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The Real Death Penalty:

Capital Punishment According to the Experts

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Introduction

There are theoretical and philosophical arguments in favor and against capital punishment. Advocates of capital punishment assert that death is a proper punishment for those who commit the most heinous crimes because offenders owe their lives to society as payment for the harms they inflicted on society (*retribution*). Further, the death penalty makes us safer by causing fear in would-be murderers so that they do not commit their crimes (*deterrence*) and by taking away the lives of murderers who might murder again if not executed (*incapacitation*).¹

The main arguments against capital punishment are that it is morally wrong, is cruel and unusual, constitutes a human rights violation, and its practice is plagued by the following problems: it is political in nature; is excessively costly; is applied in an

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¹ Paul G. Cassell, *In Defense of the Death Penalty*, in *DEBATING THE DEATH PENALTY: SHOULD AMERICA HAVE CAPITAL PUNISHMENT?* 183, 205 (Hugo Adam Bedau & Paul G. Cassell eds., 2004); Ernest van den Haag, *The Death Penalty Once More*, in *THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES* 445 (Hugo A. Bedau ed., 1997); Louis P. Pojman, *Why the Death Penalty Is Morally Permissible*, in *DEBATING THE DEATH PENALTY* 51 (Hugo Adam Bedau & Paul G. Cassell eds., 2004).

arbitrary and discriminatory manner; is occasionally used against the innocent; and capital juries are confused about their duties and often make mistakes, including conviction of the innocent.²

Of course, the death penalty does not exist in theory.³ If we could establish the empirical realities of capital punishment, we could better discuss the “real death penalty” – capital punishment as it is administered. The goal of the Article is to inform public policy regarding capital punishment by surveying expert opinion.

Justifications for Capital Punishment

The main justifications for capital punishment are retribution, incapacitation and deterrence. *Retribution* is a state sponsored rational response to criminality that is justified given that the state is the victim when a crime occurs. It entails punishment given to an offender aimed at rebalancing the scales of justice that were unfairly tipped in the favor of the offender when he or she committed a crime. We could conclude that retribution is achieved by capital punishment if families of crime victims feel a sense of retribution after an execution and if executions lead to a sense of justice for members of

² LOUIS P. ROJMAN & JEFFREY REIMAN, *THE DEATH PENALTY – FOR AND AGAINST* (1998); Hugo Adam Bedau, *An Abolitionist's Survey of the Death Penalty in America Today*, in *DEBATING THE DEATH PENALTY* 15 (Hugo Adam Bedau & Paul G. Cassell eds., 2004); Stephen B. Bright, *Why the United States Will Join the Rest of the World in Abandoning Capital Punishment*, in *DEBATING THE DEATH PENALTY: SHOULD AMERICA HAVE CAPITAL PUNISHMENT?* 152 (Hugo Adam Bedau & Paul G. Cassell eds., 2004); FRANK ZIMRING, *THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT* (2003).

³ ROBERT M. BOHM, *DEATHQUEST II: AN INTRODUCTION TO THE THEORY AND PRACTICE OF CAPITAL PUNISHMENT IN THE UNITED STATES* (2d ed. 2003).

society.⁴

Deterrence is the notion that by administering punishment to offenders, the state can cause fear in both the offender (*special deterrence* or *specific deterrence*) and in others (*general deterrence*) so that they will not want to commit crimes in the future. Obviously, capital punishment cannot achieve special or specific deterrence because once the offender is dead, he or she cannot be afraid of future punishment. We could conclude that deterrence is achieved by capital punishment if executions reduce murder rates by causing fear in would-be murderers.⁵

Incapacitation means taking away a person's freedom so that he or she cannot commit another crime. While the typical form of incapacitation is incarceration, and the most common form is relatively mild (probation), the ultimate form of incapacitation is death. Since the goal of incapacitation is to reduce crime by restricting the freedoms of criminals, we could conclude that incapacitation is achieved by capital punishment if murder rates declined in society due to the effects of executing murderers.⁶

Problems with the Death Penalty

The main problems alleged to characterize capital punishment in the United States are arbitrariness and innocence. *Arbitrariness* would be seen in disparities in

⁴ HUGO BEDAU, *THE EXPERTS FROM BOTH SIDES MAKE THEIR CASE* (1997); EVAN MANDERY, *CAPITAL PUNISHMENT IN AMERICA: A BALANCED EXAMINATION* (2004); BOHM, *supra* note 3.

