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A Broken System: Error Rates in Capital Cases, 1973-1995

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James S. Liebman, Jeffrey Fagan, and Valerie West

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A Broken System:

Error Rates in Capital Cases,

1973-1995

James S. Liebman
Simon H. Rifkind Professor of Law
Columbia University School of Law

Jeffrey Fagan
Professor, Joseph Mailman
School of Public Health
Visiting Professor, Columbia
University School of Law

Valerie West
Doctoral Candidate
Department of Sociology
New York University

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Executive Summary

There is a growing bipartisan consensus that flaws in America's death-penalty system have reached crisis proportions. Many fear that capital trials put people on death row who don't belong there. Others say capital appeals take too long. This report—the first statistical study ever undertaken of modern American capital appeals (4,578 of them in state capital cases between 1973 and 1995)—suggests that *both* claims are correct.

Capital sentences do spend a long time under judicial review. As this study documents, however, **judicial review takes so long precisely *because* American capital sentences are so persistently and systematically fraught with error that seriously undermines their reliability.**

Our 23 years worth of results reveal a death penalty system collapsing under the weight of its own mistakes. They reveal a system in which lives and public order are at stake, yet for decades has made more mistakes than we would tolerate in far less important activities. They reveal a system that is wasteful and broken and needs to be addressed.

Our central findings are as follows:

- Nationally, during the 23-year study period, **the overall rate of prejudicial error in the American capital punishment system was 68%**. In other words, courts found **serious, reversible error in nearly 7 of every 10 of the thousands of capital sentences that were fully reviewed during the period.**
- Capital trials produce **so many mistakes** that it takes three judicial inspections to catch them—leaving **grave doubt whether we *do* catch them all**. After state courts threw out **47%** of death sentences due to serious flaws, a later federal review found “serious error”—error undermining the reliability of the outcome—in **40%** of the *remaining* sentences.
- Because state courts come first and see *all* the cases, they do most the work of correcting erroneous

death sentences. Of the **2,370 death sentences** thrown out due to serious error, **90%** were overturned by **state judges**—many of whom were the very judges who imposed the death sentence in the first place; nearly all of whom were directly beholden to the electorate; and none of whom, consequently, were disposed to overturn death sentences except for very good reason. This does not mean that federal review is unnecessary. Precisely *because* of the huge amounts of serious capital error that state appellate judges are called upon to catch, it is not surprising that **a substantial number of the capital judgments they let through to the federal stage are still seriously flawed**.

- To lead to reversal, error must be serious, indeed. The most common errors—prompting a **majority of reversals** at the state post-conviction stage—are **(1) egregiously incompetent defense lawyers who didn’t even look for—and demonstrably missed—important evidence that the defendant was innocent or did not deserve to die; and (2) police or prosecutors who *did* discover that kind of evidence but *suppressed* it, again keeping it from the jury.** [Hundreds of examples of these and other serious errors are collected in Appendix C and D to this Report.]
- High error rates put many individuals at risk of wrongful execution: **82%** of the people whose capital judgments were overturned by state post-conviction courts due to serious error were found to deserve a sentence **less than death** when the errors were cured on retrial; **7% *were found to be innocent of the capital crime.***
- High error rates persist over time. More than **50%** of all cases reviewed were found seriously flawed in **20 of the 23 study years**, including 17 of the last 19. In **half** the years, including the **most recent one**, the error rate was **over 60%**.
- High error rates exist across the country. **Over 90%** of American death-sentencing states have

overall error rates of **52% or higher**. **85%** have error rates of **60% or higher**. **Three-fifths** have error rates of **70% or higher**.

- Illinois (whose governor recently declared a moratorium on executions after a spate of death-row exonerations) does not produce atypically faulty death sentences. **The overall rate of serious error found in Illinois capital sentences (66%) is very close to—and slightly *lower* than—the national average (68%).**
- Catching so much error takes time—a national average of **9 years** from death sentence to the last inspection and execution. By the end of the study period, that average had risen to **10.6 years**. **In *most* cases, death row inmates wait for years for the lengthy review procedures needed to uncover all this error. Then, their death sentences are *reversed*.**
- This much error, and the time needed to cure it, impose **terrible costs on taxpayers, victims' families, the judicial system, and the wrongly condemned**. And it renders unattainable the **finality, retribution and deterrence that are the reasons usually given for having a death penalty**.

Erroneously trying capital defendants the first time around, operating the multi-tiered inspection process needed to catch the mistakes, warehousing thousands under costly death row conditions in the meantime, **and having to try two out of three cases *again*** is irrational.

This report describes the extent of the problem. A subsequent report will examine its causes and their implications for resolving the death penalty crisis.

