DEATH ROW KIDS

Finding a Better Solution to the Juvenile Death Penalty

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Kristy L. Archer

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Faculty Advisor's Approval Nicholas A. Gunnarsson

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-INTRODUCTION-

In the maximum-security Indiana Women's Prison in Indianapolis, Paula Cooper, a twenty-six year old woman, sits in prison and awaits the death penalty. She is the youngest woman ever sentenced to death. On May 14, 1985, at the age of fifteen, Paula and three of her friends went to the house of seventy-eight year old Ruth Pelke. After giving an excuse of wanting Bible school lessons, the girls entered the house, ransacked it, and then brutally stabbed Ruth to death (Broydo, 1998, p. 16). Without a trial or a jury, the judge sentenced Paula to die in the electric chair (Broydo, 1998, p. 16). She was blamed for Ruth's death, while the other three accomplices only received long terms of imprisonment (Broydo, 1998, p. 16).

Although Paula possesses the laugh and voice of the average young adult, she is experienced beyond her years. Throughout her childhood, Paula was abused by her father. Her mother's solution was to attempt suicide and to take Paula with her. When her mother's plan was not followed through, Paula's response was to become a chronic run-away (Broydo, 1998, p.17). The judge of her case never considered the fact that Paula was a product of an unloving family (Broydo, 1998, p. 17). Paula's attorney felt that her personal background was not presented strongly at her sentencing trial. He believes that if the past had been addressed, then the severe punishment would not have resulted (Broydo, 1998, p. 18).

Paula's case adds to the controversy of juvenile capital punishment. There are some supporters who say that a teenager capable of committing such

a brutal murder deserves the "chair". On the other hand, Paula was fifteen at the time and did not know the consequences of murder. Even though she committed an adult crime, did she really deserve the death penalty? Paula's friends face long imprisonment which allows the girls time to mature and to rehabilitate (Broydo, 1998, p. 18). Capital punishment is an excessive punishment for juveniles; rehabilitation, through prison or community programs, results in the same crime deterrent and provides juvenile delinquents a second chance. In addition, these condemned juveniles are stripped of ever providing some utility and serving a purpose in our society.

-U.S. HISTORY OF JUVENILE CAPITAL PUNISHMENT-

Paula's case is not the first time a juvenile has faced the death penalty as punishment to crime. In order to better understand the controversy briefly explore the history of capital punishment and juvenile capital punishment. The word "capital" comes from the Latin word, meaning "head" (Bedau, 2000). The idea of capital punishment began centuries ago when the rulers and governments of the Western Hemisphere decapitated any unlawful citizen (Streib, 1987, p. 22). The first records of capital punishment in America appeared in the colonies in the middle sixteen hundreds (Streib, 1987, p. 24). Contrary to European practices, beheading was not the method used to punish the capital offenders (Streib, 1987, p. 39).

The first record of juvenile capital punishment in America took place in the Massachusetts Bay Colony in 1642 (Amnesty "Facts and...", 1999). Seventeen year old Thomas Graunger was executed for indecent behavior (Eskin, 1998, p. 4). Over the next century, the death penalty was more commonly used. Beginning in the eighteen hundreds, many crimes were punishable by death (Amnesty "Facts and...", 1999). The crime categories ranged from arson to theft to murder (Amnesty "Facts and...", 1999). Many consider the offenses, then classified as capital crimes, minor in comparison to those of today. The government caught more minors in the act due to the strict laws (Ewing, 1990, p. 89). In the seventeenth and eighteenth centuries, the majority adhered to a traditional theory (Welsh, 1996, p. 60). The citizens, according to the theory, acknowledged a person's "natural rights" to include the "right of life" (Welsh, 1996, p. 60). Consequently, the right to live was forfeited as soon as an act of crime was committed without a legitimate excuse (Welsh, 1996, p. 61). Thus, if the person was found guilty of the crime then he or she possessed no moral value and deserved no respect from society (Welsh, 1996, p. 61). The person, or criminal, faced death as the punishment of his or her offense (Welsh, 1996, p. 62). Unfortunately, before the twentieth century, the public also took justice into its own hands and illegally executed unlawful juveniles by lynching (Scheb, 1996, p. 259). A centralized government court system was needed to handle the cases involving juvenile criminals.

In 1899, after the establishment of the juvenile justice system, the number of juvenile executions began to decrease (Jackson, 1998, p. 391). The

beginning of the new century marked the era of intervention by the judicial sentencing system to stop serious law violations (Jackson, 1998, p. 391). By this time, the government recognized its irresponsibility. The judges in the system wanted to predict the future behavior of the youth rather than debate over the case of past crimes (Amnesty "Facts and....", 1999). There was no need to subject juveniles to the same harsh punishments that adults received. The juvenile courts provided care, discipline, and love that a parent should have provided (Amnesty "Facts and...", 1999). The emphasis was on rescue instead of punishment (Amnesty "Facts and...", 1999).

The judges and social workers of the system received the authority to act as a foster parent to the delinquents (Jackson, 1998, p. 392). They had the power to force the child to do what the system saw as the best solution to the crime (Jackson, 1998, p. 392). The system suffered from attempting to match its "idealistic rhetoric with realistic action" (Streib "The Juvenile Death...", 1999). Even though the juvenile system was in working condition in the early nineteen hundreds and had originally reduced the number of juveniles executed, the juvenile death rate peaked in the 1940's with fifty-one executions (Streib "The Juvenile Death..., 1999). The government's efforts to remove juveniles from the excessive punishments of the death penalty were not successful through the establishment of a juvenile court system.