⁵ BEDAU, *supra* note 4; BOHM, *supra* note 3; MANDERY, *supra* note 4.

⁶ BOHM, *supra* note 3; MANDERY, *supra* note 4.

capital punishment based on extra-legal factors (i.e., race, class, and gender) that are not explained away by legal factors such as statutorily prescribed aggravating factors.⁷

The most troubling allegation against the administration of capital punishment in the United States is that occasionally innocent people are wrongly convicted, sentenced to death, and executed. Such a claim could be proven by the evidence showing innocent people being wrongly convicted, sentenced to death, or executed.⁸

Other alleged problems with capital punishment include the excessive cost to carry out the punishment, problems with capital jurors, poor quality legal representation and a growing isolation of the U.S. with regard to the practice.

Public Opinion and Expert Opinion on the Death Penalty

Although several polls are available which reflect capital punishment opinion – e.g., Gallup and Harris, to this date no one has successfully captured expert opinion on capital punishment. A previous survey of current and former presidents of the American Society of Criminology (ASC), the Academy of Criminal Justice Sciences (ACJS), and the Law and Society Association (LSA) attempted to capture expert opinion on the death penalty but the study focused exclusively on the issue of deterrence. The authors found:

- 84% said death penalty is not deterrent to homicide;
- 93% said threat of death penalty is not greater deterrent to murder than long prison terms;
- 87% said abolishing the death penalty in a state would have no significant effects of murder in that state;

⁷ SAMUEL WALKER ET AL., *THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA* (4th ed. 2006).

⁸ MATHEW ROBINSON, *JUSTICE BLIND? IDEALS AND REALITIES OF AMERICAN CRIMINAL JUSTICE* (2nd ed. 2005).

- 87% said debates about death penalty distract law makers from focusing on real solutions to crime problems; and
- 0% said the death penalty significantly reduces homicide.⁹

The authors of the above research acknowledged that they did not actually survey death penalty experts:

[W]e must first answer the question of how to define “expert.” One plausible definition is anyone who has published peer-reviewed research on the death penalty and deterrence. Surely those who have been active researchers in an area over many years are experts. However, such an approach has limited utility because 1) it is possible that only death penalty abolitionists, for whatever reasons, are motivated to conduct such research, 2) there would be a problem in differentially weighing the opinions of scholars who have published several acclaimed deterrence studies in major criminology journals from those whose research is less abundant or respected, and 3) surveying researchers in the field of deterrence would ask them to, in effect, evaluate their own work.¹⁰

For these reasons, the authors chose not to survey scholars who had published in the area of deterrence, but instead chose to survey presidents of major criminological organizations. This is a significant limitation because presidents of major criminological associations are not necessarily experts on capital punishment.

In the current study, I survey published scholarly experts. The three limitations identified above thus apply to this study. That is, authors of books and articles on capital punishment may express views on capital punishment that lack an empirical basis, some respondents in the study may have greater expertise than others, and respondents may be reporting findings from their own research. Yet, this study

⁹ Michael L. Radelet & Ronald L. Akers, *Deterrence and the Death Penalty: The Views of the Experts*, 87 J. CRIM. L. & CRIMINOLOGY 1 (1996).

¹⁰ Radelet & Akers, *supra* note 9 (online version quoted).

advances our knowledge on the administration of capital punishment: by surveying those most familiar with the relevant empirical research.