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A Broken System: Error Rates in Capital Cases, 1973-1995^{*}

by James S. Liebman, Jeffrey Fagan & Valerie West

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I. Introduction

A new debate over the death penalty is raging in the United States.¹ Until now, the focus of that debate has been the fairness of particular capital convictions and sentences. This Report addresses a different and broader question: **the reliability—indeed, the bare rationality—of the death penalty system as a whole.** It asks whether the mistakes and miscarriages of justice known to have been made in individual capital cases² are isolated, or common? The answer provided by our study of 5,760 capital sentences and 4,578 appeals is that **serious error**—error substantially undermining the reliability of capital verdicts—has reached **epidemic proportions** throughout our death penalty system. **More than two out of every three capital judgments reviewed by the courts during the 23-year study period were found to be seriously flawed.**

Americans seem to be of two minds about the death penalty.³ In the last several years, executions have risen steeply, reaching a 50-year high.⁴ Two-thirds of the public support the penalty.⁵

Two-thirds support, however, represents a steady *decline* from the four-fifths of the population that supported the penalty only six years ago, leaving support for capital punishment at a 20-year low.⁶ When life without parole is proposed as an alternative, support for the penalty drops even more—often below a majority.⁷ Grants of executive clemency reached a 20-year high in 1999.⁸

In 1999 and 2000, Governors, attorneys general and legislators in Alabama, Arizona, Florida, and Tennessee have fought high-profile campaigns to speed up and increase the number of executions.⁹

In the same period, however:

- The Republican Governor of Illinois, with support from a majority of the electorate, declared a

moratorium on executions in the state.¹⁰

- The Nebraska Legislature did the same. Although the governor vetoed the legislation, the Legislature appropriated money for a comprehensive study of the even-handedness of the state's exercise of capital punishment.¹¹ Similar studies have since been ordered by the Chief Justice, task forces of both houses of the state legislature and the Governor of Illinois,¹² and also the Governors of Indiana and Maryland and the Attorney General of the United States.¹³
- Serious campaigns to abolish the death penalty are under way in New Hampshire¹⁶ and (with the support of the Governor and a popular former Republican Senator) in Oregon.¹⁷
- The Florida Supreme Court and Mississippi Legislature have recently acted to improve the quality of counsel in capital cases,¹⁸ and bills aiming to do the same and to improve capital prisoners' access to DNA evidence have been introduced in both houses of the United States Congress, with bipartisan sponsorship.¹⁹
- Observers in the *Wall Street Journal*, *New York Times Magazine*, and *Salon* and on *ABC This Week* see "a tectonic shift in the politics of the death penalty."²⁰ In April 2000 alone, George Will²¹ and Rev. Pat Robertson—both strong death penalty supporters—expressed doubts about the manner in which government officials carry out the penalty in the United States, and Robertson advocated a moratorium on *Meet the Press*.²²

Fueling these competing initiatives are two beliefs about the death penalty. One is that death sentences move too slowly from imposition to execution, undermining deterrence and retribution, subjecting our criminal laws and courts to ridicule, and increasing the agony of victims.²³ The other is that death sentences are fraught with error, causing justice too often to miscarry, and subjecting innocent and other undeserving defendants—mainly, the poor and racial minorities—to execution.²⁴

Some observers attribute these seemingly conflicting events and opinions to “America’s schizophrenia—we believe in the death penalty, but shrink from it as applied.”²⁵ These views may not conflict, however, and Americans who hold *both* may not be irrational. It may be that capital sentences spend too much time under review *and* that they are fraught with disturbing amounts of error. Indeed, it may be that **capital sentences spend so much time under and awaiting judicial review precisely because they are so persistently and systematically fraught with alarming amounts of error.** That is the conclusion to which we are led by a study of all 4,578 capital sentences that were finally reviewed by state direct appeal courts, 248 state post-conviction reversals of capital judgments, and all 599 capital sentences that were finally reviewed by federal habeas corpus courts between 1973 and 1995.²⁶

II. Summary of Central Findings

In *Furman v. Georgia*²⁷ in 1972, the Supreme Court reversed all existing capital statutes and death sentences. The modern death-sentencing era began the next year with the implementation of new capital statutes designed to satisfy *Furman*. Unfortunately, no central repository of detailed information on post-*Furman* death sentences exists.²⁸ In order to collect that information, we undertook a painstaking search, beginning in 1991 and accelerating in 1995, of all published state and federal judicial opinions in the U.S. conducting direct and habeas review of *state* capital judgments, and many of the available opinions conducting state post-conviction review of those judgments. We then (1) checked and catalogued all the cases the opinions revealed, and (2) collected hundreds of items of information about each case from the published decisions and the NAACP Legal Defense Fund’s quarterly death row census, and (3) tabulated the results.²⁹

Nine years in the making, our central findings thus far are these:

- Between 1973 and 1995, approximately **5,760** death sentences were imposed in the U.S.³⁰ Only **313 (5.4%; one in 19)** of those resulted in an execution during the period.³¹
- Of the 5,760 death sentences imposed in the study period, **4,578 (79%)** were finally reviewed on “direct appeal” by a state high court.³² Of those, **1,885 (41%; over two out of five)** were thrown out because of “serious error,” *i.e.*, error that the reviewing court concludes has seriously undermined the reliability of the outcome or otherwise “harmed” the defendant.³³
- Nearly all of the remaining death sentences were then inspected by state post-conviction courts.³⁴ Our data reveal that state post-conviction review is an important source of review in states such as Florida, Georgia, Indiana, Maryland, Mississippi, North Carolina, and Tennessee.³⁵ In Maryland, at least **52%** of capital judgments reviewed on state post-conviction during the study period were overturned due to serious error; the same was true of at least **25%** of the capital judgments that were similarly reviewed in Indiana, and at least **20%** of those reviewed in Mississippi.³⁶
- Of the death sentences that survived state direct and post-conviction review, **599** were finally reviewed in a first habeas corpus petition during the 23-year study period.³⁷ Of those 599, **237 (40%; two out of five)** were overturned due to serious error.³⁸
- The “**overall success rate**” of capital judgments undergoing judicial inspection, and its converse, the “**overall error-rate**,” are crucial factors in assessing the effectiveness of the capital punishment system. The “overall *success* rate” is the proportion of capital judgments that underwent, and *passed*, the three-stage judicial inspection process during the study period. The “overall *error* rate” is the reverse: the proportion of fully reviewed capital judgments that were *overturned* at one of the three stages due to serious error.³⁹ **Nationally, over the entire 1973-1995 period, the**

