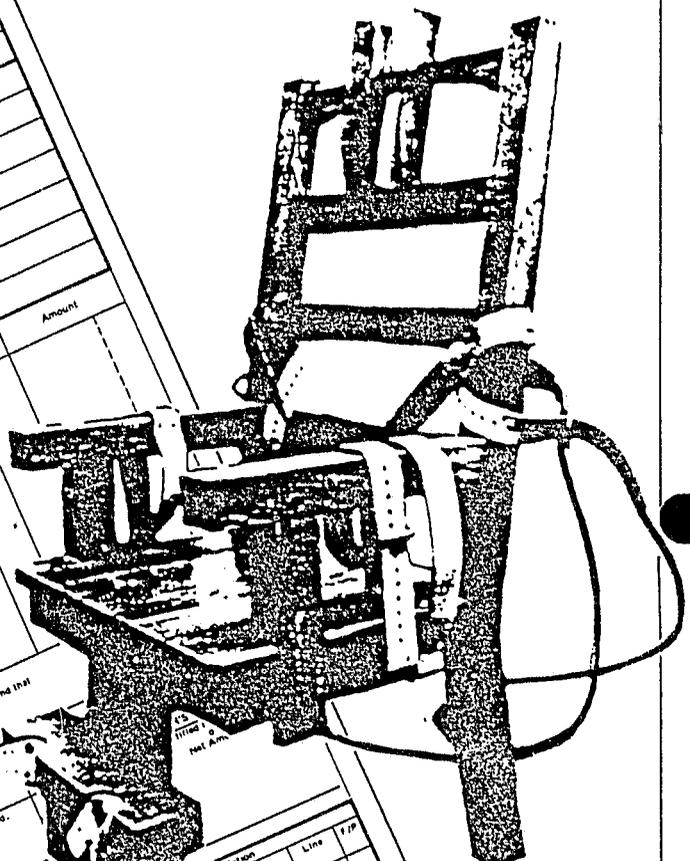
44) Line

45) Yr

46) OSC

47) Location

48) PO/Contract



April 1, 1982

A report from
the Public Defense
Backup Center to the Senate
Finance Committee, the Assembly
Ways and Means Committee and the
Division of the Budget.

New York State Defenders Association, Inc.
150 State Street • Albany, NY 12207

102398

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