In 1967, the Supreme Court addressed the concept and legality of the death penalty as a punishment, not only for juveniles, but also as a punishment for any criminal (Witkin, 1997, p. 39). While the Supreme Court Justices heard

the case *Furman v. Georgia,* all executions were suspended until the legality of the death penalty was decided (Eskin, 1986, p. 25). Anthony Amsterdom, the defense attorney for *Furman*, argued that the death penalty violated the eighth and fourteenth amendments (Eskin, 1986, p. 25). The eighth amendment prohibits "cruel and unusual punishment", and the fourteenth amendment provides for equal protection of laws (Amnesty "Facts and Figures..., 1999). Through his argument, he convinced the Justices of the arbitrariness of the penalty. Finally, in 1972, the Justices ruled capital punishment unconstitutional because it administered in an unjust manner (Eskin, 1986, p. 25).

During the same time period, the Justices also revised the fundamental workings of the juvenile court system through the *Kent*, *Gault*, and *Winship* cases (Schmalleger, 1997, p. 387). According to these case decisions, juvenile judges were no longer allowed to rule in the best interests of the child (Schmalleger, 1997, p. 387). These new case decisions caused more controversy over the death penalty issue. Most judges at the state juvenile court level abided by the new rules for sentencing (Schmalleger, 1997, p. 388). If they felt the death penalty was the only punishment to the committed crime, then they sentenced the juvenile to death. However, the public and several defense attorneys then accused the juvenile judges of sentencing similar cases to dissimilar penalties (Schmalleger, 1997, p. 388). Granted that some of the different sentences given for the same crimes resulted due to different laws from state-to-state; even so, the unbalanced rulings within the same state were enough to again convince the Supreme Court Justices of the unfairness of the sentencing of the death penalty

(Scheb, 1996, p. 260). The rulings in the four Supreme Court cases finally resulted in the conversion of over six hundred death sentences to long terms of imprisonment (Schmalleger, 1997, 389).

The Justices' new decisions on the death penalty forced each state to rewrite its capital punishment sentencing procedure (Shapiro, 2000, p. 43). Each individual state created its own new standards in the trial process (Shapiro, 2000, p. 43). The procedure changed from a one trial to a two trial process (Scheb, 1996, p. 254). During the initial trial, the jury would decide the defendant's guilt or innocence (Scheb, 1996, p. 254). After a guilty verdict, according to the new law, the case was automatically appealed to the state's Supreme Court (Scheb, 1996, p. 255). There a second judge would determine the deserved punishment (Scheb, 1996, p. 255). During the penalty trial, the second trial, the jurors and judge were able to consider the background and character of the accused before deciding his or her fate (Scheb, 1996, p. 256). Since the state governments established safe guards, according to the new laws, to ensure that no penalty would be given to adult or juvenile in an "arbitrary or capricious manner", the Justices reinstated the death penalty (Eskin, 1986, p. 26).

Although each state rewrote its procedural law, not every state legislated the death penalty. As of 1992, fourteen states did not approve of the death penalty as an acceptable punishment for criminal acts (Chiasson, 1998, p. 51). The other thirty-six states approved and have employed the death penalty in capital crimes (Chiasson, 1998, p. 51) See Table 1. Nevertheless, each state specified a different age requirement for the death penalty. As of 1987, fifteen

states enforced the death penalty at the minimum age of eighteen, and nine enforced the death penalty at the minimum age of sixteen (Death "Executions of...", 1999). Just as the age varies, the execution methods vary from state to state, buy only electrocution, gas chamber, lethal injection, hanging, and firing squad are legal in the United States. (Death "Executions of...", 1999)

The state governments created new laws regarding the court process, which affected the juvenile court system also. When a youth was tried in the juvenile court system, the punishment was limited (Shapiro, 2000, p. 45). A juvenile court judge only had the authority to place a delinquent on probation or in an institution until the age of twenty-one (Shapiro, 2000, p. 45). In the case of severe crimes, the public was not secure in allowing the juvenile his freedom after such a short time of restraint. More serious juvenile offenses began to be tried in the criminal court system in the modern era of the juvenile system (Shapiro, 2000, p. 45). When a juvenile was tried in the criminal courts, he or she was again susceptible to the excessive punishments for adult crime (Shapiro, 2000, p. 45).