overall error-rate in our capital punishment system was 68%.⁴⁰

- “Serious error” is error that **substantially undermines the reliability of the guilt finding or death sentence imposed at trial.**⁴¹ Each instance of that error warrants public concern. **The most common errors are (1) egregiously incompetent defense lawyering** (accounting for 37% of the state post-conviction reversals), and **(2) prosecutorial suppression of evidence that the defendant is innocent or does not deserve the death penalty** (accounting for another 16%—19%, when all forms of law enforcement misconduct are considered).⁴² As is true of other violations, these two count as “serious” and warrant reversal *only* when there is a reasonable probability that, but for the responsible actor’s miscues, the **outcome of the trial would have been different.**⁴³
- The seriousness of these errors is also revealed by what happens on retrial, when the errors are cured. In our state post-conviction study, an astonishing **82% (247 out of 301) of the capital judgments that were reversed were replaced on retrial with a sentence *less* than death, or *no* sentence at all.**⁴⁴ In the latter regard, **7% (22/301) of the reversals for serious error resulted in a determination on retrial that the defendant was not guilty of the capital offense.**⁴⁵
- The result of **very high rates of serious, reversible error** among capital convictions and sentences, and **very low rates of capital reconviction and resentencing**, is the **severe attrition of capital judgments**. As is illustrated by the flow chart below:
 1. For every 100 death sentences imposed and reviewed during the study period, **41 were turned back** at the state direct appeal phase because of serious error. Of the 59 that got through that phase to the second, state post-conviction stage, **at least**⁴⁶ **10%—meaning**

6 more of the original 100—were turned back due to serious flaws. And, of the 53 that got through that stage to the third, federal habeas checkpoint, **40%—an additional 21 of the original 100—were turned back** because of serious error. All told, at least **68 of the original 100 were thrown out because of serious flaws**, compared to only 32 (or less) that were found to have passed muster—**after** an average of **9-10 years** had passed.

2. And among the individuals whose death sentences were overturned for serious error, 82% (56 in our example) were found on retrial **not** to have deserved the death penalty, including **7% (5)** who were *found innocent of the offense*.