Methodology

My survey addressed theoretical justifications for, and alleged problems with, capital punishment. The survey was meant to assess the following:

- whether capital punishment experts thought the death penalty met its goals;
- whether it was plagued by significant problems;
- whether experts support capital punishment (or alternatives such as life imprisonment without the possibility of parole);
- whether they favored a temporary halt on executions and/or abolition of capital punishment.

Dictionary.com defines “expert” as: “A person with a high degree of skill in or knowledge of a certain subject.”¹¹ Wikipedia defines an expert as “someone widely recognized as a reliable source of knowledge, technique, or skill whose judgment is accorded authority and status by the public or their peers. Experts have prolonged or intense experience through practice and education in a particular field.”¹²

Modifying the definitions of expert above leads to my definition of a capital punishment expert: A capital punishment expert is a person with a high degree of knowledge of capital punishment, is widely recognized as a reliable source of knowledge due to prolonged experience through practice and education related to the

¹¹ Dictionary.com, entry for “expert” (2006), available at <http://dictionary.reference.com/browse/expert>.

¹² Wikipedia.com, entry for “expert” (2006), available at <http://en.wikipedia.org/wiki/Expert>.

death penalty, and whose judgment is accorded authority and status by the public or their peers.

Given the definition of expert above, I selected a sample of experts from all capital punishment scholars who had recently published books and articles on the death penalty.

To locate academic or scholarly experts on capital punishment, I utilized two computerized databases in order to search for books and articles on the subject. To locate books, I used the WorldCat database. WorldCat contains more than 40 million records cataloged by Online Computer Library Center (OCLC) member libraries throughout the world, including primarily books, but also other manuscripts. WorldCat does not include individual articles in journals.¹³ For articles, I used the Academic Search Elite and Academic Search Premier databases. They provide abstracts and indexing for almost 8,200 titles, including more than 3,600 peer-reviewed titles, as well as searchable cited references for 1,000 titles in the social sciences and other areas.¹⁴

Using these databases allowed me to locate every book and article indexed in these sources on the subject of “capital punishment” or “death penalty.” Given the enormous numbers of books and articles published on these topics – nearly 7,000 books and articles published in English, I ultimately limited my search to books and articles

¹³ Appalachian State University, Carol Grotnes Belk Library & Information Commons (2006). About WorldCat, *available at* <http://www.library.appstate.edu/reference/about/worldcat.html>.

¹⁴ Appalachian State University, Carol Grotnes Belk Library & Information Commons (2006). About WorldCat, *available at* <http://www.library.appstate.edu/reference/about/worldcat.html>.

published between 2001-2005. This resulted in 686 books and 390 articles.¹⁵ Limiting the search to works published between 2001 and 2005 assures I would include those scholars who are currently active in death penalty scholarship while it also eliminates several notable scholars.

Entries were eliminated from the population if they were retrieved in error (e.g., the entry was not related to the topic), duplicates, or if they dealt with: a) the death penalty in another country; or b) some aspect of capital punishment that was very limited in nature (e.g., execution of juveniles, IQ and the death penalty, mental illness and capital punishment, religion or the Bible and the death penalty, the use of DNA in the capital punishment process). I maintained all works that dealt with the issue of capital punishment generally.

The final population of capital punishment books and articles was made up of 240 authors. Of the 240 authors identified using these databases, 44 individuals had published at least one book and one article on capital punishment. Another 73 individuals had published a book on the topic but no articles. Finally, 123 scholars had published at least one article on the death penalty. Many of the authors of books and articles were one-time authors who might not reasonably be considered experts given their limited research on the topic. Most of these were eliminated from the population for this reason. Only 16 authors of single articles remained in the population, and they were maintained because of the particular topics of their articles. Authors of single

¹⁵ I searched each database using the terms “capital punishment” OR “death penalty” in the “Subject” field, specifying the language of English, and for books only using the WorldCat database, and refereed articles only in scholarly (peer reviewed) journals using the Academic Search databases.

articles on topics directly related to the survey were maintained in the sample, including justifications for capital punishment (retribution, deterrence, and incapacitation) and alleged problems with capital punishment (race, class, and gender bias, innocence, and so forth).