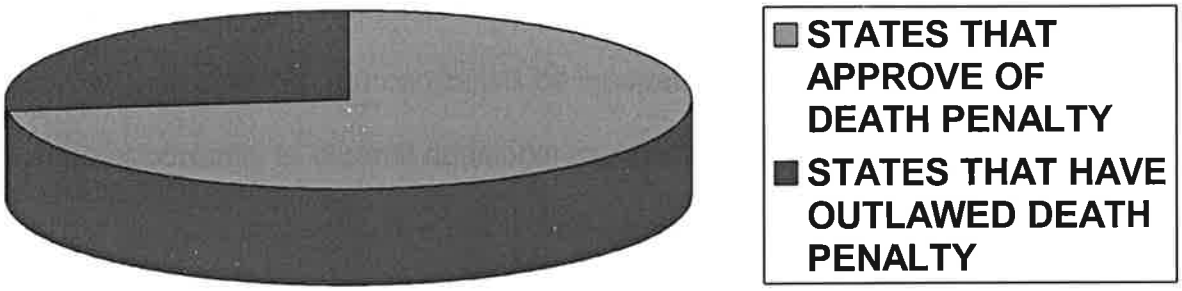
Since 1642, juvenile capital punishment has existed and has been debated. Over the past three hundred and fifty years, two hundred and eighty-one juvenile executions have occurred (Amnesty "Facts and...", 1999). The youngest child ever executed was ten years old (Amnesty "Facts and...", 1999). Even though, teenage death penalties were more common before the nineteen hundreds, ninety percent of juvenile capital crime is now committed by sixteen and seventeen year olds (Broydo, 1998, p. 17). Two out of three juveniles on

death row have previous criminal records for felony convictions (Broydo, 1998, p. 17). While, eighty percent of those juveniles on death row are there because they have been accused of committing murder and another fifteen percent have been accused of rape (Broydo, 1998, p. 18). Over the past several years the number of juveniles sentenced to death has been increasing – thirty-one in 1994 and fifty-six in 1995 (Witkin, 1997, p. 42). It is apparent that the death penalty is not the proper way to punish young criminals.

Unfortunately, in America, there are still supporters of the death penalty for juveniles. In July of 1989, the Supreme Court Justices decided that it was not "cruel and unusual" to execute a juvenile of sixteen or seventeen years of age (Hodgkinson, 1998, p. 7). As a result of the decision, two boys, Kevin Stanford (KY) and Heath Wilkins (MO), and thirty-six other juveniles remain on death row for committing murders before the age of eighteen (Jackson, 1998, p. 393). Ironically, the Justices' 1989 decision also influenced the public's view on juvenile capital punishment (Hodgkinson, 1998, p. 7). The support for the death penalty for juveniles has decreased over the past decades however, fifty-seven percent are still in favor of the death penalty for mature juveniles (Hodgkinson, 1998, p. 8). The public wants to teach juvenile offenders to take responsibility for their actions. Juveniles believe that they can act in an unlawful manner and then use their age as an excuse. The juveniles need a reminder of the "moral order by which [Americans}...live a human beings" (Hodgkinson, 1998, p. 9)

TABLE 1

- CURRENT U.S. POLICY ON CAPITAL PUNISHMENT-



SOURCE: Chiasson, John. "The Kids on Death Row" *Time*. 19 January 1998 Vol. 151 No. 2, p. 48-52.

-THE DEBATE-

The focus of the debate on capital punishment – adult or juvenile – centers on three dichotomous variables: deterring versus incapacity, premeditation versus a spontaneous act, and guilt versus innocence. One of the chief arguments of death penalty advocates is that the execution of convicted murderers deter others from committing murder for fear that they will also be executed, and also that murderers will be incapacitated: once dead, they will have no opportunity to commit additional murders (Justice Center "Focus on...", 1999). This is an incapacitative, not a deterrent, effect of executions (Justice Center "Focus on...", 1999). Death penalty opponents dispute the deterrent effect of capital punishment, arguing that few murderers rationally weigh the possibility that they might face the death penalty before committing a murder (Berlow, 1998, p. 52). The key question is whether the death penalty has a unique deterrent effect over other forms of punishment. All the available research suggests that the death penalty would not reduce the homicide rate (Berlow, 1998, p. 53).

The majority of homicides are not premeditated, and there must be doubt that any punishment would "deter" the perpetrators (Justice Center "Focus on...", 1999). Persons who commit murder and other crimes of personal violence either premeditate them or they do not (Justice Center "Focus on...", 1999). If the crime is premeditated, the criminal ordinarily concentrates on escaping detection, arrest, and conviction (Justice Center "Focus on...", 1999). The threat of even the severest punishment will not deter those who expect to escape detection and

arrest. If the crime is not premeditated, then it is impossible to imagine how the threat of any punishment could deter it. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended (Berlow, 1999, p. 54). Impulsive or expressive violence is inflicted by persons heedless of the consequences to themselves as well as to others.

In 1991 over half of homicides were committed during quarrels or bouts of temper – where the perpetrators are not usually in a state of mind to consider the consequences of their acts (Berlow, 1999, p. 55). Nor are killers who act under the influence of alcohol or drugs (Berlow, 1999, p. 55). Nor are those who are mentally disturbed (Berlow, 1999, p. 55). Over the past decade, the victim was a member of the killer's family, a lover or a cohabitee in about 40% of all cases (Duncan, 1998, p. 4). If, however, severe punishment can deter crime, then long term imprisonment is severe enough to cause any rational person not to commit violent crimes. The vast preponderance of the evidence shows that the death penalty is no more effective than imprisonment in deterring murder and that it may even be an incentive to criminal violence in certain cases (Schmalleger, 1997, p. 388).