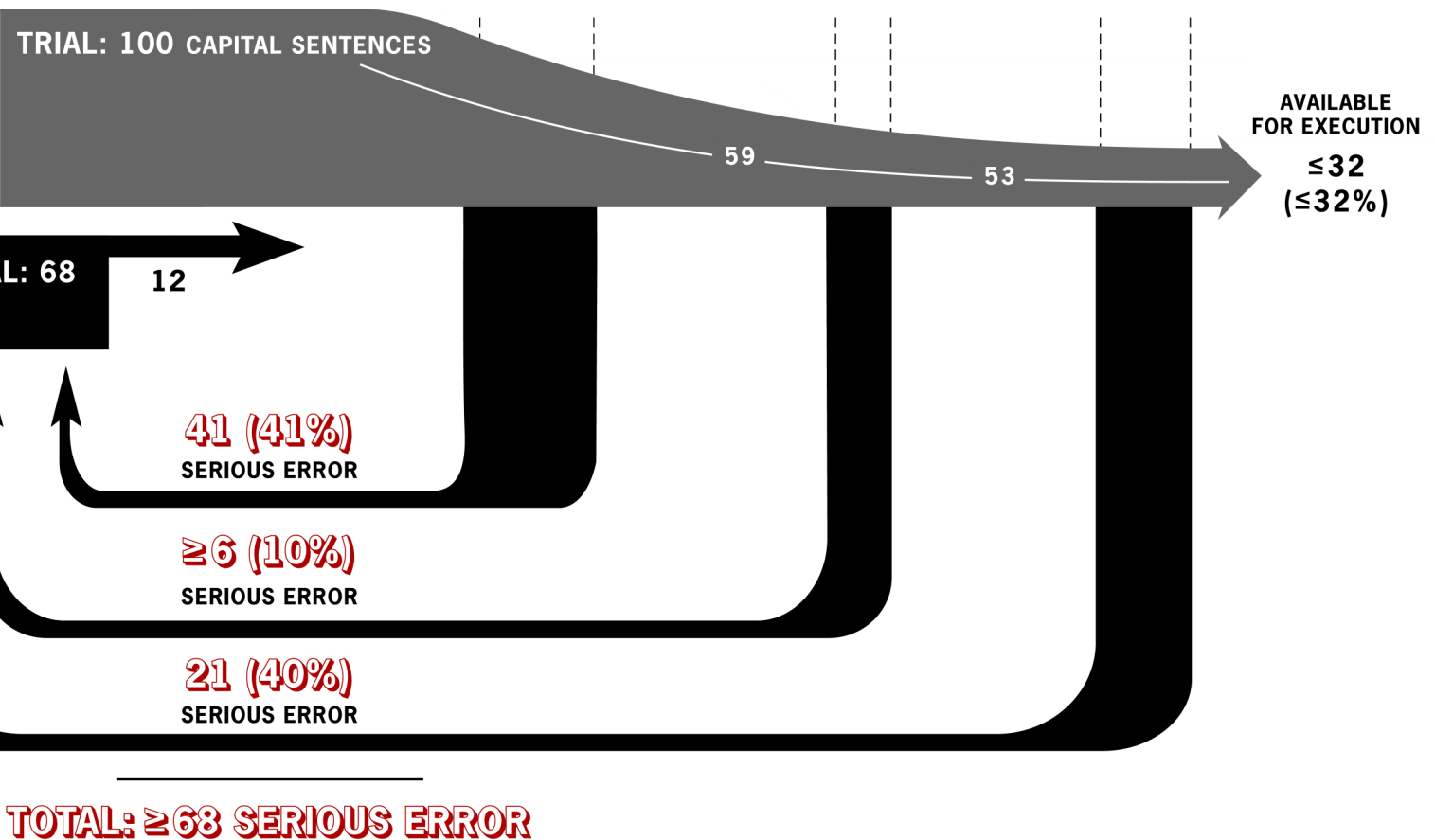
THE ATTRITION OF CAPITAL JUDGEMENTS

YEAR: 0 ————— 5 ————— 9 —

1ST INSPECTION
STATE DIRECT APPEAL

2ND INSPECTION
STATE POST-CONVICTION

3RD INSPECTION
FEDERAL HABEAS CORPUS



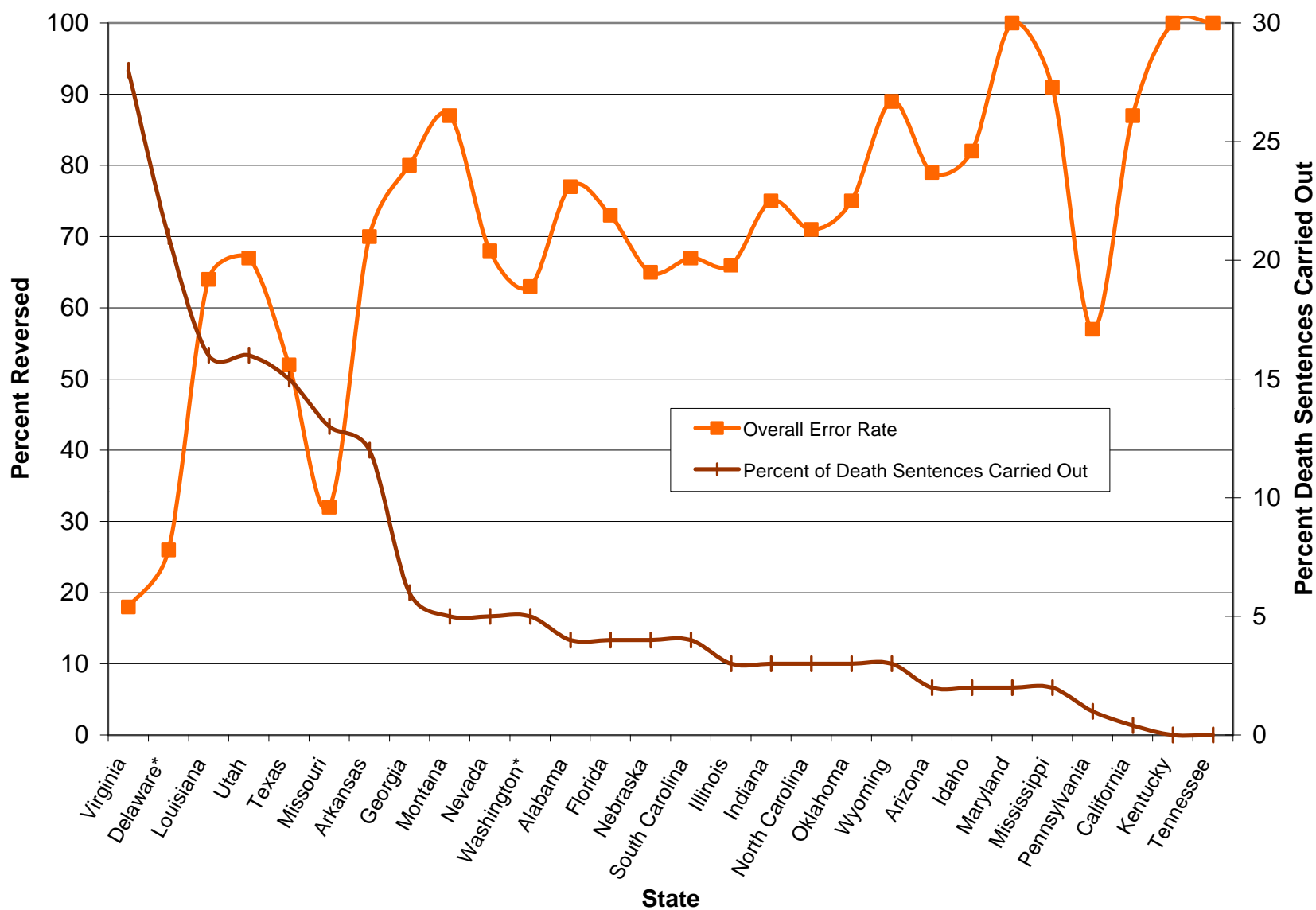
- High error rates pervade American capital-sentencing jurisdictions, and are geographically dispersed. Among the 26 death-sentencing jurisdictions with at least one case reviewed in both the state and federal courts and as to which information about all three judicial inspection stages is available:
 1. **24 (92%)** have overall error rates of **52% or higher**;
 2. **22 (85%)** have overall errors rates of **60% or higher**;
 3. **15 (61%)** have overall error rates of **70% or higher**.
 4. Among other states, Maryland, Georgia, Alabama, Mississippi, Indiana, Oklahoma, Wyoming, Montana, Arizona, and California have overall error rates of **75% or higher**.⁴⁷
- It sometimes is suggested that Illinois, whose governor declared a moratorium on executions in January 2000 because of a spate of death row exonerations there,⁴⁸ generates “uniquely” flawed death sentences.⁴⁹ Our data dispute this suggestion: **The overall rate of serious error found to infect Illinois capital sentences (66%) actually is slightly *lower* than the nationwide average (68%).**⁵⁰
- High error rates have persisted for decades. A **majority** of all cases reviewed in **20 of the 23 study years**—including in 17 of the last 19 years—were found seriously flawed. In **half** of the years studied, the error rate was **over 60%**. Although error rates detected on state direct appeal and federal habeas corpus dropped some in the early 1990s, they went back up in 1995⁵¹. The amount of error detected on state post-conviction has apparently *risen throughout* the 1990s.⁵²
- The **68% rate of *capital* error** found by the three stage inspection process is **much higher than the error rate of less than 15%** found by those same three inspections **in *noncapital* criminal cases**.⁵³