The final population of death penalty experts was made up of 133 scholars. A random selection of 90 experts was chosen for the sample because the survey was lengthy (12 pages) and required respondents to write short answers to numerous questions. Another reason to keep the sample below 100 experts was because each respondent would be providing up to 10 names of people they thought were experts (my definition of expert includes a person “whose judgment is accorded authority and status by the public or their peers”).

I attained the contact information of each of the 90 experts included in the study and first sent each expert an email to let them know I would be sending the survey soon in the mail. Then, I mailed each expert a copy of the survey and followed that up with another email reminding them of the deadline by which the survey should be sent back to me in the stamped, return envelopes I provided. Shortly thereafter, I sent copies of the survey via email to all potential respondents. Just before the deadline for participation, I contacted the experts again via email and reminded them of the deadline. I also sent one final email shortly after the deadline as a last call for participation.

The respondents who participated in the study identified a total of 82 different individuals who they considered to be experts.¹⁶ Of these, only about one-quarter (21 individuals) were identified by more than 2 respondents. All but 6 of these 21 individuals were already included in the sample based on their recently published work, and the 15 individuals already in the sample were identified by an average of 8.7 respondents. Stated differently, 15 of the 21 individuals (71.4%) who were selected by more than two of the experts in this study were already included to receive the survey.

I added the 6 additional experts to the sample. Each of these 6 individuals was identified by an average of 6 respondents.

The total sample of death penalty experts was thus 96 individual scholars who either had written books and/or articles on the death penalty between 2001 and 2005, or were selected by more than two of these scholars as experts on the death penalty.

This approach is not without limitations. Adding 6 new scholars to the sample and eliminating books and articles based on their limited focus means the selection process was not entirely random. Yet, this was my effort to capture the opinions of those doing work on capital punishment generally, and to add experts widely recognized by scholars to my sample of death penalty experts, based on my definition of a capital punishment expert.

After sending out surveys to each of the 96 individuals, I learned that two had recently died. Thus, my sample size was now down to 94 experts (others had moved to

¹⁶ This was in response to the question: "Please list UP TO 10 individuals you consider to be death penalty experts."

new jobs and may have never received the surveys). I received completed surveys from 45 respondents. Thus, 48% of the 94 experts chosen for the sample participated in the study. Ideally, a higher number of responses could have been potentially more useful, but a response rate of 48% is considered adequate for studies conducted via the mail.¹⁷

Some possible reasons why the response rate was not higher include the length of the survey (12 pages), the controversial nature of some of the questions, and because some individuals did not want to be identified. I also did not contact any potential respondent by telephone so not to bias their answers, which likely lowered the response rate.

In spite of not having a higher rate of participation by death penalty experts, most of the highly published experts and those widely considered to be experts by my original sample did participate in this study. Since only 11 of the surveys were returned anonymously, I knew who filled out most of the surveys. Due to length, only summaries of comments of capital punishment scholars are provided in this Article.

Findings: The Experts' Views

1. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT ACHIEVES RETRIBUTION

As shown in Table 1, the largest portion of capital punishment experts (36%) responded that they did not think the death penalty achieves retribution, but a sizable portion of death penalty experts (31%) indicated that they thought capital punishment

¹⁷ EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 100 (10th ed. 2003).

achieves retribution (“provides justice for murder victims, their families, and society at large”). Another third of the experts (33%) said they were unsure.

TABLE 1

Does capital punishment, as actually practiced in the United States, achieve retribution (i.e., provide justice for murder victims, their families, and society at large)?