In the U.S. – where the death penalty is available in 38 of 50 states a paradox exists. Rates of homicide have declined in some executing states but have increased in others (Scheb, 1996, p. 260). Similarly, homicide rates have declined in some non-executing states, but have increased in others (Scheb, 1996, p. 260). Three major cities in Texas, the state which executes more

prisoners than any other, have some of the highest murder rates in the U.S. (Streib "The Juvenile...", 1999). Evidence also indicates that homicide rates usually increase in specific states in the month following an execution (Streib "The Juvenile...", 1999). Also, some research suggests that the death penalty increases the number of homicides through a "brutalization" effect (Justice Center "Focus on...", 1999). Finally, death penalty opponents do not dispute that execution incapacitates executed murderers, but argue that life imprisonment without the possibility of parole is equally incapacitating (Hawkins, 1998, p. 14). Death penalty opponents emphasize the sacredness of life, arguing that killing is always wrong whether by individual or by state, and that justice is best served through reconciliation (Hawkins, 1998, p. 15).

Advocates of the death penalty often argue that it is the only punishment that "fits" the crime of murder (Lyskey, 2000, p. 64). The suggestions is that only the death penalty can offer an equivalent degree of severity to match the taking of another person's life (Lyskey, 2000, p. 65). Nevertheless, the claim of "an eye for an eye" is only applied to murder (Lyskey, 2000, p. 65). Calls are not made for the homes of arsonists to be burned down or for thieves to have their possessions stolen.

The cruelty of the death penalty, however, is undeniable. It is not merely the methods of execution that inflict pain. The ritualized process of government-sanctioned killings involves a unique degree of inhumanity. For a murderer to commit an "equivalent" crime, they would have to abduct their intended victim months (or, in most cases, years) in advance, hold them in captivity, then tell

them the date, time and method by which they intended to kill their victim and then carry out their killing in a slow, clearly defined ritual, possibly in front of people who have volunteered to watch them die (Hawkins, 1998, p. 17).

-GENDER & RACE OF JUVENILE OFFENDERS-

Juvenile homicide, like most crimes at all ages, is much more likely to be perpetrated by males than females (McCleskey, 1996, p. 31). Just as younger juveniles rarely kill, girls of any age are less likely to commit homicide (McCleskey, 1996, p. 32). As the table below demonstrates, at all age levels under eighteen years, the vast majority of those arrested for murder or non-negligent manslaughter are males. On an annual basis, men consistently comprise nearly 90 percent of all persons arrested for murder or non-negligent homicide (Ewing, 1991, p. 4). Similar data is present for both juveniles and adults for most major crimes and many minor crimes.

TABLE 2

Percentage of Murder and Non-Negligent Manslaughter Arrests by Gender and Age 1984-1988

		Age							
Year	Gender	<10	10-12	13-14	15	16	17	<18	18+
1984	Male	83	76	87	88	89	93	90	86
	Female	17	24	13	12	11	7	10	14
1985	Male	100	78	88	88	92	92	91	87
	Female	0	22	12	12	8	8	9	13
1986	Male	86	87	96	93	89	97	93	87
	Female	14	13	4	7	11	3	7	13
1987	Male	93	72	85	92	90	94	91	87
	Female	7	28	15	8	10	6	9	13
1988	Male	71	96	92	91	93	94	93	87
	Female	29	4	8	9	7	6	7	13

SOURCE: Ewing, Charles Patrick. When Children Kill. Lexington Books: Toronto, 1991.

Black youths are vastly overrepresented among those juveniles arrested for murder or non-negligent manslaughter (Ewing, 1991, p. 4). Only about one-sixth of all Americans under the age of eighteen are black, yet in recent years roughly half the juveniles arrested for these homicide crimes have been black (Ewing, 1991, p.5). Indeed, the table below indicates that in some recent years, black youths have constituted the majority of those arrested for murder and non-negligent manslaughter in the under-eighteen bracket.

TABLE 3

Number and Percentage of Murder and Non-Negligent Manslaughter Arrests (under Age 18) by Race 1984-1988

Year		Whites	Blacks	Native Americans	Asians
1984	Number	539	454	7	4
	Percent	53.7	45.2	0.7	0.4
1985	Number	629	661	3	12
	Percent	48.2	50.7	0.2	0.9
1986	Number	689	671	13	22
	Percent	49.4	48.1	0.9	1.6
1987	Number	671	880	16	24
	Percent	42.2	55.3	1.0	1.5
1988	Number	720	997	7	23
	Percent	41.2	57.1	0.4	1.3

SOURCE: Ewing, Charles Patrick. When Children Kill. Lexington Books: Toronto, 1991.

Undoubtedly these figures reflect to some extent the existence of racial discrimination in the criminal justice system. It is evident that blacks are more likely than whites to be arrested for the crimes they commit. However, even allowing for such discrimination, there also seems to be no question that black youths are disproportionately involved in the commission of criminal homicides (Ewing, 1991, p. 4). In short, black youths are much more likely than white youths to kill (Ewing, 1991, p. 4).

-JUVENILE DEATH PENALTY IN FOREIGN COUNTRIES-

The death penalty for juvenile offenders is an almost uniquely American. This practice appears to have been abandoned everywhere else in large part due to he express provisions of the United Nations Convention on the Rights of the Child and several other international treaties and agreements (National Coalition "Stop...", 1999). The United States is the world-leader in sentencing children to death (Welsh, 1996, p. 62). Since 1990, only six countries have executed people for crimes they committed as children: Nigeria, Pakistan, Saudi Arabia, Yemen, Iran, and the United States (National Coalition "Stop...", 1999). Yemen has since outlawed this practice (National Coalition "Stop...", 1999). Also of note, China amended its laws in 1997 to abolish capital punishment for child offenders (Bedau, 2000). Every major international human rights treaty expressly prohibits executing people for crimes committed before the age of 18 (National Coalition "Stop...", 1999). The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the American Convention on Human Rights all prohibit this practice under international human rights standards (National Coalition "Stop...", 1999).

