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MURDER COMMITMENTS WITH SUBSEQUENT
SENTENCE VACATIONS

This brief report examines the legal and demographic characteristics of 33 offenders whose sentences for murder were subsequently vacated.

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MURDER COMMITMENTS WITH SUBSEQUENT SENTENCE VACATIONS

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MURDER COMMITMENTS WITH SUBSEQUENT SENTENCE VACATIONS

EXECUTIVE SUMMARY

1. Thirty-three offenders released from the Department of Correctional Services between 1980 and 1987 had their sentences for murder vacated and were remanded for new trials.
2. At retrial, 26 (79%) were convicted of lesser offenses ranging from Manslaughter 1st to Criminal Possession of a Weapon 3rd, and 5 (15%) were acquitted. New indictments were never filed against 2 (6%) offenders and they were released without retrial (see Section 1).
3. The mean time from prison reception to sentence vacation was 30 months. The median time was 29 months (see Section 2).
4. Fifteen (45%) of the offenders were accused of causing the death of the victim during the commission of another felony, most typically robbery. Four offenders (12%) were involved in gang related murders. Altercations between victims (acquaintances or intimates) and offenders accounted for an additional 33% (11) of the cases. In 2 cases (6%) the victim was a child and the offender either a parent or an intimate of the parent. One offender killed a stranger he mistook for someone else (see Section 3).
5. Probable reasons for sentence vacation were recorded for 64% (21) of the cases. Suspect witness identification (including informant reports) or confessions account for 57% (12) of the cases where a probable reason was recorded. In six cases (29%), sentences may have been vacated due to the more substantial involvement of one or more co-defendants in the murder (see Section 4).
6. Ninety-one percent of the offenders with sentence vacations were male and 9% female. In regard to ethnicity, in 48% (16) of the cases the offender was black, in 24% (8) Hispanic, and in 21% (7) white. Two Asians also had sentences vacated. Over one quarter (27%) of the offenders were between 21 and 24 when admitted to DOCS. Seventy-three percent (24) were between 19 and 34 (see Section 5).

7. Prior to the commission of the offense which led to the murder conviction, 9 (27%) had no previous arrests and 4 (12%) had no convictions. Of offenders with prior sentences, 5 had received a sentence of probation, 8 had been imprisoned in local jails, and 7 had been incarcerated in a state prison (see Section 6).
8. Eighteen percent (6) of the offenders in this study were under probation or parole supervision at the time of the present offense. None of the individuals in the study had pending criminal charges at the time of the instant offense (see Section 7).

MURDER COMMITMENTS WITH SUBSEQUENT SENTENCE VACATIONS

INTRODUCTION

Members of the public and the state legislature are currently examining issues that surround the proposed reinstatement of the death penalty for murder in New York. One danger of capital punishment cited by opponents is the possibility that innocent individuals will be executed by the State.

THE STUDY

The cases in this study were chosen as they represent current instances where appellate courts found error so substantial as to warrant the vacation of the conviction for murder. All of these offenders were sentenced after the 1972 Supreme Court decision in *Furman vs. Georgia*, which struck down existing capital punishment statutes in the United States. Still, the offenders' convictions for murder mandated long terms of imprisonment. Twenty-six of the offenders, convicted of lesser offenses at retrial, eventually received shorter terms of incarceration. Five offenders were acquitted of all charges after new trials and in two cases no new indictment was filed.

The 33 offenders in this report were released from the Department of Correctional Services between 1980 and 1987. Twenty-seven offenders were convicted of Murder 2nd and six were convicted of Murder (murders committed prior to 9/1/74, were degreeless). All received original maximum sentences of life imprisonment. Minimum sentences ranged from 15 to 25 years.

During this same time period, 3,771 offenders were committed to DOCS for Murder 2nd. Although these two groups are not comparable, the 1980 through 1987 commitment figures are provided to give some idea of the ratio of offenders whose sentences for murder were vacated and the larger Murder 2nd population.

Central office case files, containing court commitment papers, pre-sentence investigation reports and various court orders, were the principal source of information reported below. Individual summaries of the 33 offenders may be found in Appendix A.