Yes	31%
No	36%
Unsure	33%
N=	42

Those respondents who said the death penalty achieves retribution indicated that for some crime victims’ families, execution produces some sense of relief and justice. Those respondents who said the death penalty does not achieve retribution tended to indicate that crime victims’ families typically do not feel a sense of relief or justice after an execution. Further, respondents who answered yes suggested that the length of time it takes to carry out executions serves to draw out the process of healing after a murder. Perhaps most important is that, when judged by the standard of whether capital punishment generally leads to retribution, the experts indicated that capital punishment does not achieve the goal of retribution because of the comparatively few executions. Finally, the experts suggested that retribution can be accomplished through alternatives to capital punishment such as long terms of imprisonment or life imprisonment without the possibility of parole (LWOP).

2. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT ACHIEVES DETERRENCE

As shown in Table 2, only a small fraction of death penalty experts (9%) indicated that they thought capital punishment achieves deterrence (“prevents future

murders by causing fear in would-be murderers so that they do not commit murder”). The largest portion of capital punishment experts (79%) responded that they did not think the death penalty achieves deterrence, and 12% said they were unsure.

TABLE 2

Does capital punishment, as actually practiced in the United States, achieve deterrence (i.e., prevent future murders by causing fear in would-be murderers so that they do not commit murder)?

Yes	9%
No	79%
Unsure	12%
N= 43	

Those respondents who said the death penalty achieves deterrence referred to recent econometric studies which purport to show a deterrent effect of executions on murder.¹⁸

Those respondents who said the death penalty does not achieve deterrence were adamant that executions do not deter murder and they referred both to historical and contemporary evidence (including replications of the econometric studies) that the executions do not deter murder.¹⁹ The main reason capital punishment does not deter

¹⁸ E.g., Harold J Brumm & Dale O. Cloninger, *Perceived Risk of Punishment and the Commission of Homicides: A Covariance Structure Analysis*, 31 J. ECON. BEHAV. & ORG. 1 (1996); Dale O. Cloninger & Roberto Marchesini, *Execution and Deterrence: A Quasi-Controlled Group Experiment*, 33 APPLIED ECON. 569 (2001); Dale O. Cloninger & Roberto Marchesini, *Execution Moratoriums, Commutations and Deterrence: The Case of Illinois* (Econ. Working Paper Archive, Working Paper No. 0507002, 2005), available at <http://econwpa.wustl.edu:80/eps/le/papers/0507/0507002.pdf>; Hashem Dezhbakhsh, Paul H. Rubin & Joanna M. Shepherd, *Does Capital Punishment Have a Deterrent Effect? New Evidence from Postmoratorium Panel Data*, 5 AM. L. & ECON. REV. 344 (2003); H. Noci Mocan & R. Kaj Gittings, *Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment*, 46 J.L. & ECON. 453 (2003); Paul R. Zimmerman, *State Executions, Deterrence, and the Incidence of Murder*, 7 J. APPLIED ECON. 163 (2004); Joanna M. Shepherd, *Murders of Passion, Execution Delays, and the Deterrence of Capital Punishment*, 33 J. LEGAL STUD. 283 (2004).

¹⁹ Richard Berk, *New Claims About Executions and General Deterrence: Deja Vu All Over Again?*, 2 J. EMPIRICAL LEGAL STUD. 303 (2005); John J. Donohue & Justin Wolfers, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, 58 STAN. L. REV. 791 (2005); Public Policy Choices and Deterrence and the

murder, according to the experts, is that executions are extremely rare relative to the number of murders.

3. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT ACHIEVES INCAPACITATION

As shown in Table 3, most death penalty experts (64%) indicated that they think capital punishment achieves incapacitation (“prevents future murders by killing murderers who would murder again”). Yet, a sizable portion of capital punishment experts (24%) responded that they did not think the death penalty achieves incapacitation, and 12% said they were unsure.

TABLE 3

Does capital punishment, as actually practiced in the United States, achieve incapacitation (i.e., prevent future murders by killing murderers who would murder again)?