The U.S. has by far executed more children that any of the other countries (Amnesty "Facts and...", 1999). Since 1990, nineteen persons who committed crimes under the age of 18 have been executed worldwide (Amnesty "Facts and...", 1999) The U.S. alone accounts for more than half of these executions (Amnesty "Facts and...", 1999). The execution of Sean Sellers in February 1999 for a crime committed at the age of 16, marked the 13th execution of a child

offender in the U.S. since the reinstatement of the death penalty in 1976 (Hawkins, 1998, p. 17). The United States is literally the only country in the world that has yet ratified this international agreement, in large part because of the American desire to remain free to retain the death penalty for juveniles (Amnesty "Facts and...", 1999).

-THE CASE OF SEAN SELLERS-

In McAlester, former Satan worshipper Sean Sellers was executed, becoming the first U.S. murderer put to death in 40 years for crimes committed at age 16 (Hawkins, 1998, p. 17). The last inmate executed for a murder committed at age 16 was Leonard Shockley, who died in Maryland on April 10, 1959 (Sandholzer, 2000). Sellers, 29, was pronounced dead at 12:17 a.m. on February 4, 1999 after being injected in both arms with poisons designed to put him to sleep, stop his breathing then stop his heart (Sandholzer, 2000). Outside, some 100 death penalty opponents held lit candles and read scriptures. Some came for the first time, impressed that Sellers had preached Christianity from prison and upset that a murderer so young should die (Sandholzer, 2000).

Sellers spent his final day in a holding cell next to the room where he was to die by lethal injection (Sandholzer, 2000). He ate his last meal and spent most of the day visiting with about ten friends he had met since entering prison in 1986. Sellers died for killing an Oklahoma City convenience store clerk in September 1985 and his own mother and stepfather six months later (Hawkins,

1998, p. 17). His last appeal, to the U.S. Supreme Court, was turned down just days before his death (Hawkins, 1998, p. 17). The execution drew international media interest. TV reporters from England, France and Germany were at the Oklahoma State Penitentiary (Sandholzer, 2000).

Most cited two main reasons for opposition: Sellers' age at the time of the killings and a diagnosis that Sellers suffered from multiple personality disorder (Sandholzer, 2000). The diagnosis, by a Texas psychiatrist working on Sellers' behalf, came almost six years after Sellers went to prison, and prosecutors were never required to challenge it in court (Sandholzer, 2000). Sellers' lead attorney, Steve Presson, argued the diagnosis mandated a sentence commutation. He called it "a horrific legal error" that appeals courts said that couldn't consider the diagnosis because the issue was raised too late (Sandholzer, 2000).

Sellers wasn't a suspect in the murder of the convenient store worker until after he killed his parents on March 5, 1986, in their northwest Oklahoma City home (Sandholzer, 2000). Dressed only in black underwear, he crept into their bedroom as they slept and shot each in the head (Sandholzer, 2000). He first shot Paul Lee Bellofatto, 43, and then Vonda Bellofatto, 32 (Sandholzer, 2000). He shot his mother again as she rose up. He later said he was angry at his mother because of her interference in his relationship with his girlfriend, a high school dropout (Sandholzer, 2000).

-REHABILITATION PROGRAMS-

The death penalty, in cases where juveniles commit heinous crimes, does not seem illogical. But who learns the "moral order" from the punishment of death penalty, beside the offender? Does the punishment for juvenile offenders needs to be more widely exposed to the public? Most juvenile offenders do not hear of other juveniles being executed (Faltermayer, 1998, p. 32). The newspapers do not focus on these topics once the sentenced has been reached (Faltermayer, 1998, p. 32). Punishment for juvenile delinquents needs to be a gradual process so that they have the chance to learn from their mistakes. It is for that reason that a better solution to juvenile offenders is to teach juveniles what is wrong with their behavior, and not to resort to the idea of an "eye for an eye."

Rehabilitation punishes juvenile delinquents, and simultaneously provides hope for reform of the juvenile (Faltermayer, 1998, p. 33). Sentencing a juvenile to death abandons all hope of reform. A juvenile does not have the maturity level of an adult and cannot be expected to act as responsible in his or her actions. People under the age of eighteen are continuously treated in a separate sphere of government – it's a fundamental principle in American law (Broydo, 1998, p. 18). Why, then should some teenagers suddenly be thrown into the adult sphere when he or she commits a crime? Youths do not think about the consequences of murder. Juveniles commit murder in the heat of the moment when emotions such as rage and anger take control of the body's behavior (Chiasson, 1998, p. 51). It is not fair to subject a juvenile to death for lack of behavioral control. It is

only logical to provide services to the juveniles to help them learn to control their anger and behavior (Chiasson, 1998, p. 52).