Section 1

OUTCOME OF SENTENCE VACATION

After successful appeal of a conviction for murder, the study's 33 offenders were remanded for new trials (see table 1). Two offenders, approximately 6% of the group, were released from DOCS without new trials after local prosecutors failed to acquire new indictments against them in the time allotted by the respective courts granting the appeals. Of the remaining 31 offenders, five (15%) received acquittals after new trials and 26 (79%) either pled or were found guilty of offenses other than murder. Seventeen of those receiving new sentences were convicted of Manslaughter 1st, four of Manslaughter 2nd, and two of Criminally Negligent Homicide. There was one conviction each for Robbery 1st, Attempted Assault 1st, and Criminal Possession of a Weapon 3rd.

TABLE 1. OUTCOME OF SENTENCE VACATION

<u>Outcome</u>	<u>Frequency</u>	<u>Percent</u>
A. Acquittal After New Trial	5	15.2%
B. Original Indictment Dismissed- New Indictment Never Filed- offender Released From Custody	2	6.1%
C. Resentenced After New Trial	26	78.8%
Manslaughter 1st	(17)	(51.5%)
Robbery 1st	(1)	(3.0%)
Manslaughter 2nd	(4)	(12.1%)
Attempted Assault 1st	(1)	(3.0%)
Criminal Possession of Weapon 3rd	(1)	(3.0%)
Criminally Negligent Homicide	(2)	(6.1%)
Total	33	100.0%

Section 2

TIME TO SENTENCE VACATION

Table 2 displays the time in months from prison reception to vacation of murder sentence. It does not include time from sentencing to prison reception, or from sentence vacation to retrial. Generally the offenders in this study were received by DOCS within one month of sentencing, with the exception of three offenders received within two months.

The mean time to sentence vacation was 30 months; the median was 29 months. Should New York ever revive the death penalty for murder, the current appeal process would appear adequate to review any case where the murder conviction was questionable. For example, from 1970 through 1975, the median time in the United States from sentencing to removal from sentence of death, ranged from 44 to 54 months.¹ For individuals executed between 1977 and 1987, average time from sentencing to execution was 77 months.²

¹U.S. Department of Justice, Bureau of Justice Statistics. "Historical Corrections Statistics in the United States 1850-1984," by Margaret Werner Cahalan (Washington, D.C.: GPO, 1986), p. 21.

²U.S. Department of Justice, Bureau of Justice Statistics. Bulletin. "Capital Punishment 1987," (Washington, D.C.:GPO, 1988), pp. 8-9.

TABLE 2. TOTAL TIME IN MONTHS FROM PRISON RECEPTION
TO SENTENCE VACATION

<u>Months to Vacation</u>	<u>Frequency</u>	<u>Percent</u>
0-5 Months	0	0%
6-11 Months	3	9.1%
12-17 Months	3	9.1%
18-23 Months	4	12.1%
24-29 Months	7	21.2%
30-35 Months	5	15.2%
36-41 Months	6	18.2%
42-47 Months	3	9.1%
48-53 Months	1	3.0%
54-60 Months	1	3.0%
TOTAL	33	100.0%
Mean	29.6 months	
Median	29.0 months	

Section 3

CRIMINAL EVENT LEADING TO MURDER CONVICTION

Deaths which occurred during the commission of other felonies or as the result of disputes with acquaintances or intimates, led to the murder convictions of the majority of offenders in this study.

Eight offenders (24%) were involved in robberies where at least one victim was killed. Drug related murders accounted for another 15% (5) of the cases. Two offenders, co-defendants, were convicted of murder after a fireman was killed while fighting a fire the two had set in an abandoned building.

Six offenders were convicted of murder after disputes with intimates (typically boyfriends or girlfriends, but also husbands and wives) concluded in the intimates' deaths. Three of the victims were male and three female. In contrast, all acquaintance-victims (5) were male, with both the victim and the offender generally residing in the same neighborhood. The victims in two cases were young children, beaten to death by either a parent or intimate of a parent.

Four offenders, belonging to separate gangs, were participants in the murders of rival gang members. Finally, an offender shot two youths after mistaking them for the teenagers who had earlier robbed him. One youth was killed instantly, and the other seriously injured.