- Appointed federal judges are sometimes thought to be more likely to overturn capital sentences than state judges, who almost always are elected in capital-sentencing states.⁵⁴ In fact, state judges are the first and most important line of defense against erroneous death sentences. They found serious error in and reversed **90% (2,133 of the 2,370)** capital sentences that were overturned during the study period.⁵⁵
- Under current state and federal law, capital prisoners have a legal right to one round of direct appellate, state post-conviction and federal habeas corpus review.⁵⁶ **The high rates of error found at *each* stage—including even at the *last* stage—and the persistence of high error rates *over time and across the nation*, confirm the need for multiple judicial inspections .** Without compensating changes at the front-end of the process, the contrary policy of cutting back on judicial inspection makes no more sense than responding to the insolvency of the Social Security System by forbidding it to be audited.
- Finding all this error takes time. Calculating the amount of time using information in published decisions is difficult. Only a small percentage of direct appeals decisions report the sentence date. By the end of the habeas stage, however, a larger proportion of sentencing dates is reported in one or another decision in the case. Accordingly, it is possible to get a good sense of timing for only the 599 cases that were finally reviewed on habeas corpus. Among those cases:
 1. It took an average of **7.6 years** after the defendant was sentenced to die to complete federal habeas consideration in the 40% of habeas cases in which reversible error was found.
 2. In the cases in which no error was detected at the third inspection stage and an execution occurred, **the average time between sentence and execution was 9 years .** Matters

did not improve over time. **In the last 7 study years (1989-95), the average time between sentence and execution *rose to 10.6 years.***⁵⁷

- High rates of error, and the time consequently needed to filter out all that error, frustrate the goals of the death penalty system. Figure 1 below compares the overall rate of error detected during the state direct appeal, state post-conviction, and federal inspection process in the 28 states with at least one capital case in which both inspections have been completed (the orange line), to the percentage of death sentences imposed by each state that it has carried out by execution (the red line).⁵⁸ In general, **where the rate of serious reversible error in a state's capital judgments reaches 55% or above (as is true for the vast majority of states), the state's capital punishment system is effectively stymied—with its proportion of death sentences carried out falling *below 7%.***

**Figure 1. Overall Error Rate and
Percent of Death Sentences Carried Out, 1973-95**



* Number of state post-conviction reversals in Delaware and Washington are unknown

The recent rise in the number of executions⁵⁹ is not inconsistent with these findings. Instead of reflecting improvement in the *quality* of death sentences under review, the rising number of executions may simply reflect how many *more* sentences have piled up for review. If the error-induced pile-up of cases is the *cause* of rising executions, their rise provides no proof that a cure has been found for disturbingly high error rates. To see why, consider a factory that produces 100 toasters, only 32 of which work. The factory's problem would not be solved if the next year it made 200 toasters (or added 100 new toasters to 100 old ones previously backlogged at the inspection stage), thus doubling its output of working products to 64. With, now, 136 duds to go with the 64 keepers, the increase in the latter would simply mask the persistence of crushing error rates.