Yes	64%
No	24%
Unsure	12%
N=	41

Those respondents who said the death penalty achieves incapacitation indicated that for those murderers who are executed, they are certainly incapacitated and therefore unable to commit future murders. Yet, even a majority of experts who said that executions achieve incapacitation stated that most murderers do not murder again and thus need not be executed. Even those who indicated that executions incapacitate offenders commonly noted its rare nature, calling into question its incapacitative value.

Death Penalty: A Critical Review of New Evidence: Hearing on H. B. 3834 Before the Joint Comm. on Judiciary of Mass. Leg. (July 14, 2005) (statement of Jeffrey Fagan); Ted Goertzel, Capital Punishment and Homicide : Sociological Realities and Econometric Illusions, *Skeptical Inquirer*, July-Aug. 2004, available at http://www.findarticles.com/p/articles/mi_m2843/is_4_28/ai_n6145278.

Further, they noted that predicting future dangerousness is impossible and that incapacitation can be achieved through other means such as life imprisonment without the possibility of parole. Those respondents who said the death penalty does not achieve incapacitation indicated that the penalty is used too infrequently to meaningfully impact murder rates. Finally, they noted that incapacitation through capital punishment also poses enormous costs, including financial costs and a significant risk of executing the innocent.

4. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT IS RACIALLY BIASED

As shown in Table 4, a very large majority of capital punishment experts (84%) believes that the death penalty is “plagued by a racial bias” of some kind.²⁰ Some respondents (7%) do not think that the death penalty is “plagued by a racial bias” of some kind, and a few respondents (9%) suggested that they were unsure.

TABLE 4

Is American capital punishment plagued by a racial bias of any kind?

Yes	84%
No	7%
Unsure	9%
N=	43

Those respondents who said the death penalty is racially biased indicated overwhelmingly their belief that the racial bias in capital punishment does not pertain to race of defendant but rather to race of victim, so that killers of white victims are far

²⁰ The verb plague is defined as “to smite, infest, or afflict with or as if with disease, calamity, or natural evil”; “to cause worry or distress to” (as in to hamper or burden); “to disturb or annoy persistently”; “To pester or annoy persistently or incessantly” (as in harass); “To afflict with or as if with a disease or calamity.” The question I was asking was is the death penalty as actually practiced in the United States infested with, afflicted with, hampered by, or burdened by a bias. See Merriam-Webster Online Dictionary, Entry for “plague” (2006), available at <http://m-w.com/cgi-bin/dictionary>; Dictionary.com, Entry for “plague,” *supra* note 11.

more likely to be executed than killers of black victims. A few respondents also suggest that killers of white females are most likely to be executed. Those respondents who said the death penalty is not racially biased discussed the waning significance of race of defendant effects.

5. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT IS CLASS BIASED

As shown in Table 5, a very large majority of capital punishment experts (80%) believes that the death penalty is “plagued by a social class bias” of some kind. Some respondents (4%) do not think that the death penalty is “plagued by a social class bias” of some kind, and more (16%) suggested that they were unsure.

TABLE 5

Is American capital punishment plagued by a social class bias of any kind?

Yes	80%
No	4%
Unsure	16%
N=	45

Those respondents who said the death penalty is class biased indicated overwhelmingly their belief that the main problem in terms of social class is inadequate legal representation for the poor in capital cases, although some respondents suggested there is a class bias in all of criminal justice. The respondent who said the death penalty is not class biased did not provide any explanation for his or her answer.

6. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT IS USED AGAINST THE INNOCENT

As shown in Table 6, a clear majority of capital punishment experts (76%) indicated that they thought the death penalty had been “ever used against the innocent,” but many were also unsure (22%). Only one respondent (2%) indicated that

he or she thought the death penalty had never been used against the innocent.

TABLE 6

Is American capital punishment ever used against the innocent?