TABLE 3. CRIMINAL EVENT LEADING TO CONVICTION FOR MURDER

<u>Event</u>	<u>Frequency</u>	<u>Percent</u>
Robbery	8	24.2%
Altercations Between Intimates	6	18.2%
Altercations Between Acquaintances	5	15.2%
Drug Activities	5	15.2%
Gang Activities	4	12.1%
Child Abuse	2	6.1%
Arson	2	6.1%
Stranger	1	3.0%
Total	33	100.0%

Section 4

PROBABLE REASONS FOR SENTENCE VACATION

Central office files were the primary source of information regarding the offenders in this study. However, in all but one case, the reviewing court's opinion as to why the murder sentence should be vacated was absent. Consequently, presentence investigation reports and periodic programming and security classification interviews were analyzed in an attempt to arrive at probable reasons for sentence vacation. Even with these sources, it was not possible to make a determination as to sentence vacation in 36% (12) of the cases (see table 4).

The presence of several individuals at a murder, often raised the issue of the culpability of the various offenders involved. In six (18%) cases, it is possible that offenders' sentences were vacated because it was doubtful whether it was the offender who committed the murder, or whether the offender even had knowledge that a co-defendant was planning on killing the victim. All of these offenders were subsequently resentenced to lesser offenses.

The veracity of eyewitnesses and informants may have been factors in the sentence vacations of an additional nine offenders. One of these individuals was acquitted at retrial, the remainder were resentenced.

Improperly obtained confessions may have so tainted the original trials of four offenders that new trials were ordered by appellate courts. Two offenders claimed the severe emotional distress they were experiencing was knowingly used by police to solicit confessions. Similarly, the impaired judgment of two offenders, one mentally handicapped and the other extremely intoxicated, resulted in incriminating statements being made to the police. In these four cases, two were acquitted at retrial, one was resentenced, and one was ordered released after no new indictment was brought against him.

Lastly, deficient legal representation apparently resulted in the new trials of two offenders. One was eventually acquitted and the other resentenced.

In the one case where it was possible to ascertain why the reviewing court ordered a new trial, the trial court was faulted for allowing the prosecution to present irrelevant and damaging expert testimony over the objection of the defense. At retrial, this offender was found guilty of a lesser offense.

TABLE 4. PROBABLE REASONS FOR SENTENCE VACATION

<u>Probable Reason</u>	<u>Frequency</u>	<u>Percent</u>
Presence of Co-Defendant(s)	6	18.2%
Witness Identification	5	15.2%
Confession	4	12.1%
Informant	3	9.1%
Evidence Admitted at Trial	1	3.0%
Legal Representation	2	6.1%
Unknown	12	36.4%
Total	33	100.0%

Section 5

DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS WITH
SENTENCE VACATIONS

The demographic characteristics of the offenders in this study are presented in table 5.

The vast majority of offenders with sentence vacations were male (30 or 91%), with females comprising only 9% of the study. Examination of ethnic affiliation reveals that sixteen of the offenders, roughly one-half (48%), were black. Hispanics accounted for another 24% (8), whites 21% (7), and Asians 6% (2). The age distribution in table 5 reflects the age of the offender at admission to DOCS. The single largest category, comprised of those aged 21 through 24, contained 27% of the study population. Seventy-three percent of the group was between 19 and 34.

TABLE 5. DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS WITH
SENTENCE VACATIONS

<u>Sex</u>	<u>Frequency</u>	<u>Percent</u>
Male	30	90.9%
Female	3	9.1%
Total	33	100.0%
<u>Ethnicity</u>		
Black	16	48.5%
Hispanic	8	24.2%
White	7	21.2%
Asian	2	6.1%
Total	33	100.0%
<u>Age at Admission</u>		
16-18	1	3.0%
19-20	4	12.1%
21-24	9	27.3%
25-29	6	18.2%
30-34	5	15.2%
35-39	3	9.1%
40-44	3	9.1%
45-49	1	3.0%
50+	1	3.0%
Total	33	100.0%

Section 6

Prior Adult Criminal Record

The adult criminal history of the offenders prior to commission of the offense leading to the murder conviction, appears in table 6. All categories are mutually exclusive and are ranked according to the severity of involvement in the criminal justice system.

Over one-quarter (27%) of the offenders had no previously recorded arrests. An additional 12% had been arrested on at least one occasion, but their records indicated no conviction. The most serious sentence received by five offenders was probation after either a misdemeanor or felony conviction. The outcome of a misdemeanor or felony conviction for eight other offenders was a term of imprisonment in a local jail. After felony convictions, seven offenders were sentenced to state prison.