The decisive question, therefore, is not the *number* of death sentences carried out each year, but the *proportion*. And as Figure 2 below shows:⁶⁰

- In contrast to the annual *number* of executions (the middle line in the chart), **the *proportion* of death row inmates executed each year (the bottom line) has remained remarkably stable—and extremely low.** Since post-*Furman* executions began in earnest in 1984, **the nation has executed an average of about 1.3% of its death row inmates each year;** in no year has it ever carried out more than **2.6 percent—or 1 in 39—**of those on death row.⁶¹
- Figure 1 thus suggests that **executions are increasing, *not* because of improvements in the quality of capital judgments, but instead because so many more people have piled up on death row that, even consistently tiny *proportions* of people being executed—because of consistently prodigious error and reversal rates—are prompting the *number* of executions to rise.**⁶² As in our factory example, rising output does not indicate better products, and instead seems to mask the opposite.

**Figure 2. Persons on Death Row and
Percent and Number Executed, 1974-99**

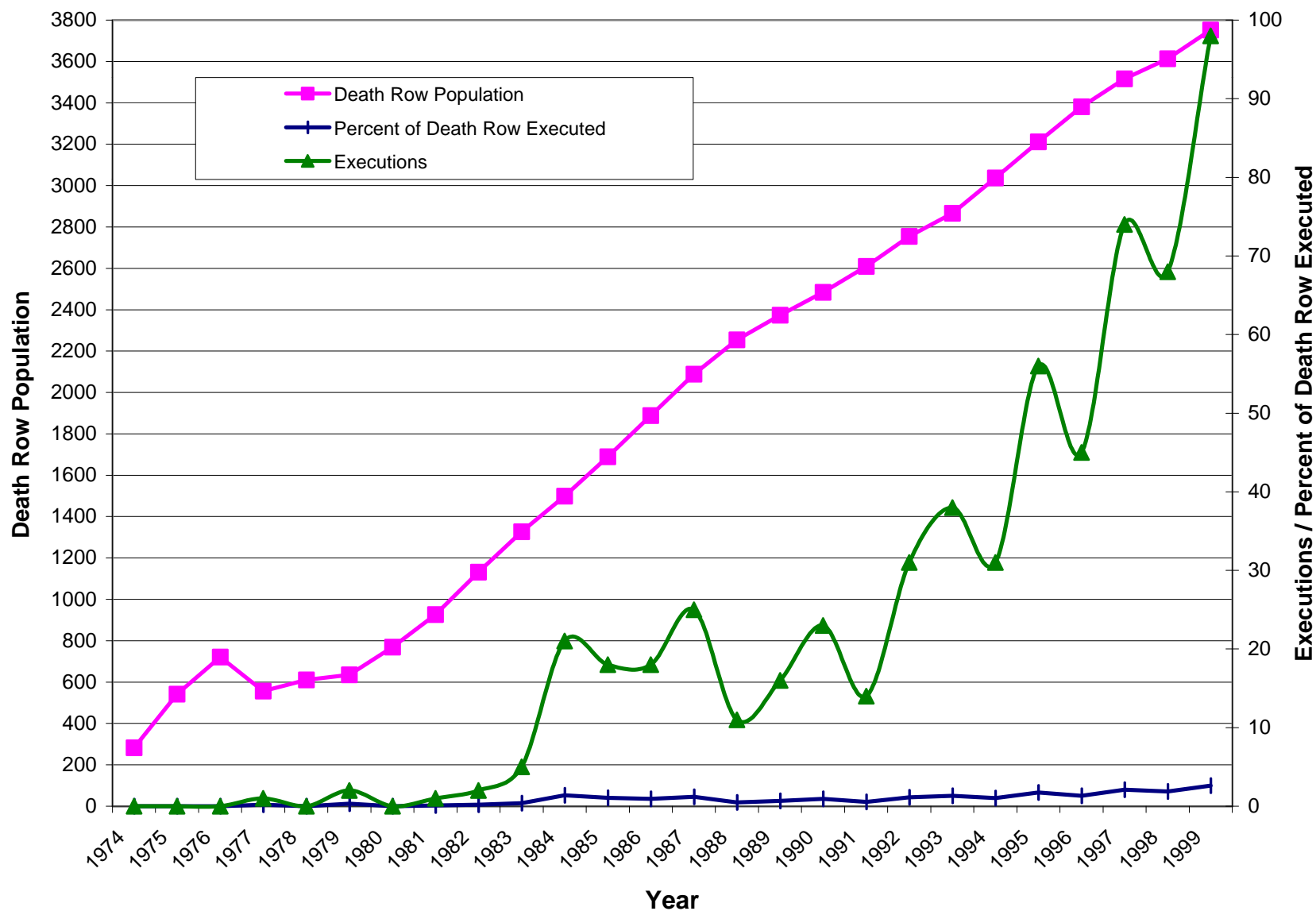


Figure 1, p. 11 above, illustrates another finding of interest that recurs throughout this Report: The pattern of capital outcomes for the State of **Virginia** is highly anomalous, given the State's **high execution rate (nearly *double* that of the next nearest state, and *5 times* the national average)** and its **low rate of capital reversals (nearly *half* that of the next nearest state, and less than *one-fourth* the national average)**. The discrepancy between Virginia and other capital-sentencing states on this and other measures⁶³ presents an important question for further study: Are Virginia capital judgments in fact half as prone to serious error as the next nearest state and 4 times better than the national average?⁶⁴ Or, on the other hand, are its courts more tolerant of serious error? We will address this issue below and in a subsequent report.⁶⁵