Yes	76%
No	2%
Unsure	22%
N=	42

Those respondents who said the death penalty is used against the innocent tended to discuss the long lists of those wrongly convicted and sentenced to death that have been created by groups like the Death Penalty Information Center and the Innocence Project,²¹ although some respondents also discussed individual cases of executions of individuals they thought to be innocent. The respondent who said the death penalty is not is used against the innocent refuted these lists and pointed out that many of the alleged innocent are actually guilty.

7. EXPERT OPINION ON WHETHER CAPITAL PUNISHMENT HAS OTHER PROBLEMS

In response to the open-ended question as to whether there were any other problems with the way capital punishment was administered, most death penalty experts (80%) said yes. In fact, only 10% said no. An additional 10% responded with unsure. Table 7 illustrates these values.

TABLE 7

In your opinion, are there any other problems (not addressed in the questions above) with the way capital punishment is practiced in the United States?

Yes	80%
No	10%
Unsure	10%
N=	39

²¹ For more information, see <http://www.innocenceproject.org/> and Death Penalty Information Center (2006); *Innocence and the Death Penalty*, available at <http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>.

Those respondents who said the death penalty has other problems indicated a long list of other problems, including its excessive costs; the length of time it takes to complete the appeals process; problems with jury selection, jury instructions, interpreting how to weigh aggravating and mitigating circumstances; the problematic nature of victim impact statements; ineffectiveness of counsel; politics; geographic disparities; arbitrariness; lack of proportionality; judicial review; inadequate resources and representation for the poor; unwillingness of parole boards or governors to grant clemency in deserving cases; improper application; conditions on death row and length of confinement; effects of the death penalty on families of defendants; potential for a brutalizing effect; and executing the mentally ill. Others reiterated that the punishment is immoral, the methods of execution are inhumane, and that the diminished reputation of United States in the international community.

Those respondents who said the death penalty does not have other problems tended not to provide any justifications for their answers.

8. DEGREE OF SUPPORT BY EXPERTS FOR CAPITAL PUNISHMENT

As shown in Table 8, a very large majority of death penalty experts in this study (80%) indicated that they are opposed to capital punishment. Only 9% of experts who responded to the survey expressed support for capital punishment, and 11% said they were not sure.

TABLE 8

Do you believe in capital punishment/the death penalty, or are you opposed to it?
Believe in 9%

Opposed	80%
Unsure	11%
N= 44	

Those respondents who said they believe in the death penalty indicated that the punishment fit the crime of murder and its popular support is consistent with democratic principles. Those respondents who said they do not believe in the death penalty asserted in part that the death penalty does not meet its goals of retribution, deterrence and incapacitation; it is plagued by race and class bias as well as other forms of arbitrariness; and the serious risk of executing the innocent.

9. EXPERT OPINION ON THE APPROPRIATE SENTENCE FOR CONVICTED MURDERERS

When asked what the most appropriate punishment is for someone convicted of first-degree murder, all capital punishment experts who participated in this study answered “life imprisonment without parole” (37%) or “other” (63%). As shown in Table 9, no experts (0%) indicated capital punishment. Other punishments specified by respondents included life imprisonment with the opportunity for parole, twenty-five years imprisonment to life, and other terms of imprisonment (e.g., a long term of imprisonment with parole consideration after 10 years, life with the possibility of parole after 20 years, life imprisonment with the possibility of parole after 25 years, 50 years with the possibility of parole after 25 years).

TABLE 9

What is the most appropriate punishment for someone convicted of first-degree murder?

Death sentence	0%
LWOP	37%
Other	63%
N= 43	

Those respondents who said the most appropriate punishment was LWOP indicated that it achieves the goal of incapacitation without the risk of executing the innocent as well as saving society money. Those respondents who answered “other” tended to suggest very long terms of imprisonment dependent on the nature of the crime and the defendant. They explained that LWOP was not acceptable to them because such a sentence interfered with a chance at redemption and was inconsistent with maturation away from crime and violence due to aging.