A term of long imprisonment is an alternative sentence to a death penalty which would punish and offer rehabilitation to the juvenile delinquent (Faltermayer, 1998, p. 34). The public wants tough judicial punishment given to offenders. Therefore, the punishment must be issued and followed through quickly. The death penalty entails endless months of trials and appeals, as the offender sits in jail (Faltermayer, 1998, p. 34). With imprisonment, the offender immediately begins his or her sentence and also starts rehabilitation programs (Faltermayer, 1998, p. 34). The expenses that pay for the costly trials in the death penalty appeals process can be better invested in programs for the juveniles (Eskin, 1986, p. 25). Research shows that juvenile criminals are more likely to respond to rehabilitation than adults (Hodgkinson, 1998, p. 8). As a teenager grows, his or her behavior patterns change. Experience in the reform programs can help the juvenile to learn to control his or her temper and to attain maturity (Eskin, 1986, p. 25).

After long comparisons between the death penalty and imprisonment, the Juvenile Rehabilitation Committee concludes that the murder rates in states with the death penalty are no lower than those without the penalty (Faltermayer, 1998, p. 35). It is possible to have malicious criminals at age sixteen or seventeen, but during the penalty of imprisonment the offender can rehabilitate himself or herself from a destructive teenager to a productive adult (Faltermayer, 1998, p. 35)

Community-based rehabilitation centers are one way to help reform juvenile delinquents. In 1972, Massachusetts closed all of its houses for delinquent juveniles (Shapiro, 2000, p. 45). In their place, the Youth Services Director set up community based-alternatives (Shapiro, 2000, p. 45). The change was part of the department's commitment to the "least restrictive setting for youth offenders" (Shapiro, 2000, p. 45). The program involved treatment programs, education, and social skill development aimed at advancing the offender's re-entry into the community (Shapiro, 2000, p. 45). So far, the program has been a success. The juveniles committed to the program learn to control and reduce their criminal behaviors (Shapiro, 2000, p. 45). Programs like the Massachusetts model prove that rehabilitation is worth a try. If at least one teen is reformed by the time his or her sentence is up, the rejection of capital punishment is the right decision.

In order to prevent juvenile delinquents from returning to their old habits after their sentence is over, new programs must be implemented in prisons. One idea for a program called "Scared Stiff" uses past videos of juvenile executions to show juvenile delinquents already in prison (Higgins, 1999, p. 92). To prevent the juveniles from committing more crime after their release, they should be forced to witness past executions (Higgins, 1999, p. 93). The best way to deter further acts of crime is to present the possible and very real penalties (Higgins, 1999, p. 93). By witnessing the act of the death penalty, teenagers would see and recognize the reality of the punishment of death. Many death penalty supporters have changed their views on the death penalty after watching actual

death penalties performed (Higgins, 1999, p. 94). Once observing first hand the unalterable, final punishment of death, most juveniles would be scared to even think about committing a capital crime (Higgins, 1999, p. 101).

-CURRENT DEATH ROW INMATES UNDER JUVENILE DEATH SENTENCE-

As of June 1, 1999, the death penalty was authorized by 38 states, the Federal Government, including the U.S. Military (Chiasson, 1998, p. 52) See Table 1. Those jurisdictions without the Death Penalty include 12 states (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin) and the District of Columbia (Chiasson, 1998, p. 52). Also as of June 1999, 70 persons were on death row under death sentences received for juvenile crimes (Amnesty "Facts and...", 1999). Those 70 condemned juveniles constituted about 2% of the total death row population of about 3,600 (Amnesty "Facts and...", 1999). Although all were age 16 or 17 at the time of their crimes, their current ages range from 18 to 40 (Chiasson, 1998, p. 52). They were under death sentences in 16 different states and had been on death row from a few months to nearly twenty years (Chiasson, 1998, p. 52). Texas has by far the largest death row for juvenile offenders, now holding 24 (which constitutes 34%) of the national total of 70 juvenile offenders (Amnesty "Facts and...", 1999).

All 70 juvenile offenders on death row are male and had been convicted and sentenced to death for murder (Broydo, 1998, p. 18). Three-quarters of

these cases involved 17 year old offenders, and two-thirds of them were minority offenders (Broydo, 1998, p. 18). In contrast, 80% of the victims were adults (Broydo, 1998, p. 18). Two-thirds of the victims were white, and over half were females (Chiasson, 1998, p. 52). The paradigm case of the juvenile offender on death row is that of the 17 year-old African-American or Hispanic male whose victim is a white adult (McCleskey, 1996, p. 69).

The total number of persons under death sentences has increased by 198% in the past fifteen years, reflecting a steady rise from 1,209 in 1983, compared to about 3,600 in June 1999 (Amnesty "Facts and..., 1999). In contrast, the number of juvenile offenders under death sentences has risen much more slowly (Eskin, 1986, p. 26). Thirty-three juvenile offenders were under death sentences at the close of 1983, compared to 70 juvenile offenders today (a 112% increase), but this number has fluctuated back and forth between these two extremes during this decade (Eskin, 1986, p. 26). This comparatively constant death row population for juvenile offenders results from the fact that the number of new death sentences each year is roughly equal to the combination of death sentence reversals plus executions for juvenile offenders (Eskin, 1986, p. 26).