III. Confirmation from a Parallel Study

Results from a parallel study by the U.S. Department of Justice suggest that our **32%, or one-in-three**, figure for valid death sentences actually overstates the chance of execution:

- Included in the Justice Department study is a report of the outcome as of the end of 1998 of the 263 death sentences imposed in 1989.⁶⁶ A final disposition of only 103 of the 263 death sentences had been reached nine years later.⁶⁷ Of those 103, 78 (76%) had been overturned by a state or federal court. Only 13 death sentences had been carried out.⁶⁸ So, for every **one** member of the death row class of 1989 whose case was finally reviewed and who was executed as of 1998, **six** members of the class had their cases overturned in the courts.
- Because of the intensive review needed to catch so much error, 160 (61%) of the 263 death sentences imposed in 1989 were still under scrutiny nine years later.⁶⁹
- The approximately 3,600 people on death row today have been waiting an average of 7.4 years

for a final declaration that their capital verdict is error-free—or, far more probably, that it has to be scrapped because of serious error.⁷⁰

- Of the approximately 6,700 people sentenced to die between 1973 and 1999, only 598—**less than one in eleven**—were executed.⁷¹ About four times as many had their capital judgments overturned or gained clemency.⁷²

IV. Implications of Central Findings

To help appreciate these findings, consider a scenario that might unfold immediately after any death sentence is imposed in the U.S. Suppose the defendant, or a relative of the victim, asks a lawyer or the judge, “What now?”

Based on almost a quarter century of experience in thousands of cases in 28 death-sentencing states in the U.S. between 1973 and 1995, a responsible answer would be: *“The capital conviction or sentence will probably be overturned due to serious error. It’ll take nine or ten years to find out, given how many other capital cases being reviewed for likely error are lined up ahead of this one. If the judgment is overturned, a lesser conviction or sentence will probably be imposed.”*⁷³

As anyone hearing this answer would probably conclude as a matter of sheer common sense, all this error, and all the time needed to expose it, are extremely burdensome and costly:

- Capital trials and sentences cost more than noncapital ones.⁷⁴ Each time they have to be done over—as happens 68% of the time—that difference grows exponentially.
- The error-detection system all this capital error requires is itself a huge expense—apparently *millions of dollars* per case.⁷⁵
- Many of the resources currently consumed by the capital system are not helping the public, or

victims,⁷⁶ obtain the valid death sentences for egregious offenses that a majority support. Given that nearly 7 in 10 capital judgments have proven to be seriously flawed, and given that 4 out of 5 capital cases in which serious error is found turn out on retrial to be more appropriately handled as non-capital cases (and in a sizeable number of instances, as non-murder or even *non-criminal* cases),⁷⁷ it is hard to escape the conclusion that large amounts of resources are being wasted on cases that should never have been capital in the first place.

- Public faith in the courts and the criminal justice system is another casualty of high capital error rates.⁷⁸ When most capital-sentencing jurisdictions carry out fewer than 6% of the death sentences they impose,⁷⁹ and when the nation as a whole never executes more than 2.6% of its death population in a year,⁸⁰ the retributive and deterrent credibility of the death penalty is low.
- When condemned inmates turn out to be *innocent*⁸¹—an error that is different in its consequences, but is *not* evidently different in its causes, from the other serious error discussed here⁸²—there is no accounting for the cost: to the wrongly convicted;⁸³ to the family of the victim, whose search for justice and closure has been in vain; to later victims whose lives are threatened—and even taken—because the real killers remain at large;⁸⁴ to the public’s confidence in law and legal institutions; and to the wrongly *executed*, should justice miscarry at trial, and should reviewing judges, harried by the amount of error they are asked to catch, miss one.⁸⁵

If what were at issue here was the fabrication of toasters (to return to our prior example), or the processing of social security claims, or the pre-takeoff inspection of commercial aircraft—or the conduct of *any other* private- or public-sector activity—neither the consuming and the taxpaying public, nor managers and investors, would for a moment tolerate the error-rates and attendant costs that dozens of states and the nation as a whole have tolerated in their

capital punishment system *for decades*. Any system with this much error and expense would be halted immediately, examined, and either reformed or scrapped.

The question this Report poses to taxpayers, public managers and policymakers, is whether that same response is warranted here, when what is at issue is not the content and quality of tomorrow's breakfast, but whether society has a swift and sure response to murder, and whether thousands of men and women condemned for that crime in fact deserve to die.