TABLE 6. PRIOR ADULT CRIMINAL RECORD

<u>Prior Adult Criminal Record</u>	<u>Frequency</u>	<u>Percent</u>
No Prior Arrest	9	27.3%
No Prior Conviction	4	12.1%
Misdemeanor or Felony Probation Sentence	5	15.2%
Local Jail Sentence	8	24.2%
State Prison	7	21.2%
Total	33	100.0%

Section 7

LEGAL STATUS AT TIME OF INSTANT OFFENSE

This section focuses on any contemporaneous involvement in the criminal justice system at the time the murder was committed.

As can be seen in table 7, 81% of the offenders were free of any legal entanglements. This means that these 27 offenders had no criminal charges pending against them, nor were they under any probation or parole supervision. Only two offenders were under probation supervision, while four were serving the remainder of prior felony sentences under the supervision of the New York State Division of Parole.

TABLE 7. LEGAL STATUS AT TIME OF INSTANT OFFENSE

<u>Legal Status</u>	<u>Frequency</u>	<u>Percent</u>
Probation	2	6.1%
Parole	4	12.1%
No Involvement	27	81.8%
Total	33	100.0%

CONCLUSION

During the time which the offenders in this study were sentenced, New York did not have a viable death penalty statute. It is not the intent of this report to suggest then that these cases stand in stead for capital cases when examining the issue of the fallibility of the criminal justice process, they do not. Rather, the cases reported here stand on their own as instances where 33 offenders had sentences for murder vacated after appellate courts found substantial error in the circumstances surrounding the original murder conviction.

If the error in these cases had not been established by the appellate courts, the offenders would have served out the remainder of prison terms that carried a minimum of at least 15 years and a maximum of life. This scenario would be especially disturbing in the cases of the five individuals acquitted at retrial and the two who were released after local prosecutors failed to obtain new indictments against them.

These cases do confirm, however, that the appellate process provides a timely review of suspect cases. In this study for example, the median time to sentence vacation from prison reception was 30 months.

Should New York reinstate capital punishment, those sentenced to death would likely appeal their convictions in both state and federal courts. Still the right to automatic appeal in capital cases does not insure that the State will never execute an innocent individual, it may, and once an individual is wrongly executed, there can be no satisfactory redress of the error.

APPENDIX A

SURVEY OF INMATES WITH MURDER SENTENCE VACATIONS

<u>Case</u>	<u>Crime</u>	<u>Total Time to Reversal</u>	<u>Outcome</u>	<u>Probable Reason</u>	<u>Original Criminal Circumstances</u>	<u>Age at Admission</u>	<u>Ethnicity</u>
Case #1	Murder 2nd	19 Months	Resentenced - Att. Assault 1st	Witness identification	Gang killing	21	Asian
Case #2	Murder 2nd	41 Months	Resentenced - Criminally negligent homicide	--	Drug related	27	Black
Case #3	Murder 2nd	12 Months	Resentenced - Manslaughter 2nd	Individual responsibility	Child abuse	22	White
Case #4	Murder	27 Months	Resentenced - Manslaughter 1st	Individual responsibility	Gang killing	19	Black
Case #5	Murder 2nd	7 Months	Resentenced - Manslaughter 2nd	--	Arson related death	20	White
Case #6	Murder	40 Months	Resentenced - Manslaughter 1st	--	Shot acquaintance	27	Hispanic
Case #7	Murder 2nd	28 Months	Resentenced - Criminally negligent homicide	Individual responsibility	Child abuse	24	White
Case #8	Murder 2nd	22 Months	Acquitted	Witness identification	Argument between friends	42	Black
Case #9	Murder 2nd	17 Months	Resentenced - Manslaughter 1st	Tainted eyewitness account- accomplice	Gang killing	28	Hispanic