-THE FUTURE OF THE DEATH PENALTY-
-MORATORIUM IN ILLINOIS-

All executions in Illinois will be halted until a special panel can be convened in investigate the state's capital punishment system. Illinois Governor

George Ryan called for a moratorium citing "grave concerns about our state's shameful record of convicting innocent people and putting them on death row" (Shapiro, 2000). He said that he could no longer "support a system which, in its administration, has proven so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life" (Claiborne, 2000, p. 10)

The Illinois Death Penalty Moratorium Project was established out of a concern that the death penalty process in Illinois is seriously flawed. Some 4,000 of the state's business and civic leaders called for the moratorium last month (Lafevere, 2000). The Project believes that the law needs to be put on hold for a time to determine the causes of the problems in the administration of capital punishment in the state ("A Call for...", 2000). During this moratorium, an independent, nonpartisan commission consisting of persons with a wide range of perspectives and experience will be formed to study capital punishment (Tanner, 2000).

Governor Ryan said he was unwilling to sign off on executions ordered under the existing capital punishment regime in Illinois after thirteen condemned inmates were freed from Illinois' death row over the past several years (Shapiro, 2000, p. 43). More people have been found innocent and released from death row than have been executed since the state reinstated capital punishment in 1977 (Claiborne, 2000). For the most part, it was individuals outside the system who uncovered and proved the innocence of these inmates ("A Call for...", 2000). With an error rate exceeding 50%, the state can not continue to impose this deadly form of punishment ("A Call for...", 2000).

Among the thirteen inmates whose death sentences have been reversed – all within the past six years – the case of Anthony Porter drew close attention. Held for fifteen years on death row, Porter came within two days of being executed when journalism students at Northwestern University in Evanston helped to prove his innocence (Lefevere, 2000). Witnesses who had testified against him recanted their statements (Tanner, 2000). Novelist and Chicago lawyer Scott Turow uncovered new evidence that led to the exoneration of Rolando Cruz and Alejandro Hernandez (Tanner, 2000). Both men served more than a decade on death row for the wrongful conviction of the rape and murder of a 10-year-old girl (Tanner, 2000). In addition, five of the thirteen men cleared were exonerated by DNA testing that ruled them out as murderers (Lefevere, 2000). Prosecutorial misconduct, including the suppression of evidence, was a factor in several other cases (Shapiro, 2000, p. 44).

Some of those supporting the Moratorium Project believe the State should have the death penalty. But they are disturbed that Illinois has made so many mistakes in administering an irrevocable penalty – one that cannot be "undone" after mistakes are discovered. And they are disturbed by other aspects of capital cases that infect the process and determine who ends up on death row: racism, poverty, mental illness, police and prosecutorial misconduct, judicial corruption, and inadequate legal representation (Claiborne, 2000, p. 12).

The Moratorium Project has called on the Legislature to pass legislation imposing a stay on executions and setting up a Task Force to study the problems with Illinois' administration of the death penalty ("A Call for...", 2000). This past

spring, the Legislation established a Task Force to study the death penalty but did not impose a moratorium on executions ("A Call for...", 2000). Instead, it called on the Governor and the Supreme Court to impose a halt on executions ("A Call for...", 2000).

It is the goal of the Moratorium Project to organize citizens throughout the State and to help them get involved in numerous efforts to reform the death penalty process ("A Call for...", 2000). This is achieved by attending clemency hearings, participating in information pickets and contacting government officials (Tanner, 2000). The Project is disseminating information concerning problems with the death penalty process and on whether and how they might be remedied ("A Call for...", 2000).

Anti-death penalty advocates believe Ryan's announcement is a major step toward wider acceptance of moratoriums on capital punishment and predict that the governor's commission of inquiry will focus a national spotlight on whether the death penalty is being imposed fairly or not (Claiborne, 2000, p. 12). Besides Illinois, moratorium legislation, resolutions or referendums are underway in at least 11 other of the 38 death penalty states: Alabama, Indiana, Kentucky, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, and Washington (Lefevere, 2000).

-AN EVOLUTION TOWARD DECENCY-

Whether or not the death penalty for juveniles will be banned as unacceptable in our society is largely to be determined by appraisal of "the evolving standards of decency that mark the progress of a maturing society" (Streib, 1987, p. 186). Such progress is halting at best, and to precisely determine the level of progress at any one time is extremely difficult. Perhaps, the simplest way for a rejection of juvenile death sentences to occur would be for the U.S. Supreme Court to declare them unconstitutional.

In 1982, in *Eddings v. Oklahoma*, the Court had this opportunity but did not take advantage of it (Streib, 1987, p. 186). Even though a slim, five-justice majority reversed the case on other ground, the four justices in dissent were not ready or willing to find any constitutional bar to the death penalty for a crime committed at age sixteen (Streib, 1987, p. 186). With one more vote they would have settled the issue. Much more likely is a state-by-state consideration of this issue, resulting in even more statutory amendments establishing a minimum age for the death penalty.

-APPROPRIATE CRITERIA FOR FUTURE DECISIONS-

Several key criteria should be considered in addressing the decision in making an exception for juveniles in capital punishment. First, the choice of criminal punishment should be based on both the harm inflicted and the criminal

intent of the offender (Ewing, 1990, p. 51). For such crimes as murder, American criminal law has consistently required a focus on the criminal intent of the offender (Ewing, 1990, p. 51). For all homicide crimes, the harm inflicted is the death of an innocent person. The difference between the less serious level, such as negligent manslaughter, and the capital level of first-degree murder is typically the criminal intent of the offender (Ewing, 1990, p. 53) Therefore, in deciding the basis for implementation of capital punishment, one must consider in part the harm inflicted but primarily the criminal intent involved.