10. DEGREE OF SUPPORT BY DEATH PENALTY EXPERTS FOR A MORATORIUM OF EXECUTIONS

As shown in Table 10, the vast majority of death penalty experts (79%) answered in the affirmative to the question, “Do you personally favor a temporary halt to executions (moratorium) in the United States while the practice of American capital punishment is studied?” Another 14% of experts answered no and 7% said they were not sure.

TABLE 10

Do you personally favor a temporary halt to executions (moratorium) in the United States while the practice of American capital punishment is studied?

Yes	79%
No	14%
Unsure	7%
N= 44	

Those respondents who favor a moratorium indicated that it was “better than nothing,” although they tended to prefer outright abolition. Their stated rationales were varied but focused on the ineffectiveness of capital punishment and the very real problems with its application in the United States. Those respondents who do not favor

a moratorium said the punishment had been studied enough, that we already know the problems with the punishment, or that a moratorium was just a ploy by abolitionists to halt the death penalty.

11. DEGREE OF SUPPORT BY DEATH PENALTY EXPERTS FOR ABOLITION OF CAPITAL PUNISHMENT

As shown in Table 11, the vast majority of death penalty experts (84%) also answered in the affirmative to the question, “Does capital punishment, as actually practiced in the United States, have problems that are serious enough to make it unacceptable as a government-sanctioned punishment (so that states should permanently stop executing convicted murderers)?” Another 14% of experts answered no and only one respondent (2%) indicated he was unsure.

TABLE 11

Does capital punishment, as actually practiced in the United States, have problems that are serious enough to make it unacceptable as a government-sanctioned punishment (so that states should permanently stop executing convicted murderers)?

Yes	84%
No	14%
Unsure	2%
N=	44

Those respondents who favor abolition justified their answers again based on the ineffectiveness of capital punishment and the very real problems with its application in the United States. Those respondents who do not favor abolition referred back to their core belief in the punishment as well as the fact that it is supported by the public.

Conclusion

Expert opinion is solidly opposed to capital punishment. According to the

experts, capital punishment fails for two primary reasons. First, most experts indicated that the death penalty does not achieve retribution. A very large majority indicated that they thought the death penalty does not achieve deterrence of murder or other crimes. Although most capital punishment experts indicated that they thought capital punishment achieves incapacitation, many concluded that the size of the effect was small due to the infrequency of executions and not without significant costs, and that incapacitation could be achieved through other means, such as LWOP.

Second, most experts indicated that the application of the death penalty is plagued by significant problems. The experts say the death penalty is racially and class biased and likely to be used against the innocent. Further, a large majority of capital punishment experts listed other problems with the reality of capital punishment in America, including excessive costs; lengthy appeals; problems with jury selection and jury instructions; interpreting how to weigh aggravating and mitigating circumstances; the problematic nature of victim impact statements; ineffectiveness of counsel; politics; geographic disparities; a lack of proportionality, judicial and appeals review; inadequate resources for representation for the poor; the unwillingness of parole boards or governors to grant clemency in deserving cases; improper application when the victim is culpable; the immoral nature of the punishment; inhumane methods of execution; and that the damaged reputation of the United States.

The experts unanimously favored alternatives to capital punishment for convicted first-degree murderers, such as life imprisonment with the opportunity for parole and other very long prison sentences depending on the nature of the offender

and the offense. Although 78% of capital punishment experts who responded to this survey stated their opposition to capital punishment, not a single expert (0%) answered that the most appropriate sentence for convicted murderers was death. Instead, the experts recommended LWOP (37%) or some other term of imprisonment (63%).

The vast majority of death penalty experts said they supported a temporary halt to executions (moratorium) in the United States so that the death penalty can be further studied. Moreover, the vast majority supported its abolition because its several deficiencies render it “unacceptable as a government-sanctioned punishment.”