SURVEY OF INMATES WITH MURDER SENTENCE VACATIONS

<u>Case</u>	<u>Crime</u>	<u>Total Time to Reversal</u>	<u>Outcome</u>	<u>Probable Reason</u>	<u>Original Criminal Circumstances</u>	<u>Age at Admission</u>	<u>Ethnicity</u>
Case #10	Murder 2nd	34 Months	Acquitted	Questionable confession	Homosexual lovers	34	Black
Case #11	Murder 2nd	7 Months	Resentenced - Manslaughter 2nd	Questionable confession - Mentally retarded	Arson related death	19	White
Case #12	Murder	45 Months	Resentenced - Manslaughter 1st	--	Gang related	18	Black
Case #13	Murder 2nd	29 Months	Resentenced - Manslaughter 1st	--	Drug deal	25	Black
Case #14	Murder 2nd	36 Months	Resentenced - Manslaughter 1st	Confidential informant	Contract killing Driver of vehicle/lookout	40	Black
Case #15	Murder 2nd	10 Months	Resentenced - Criminal Possession of a Weapon 3rd	Nature of evidence admitted by court	Shot husband	30	White
Case #16	Murder 2nd	31 Months	Resentenced - Manslaughter 1st	Informants	Shot a numbers operator	33	Hispanic
Case #17	Murder	22 Months	Resentenced - Manslaughter 1st	Changing testimony of one witness and the existence of an altercation	Knifed and shot an acquaintance during an on-going altercation	49	Hispanic
Case #18	Murder 2nd	34 Months	Resentenced - Manslaughter 1st	Informants	Shot a numbers operator	22	Hispanic

SURVEY OF INMATES WITH MURDER SENTENCE VACATIONS

<u>Case</u>	<u>Crime</u>	<u>Total Time to Reversal</u>	<u>Outcome</u>	<u>Probable Reason</u>	<u>Original Criminal Circumstances</u>	<u>Age at Admission</u>	<u>Ethnicity</u>
Case #19	Murder	40 Months	Resentenced - Robbery 1st	Responsibility Role of co-defendants	Victim mugged, died several days afterwards	37	Black
Case #20	Murder 2nd	23 Months	Resentenced - Manslaughter 1st	No direct witness of crime or confession	Argument between neighbors, relatives by marriage	24	Black
Case #21	Murder 2nd	13 Months	Acquitted	Earlier confession given while intoxicated	Shot girlfriend during an argument	29	Hispanic
Case #22	Murder 2nd	29 Months	Resentenced - Manslaughter 1st	--	Shot boyfriend during argument	42	Black
Case #23	Murder 2nd	35 Months	Resentenced - Manslaughter 1st	--	Killed wife after she confessed to loving someone else	25	Asian
Case #24	Murder 2nd	48 Months	Resentenced - Manslaughter 1st	--	Killed victim during gas station hold-up Victim also shot defendant	37	Hispanic
Case #25	Murder 2nd	26 Months	Resentenced - Manslaughter 1st	Identification through Crime Stoppers T.V. program	Killed an acquaintance after an argument	30	Black

SURVEY OF INMATES WITH MURDER SENTENCE VACATIONS

<u>Name</u>	<u>Crime</u>	<u>Total Time to Reversal</u>	<u>Outcome</u>	<u>Probable Reason</u>	<u>Original Criminal Circumstances</u>	<u>Age at Admission</u>	<u>Ethnicity</u>
Case #26	Murder 2nd	25 Months	Resentenced - Manslaughter 1st	Initial guilty plea, did not reflect defendent's emotional state	Killed estranged wife during an argument	24	White
Case #27	Murder 2nd	31 Months	Resentenced - Manslaughter 1st	--	Knifed robbery victim after victim handed over wallet	21	Black
Case #28	Murder 2nd	25 Months	Acquitted	--	Shot victim during a day time burglary	32	Hispanic
Case #29	Murder	43 Months	Resentenced - Manslaughter 2nd	--	Killed one youth and attempted to shoot another because he thought they had earlier robbed him	53	Black
Case #30	Murder 2nd	42 Months	Original indictment dismissed	--	Shot victim during a drug deal in a social club	37	Black
Case #31	Murder 2nd	59 Months	Original indictment dismissed	Improperly obtained statement by police	Victim shot during robbery attempt co-defendants	22	White

SURVEY OF INMATES WITH MURDER SENTENCE VACATIONS

<u>Case</u>	<u>Crime</u>	<u>Total Time to Reversal</u>	<u>Outcome</u>	<u>Probable Reason</u>	<u>Original Criminal Circumstances</u>	<u>Age at Admission</u>	<u>Ethnicity</u>
Case #32	Murder 2nd	41 Months	Acquitted	Legal representation Knowledge of event	Victim shot during robbery attempt co-defendants	20	Black
Case #33	Murder 2nd	36 Months	Resentenced - Manslaughter 1st	Individual responsibility	Victim shot during drug robbery co-defendent	23	Black