It seems generally accepted that adolescents typically do not have an adult level of maturity and sophistication in their thought processes. While they can intend behavior, it is unlikely they have thought about it with insight and understanding. While they may have the criminal intent required for first-degree murder, they seldom have such intent to the fullest extent. They fall short in this critical area and thus their punishment should be a little short of the punishment for a comparable adult's acts. Given this criterion, they should receive long-term imprisonment rather than the irreversible death penalty.

Second, retribution does not demand the death penalty for juvenile crimes (Streib, 1987, p. 187). The harm these juveniles have inflicted is tragically enormous, giving rise to strong emotional feelings in the community. Nevertheless, anger at the mistakes of children is always somewhat reduced, at least for reasonable persons, by the knowledge that children cannot be expected to behave like adults all the time. The need for retribution cannot be ignored, but it can be satisfied by long-term imprisonment (Streib, 1987, p. 187). The death

penalty is simply an excessive and overly emotional response to this undeniable feeling.

Third, choosing the death penalty does not enhance deterrence (Streib, 1987, p. 188). If the alternative was no action at all or just a slap on the wrist, then of course the death penalty might be necessary for deterrence. But the alternative, life imprisonment, is a punishment even more dreaded than death by many adolescents (Streib, 1987, p. 188). The death penalty is not a greater deterrent than long-term imprisonment to violent juvenile crime (Streib, 1987, p. 188). The only question left in this regard is how long the imprisonment must be in order to provide satisfactory deterrence, a question answered in varying ways by different jurisdictions (Streib, 1987, p. 188).

Fourth, it is unreasonable to totally disregard the goals of reform and rehabilitation for juvenile offenders (Streib, 1987, p. 188). Behavior patterns change significantly as person mature from adolescence to adulthood and into middle age (Streib, 1987, p. 188). Most people mellow in their behavior after the teen years and many are later embarrassed to recall some of the wilder acts they committed during that stage of their life. Given life imprisonment, juvenile murderers also would change their behavior, most probably in ways more acceptable to society. Imposing the death penalty for juvenile crimes totally disregards the universally accepted belief about maturation (Streib, 1987, p. 189). Long-term imprisonment holds out the possibility that a destructive teenage will become a productive adult.

Fifth, the message juveniles receive from the imposition of juvenile death sentences is not the one society intends to convey (Streib, 1987, p. 189). The crimes juveniles commit often involve the killing of a person in order to solve some problem the offender perceives as otherwise unsolvable (Streib, 1987, p. 189). The girl with whom they wish to have sexual relations or the victim they wish to rob struggles and causes them major problems. Their solution is to kill the person who is causing the problem. Now they see the government struggling with a problem of its own, a person whose behavior is unacceptable. How does the government solve its problem? It kills the person who is causing the problem. Is it wrong to kill someone to solve a problem? It is difficult to convince teenagers not to do something if they see government officials doing it with the apparent blessings of society.

Sixth, abolition of the death penalty for juveniles is a common ground on which death penalty proponents and opponents can meet and agree (Streib, 1987, p. 189). The continual debate about the death penalty in general has resulted in deep divisions between the opposing groups (Streib, 1987, p. 189). Such debates often result in name-calling, angry shouting matches, and bumper-sticker slogans. The death penalty for juveniles, however, is a point on which the parties can come together (Streib, 1987, p. 189). It appears that a majority would agree that at least this branch of the capital punishment laws should be trimmed back (Streib, 1987, p. 190). If everyone can reason together on this one issue, avenues of dialogue and understanding can be opened for more rational and

constructive discussion of the death penalty for adults and for the appropriate application of criminal punishment in general.

Finally, if we discard the death penalty for juveniles, what can be done about violent juvenile crime? Many people support the death penalty for juveniles from fear of and outrage over violent juvenile crime (Ewing, 1991, p. 67). This fear and outrage is shared by all reasonable people, whether they are for or against the death penalty. Two answers to this problem suggest themselves. The temporary solution is to impose long-term prison sentences on such violent juveniles. That would ensure that they were reasonably mature adults and had been subjected to whatever rehabilitative programs were available before they were set free again.

On the other hand, the long-term solution to violent juvenile crime – or all crime, for that matter – cannot come from harsh criminal punishment, whether it is imprisonment or death. Given the individual freedom in our society, the resultant ample opportunities for violent juvenile crime, and the low probability of being caught and punished, prevention through threatened punishment will always be insufficiently effective (Ewing, 1991, p. 68).

Our society must be willing to devote enormous resources to a search for the causes and cures of violent juvenile crime, just as we have done in the search for causes and cures of such killer diseases as cancer. And we must not demand a complete cure in a short time, since no one knows how long it will take. We must at the same time be aware of people who loudly proclaim that they have the cure now. Unfortunately, no one yet has the cure for violent

juvenile crime. It seems clear, however, that the death penalty for juveniles has been given a long trial period and has been found wanting. Its societal costs are enormous, and it delays our search for a rational and acceptable means of reducing violent juvenile crime.

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