* * * * *

The remainder of this Report more fully describes our findings. Part V describes the review process for capital sentences. Part VI describes our study methodology. Parts VII, VIII and IX more thoroughly document and display our findings about the frequency with which reversible error is found in capital judgments in the United States between 1973 and 1995, and the time taken to find those errors. Part VII examines relevant factors at the national level. Part VIII does so using comparative analyses of the 28 capital-sentencing states in which at least one case had advanced through the entire post-sentence inspection process. And Part IX does the same thing, comparing the 8 federal judicial circuits and corresponding regions into which they are divided. After presenting a variety of information, Parts VII, VIII and IX preliminarily address the potential causes of so much error in capital sentencing. Finally, Part X briefly describes the more sophisticated analyses we will undertake in the next phase of our study (to be published in the Fall) to set the stage for proposed reforms.

V. The Capital Review Process

This phase of our study asks what state and federal courts discovered when they inspected capital convictions and sentences imposed during the 23-year study period. In a later phase, we will consider some candidate causes of the evidently irrational patterns of error that those courts have detected. In order to frame these questions, we first describe the capital-inspection process whose results we are studying.

A. First Inspection: State Direct Appeal

In *Furman v. Georgia* and later cases, the Supreme Court suggested that state high courts were required to review all death sentences on direct review.⁸⁶ As a consequence, the law of nearly all states requires that capital judgments be automatically appealed.⁸⁷ And as a matter of fact, virtually all capital judgments *are* appealed.⁸⁸ In all but two of our study states, that appeal ran directly from the trial court to the highest court in the state with criminal jurisdiction, which is typically the state supreme court or, as in Oklahoma and Texas, a “court of criminal appeals.”⁸⁹ In Alabama and Ohio, there were two rounds of appeals in the state direct review process—first to an intermediate court of criminal appeals, and then to the state supreme court.⁹⁰ Reversal of a capital conviction or sentence on direct appeal requires a showing of “serious error” as defined earlier.⁹¹

In nearly all cases in which the direct appeal decision runs entirely against the defendant, he or she seeks certiorari in the United States Supreme Court.⁹² Although in the vast majority of cases, the Supreme Court denies review, it occasionally undertakes merits review and either affirms or reverses.⁹³ Certiorari proceedings are typically understood to be a part of the direct review, or pre-finality, stage of a criminal case,⁹⁴ and they are treated that way here. If the Supreme Court reversed a capital conviction or sentence on direct review of the state high court’s decision, we counted that decision as a direct-appeal finding of serious (indeed, in all such cases, federal constitutional⁹⁵) error.

B. Second Inspection: State Post-Conviction

In order to seek federal habeas review of a constitutional claim, the prisoner must have exhausted at least one full round of state judicial remedies for the claim.⁹⁶ There are certain kinds of claims that cannot easily be exhausted at trial and on direct appeal because the defendant cannot discover or adequately litigate the facts or the legal principles supporting the claims at trial or on direct appeal.⁹⁷ This sometimes occurs (1) because a police officer, prosecutor or other state actor has suppressed the relevant facts (which may itself have violated the Constitution, as when the suppressed facts show the defendant is innocent,⁹⁸ or may keep the defendant from establishing the violation of some other principle, as when police suppressed evidence that they coerced the defendant into confessing, or when the prosecutor hid his efforts to keep African-Americans off of criminal juries⁹⁹); (2) because the agent of the violation was the defendant's own trial or direct appeal attorney (as in the case of ineffective assistance of counsel), thus preventing the defendant from recognizing or fairly litigating the claim;¹⁰⁰ (3) because the evidence establishing the claim was not reasonably available to the defense at the time of trial or appeal for some other reason¹⁰¹ (as when counsel later discovers that the trial judge was corrupt¹⁰² or biased,¹⁰³ that a juror lied during the jury selection process,¹⁰⁴ or that the bailiff secretly lobbied the jury to convict or condemn¹⁰⁵); or (4) because the legal rule establishing the claim did not exist at the time of trial or appeal and the rule applies "retroactively" to the prisoner's case.¹⁰⁶

Because the Supreme Court has suggested that states are constitutionally required to provide adequate state post-conviction remedies for federal constitutional claims that cannot properly be pursued at trial and on direct appeal,¹⁰⁷ and because federal habeas law rewards states when they *do* provide such remedies,¹⁰⁸ all states now do so.¹⁰⁹ State capital prisoners seeking to preserve their access to federal habeas review accordingly are obliged to exhaust those remedies, and the professional obligation of capital

attorneys to subject their clients' convictions and sentences to searching scrutiny compels them to pursue state post-conviction review in nearly all capital cases.¹¹⁰

State post-conviction review takes a variety of forms under a variety of names (*e.g.*, habeas corpus, coram nobis, extraordinary motion for new trial, and state post-conviction procedures acts). Traditionally, such proceedings have taken place after the completion of state direct appeal and have entailed the filing of a petition for review with the judge who presided over the original trial, and the appeal of any adverse rulings up to an intermediate state appellate court and then to the state high court.¹¹¹ More recently, an increasing number of states (1) have adopted "unitary appeal" procedures that require direct appeal and state post-conviction proceedings to take place nearly simultaneously,¹¹² and/or (2) have required prisoners to commence state post-conviction proceedings in a state intermediate or high court that either can grant or deny state post-conviction relief once and for all, or can remand the case to a trial court to take evidence. In most states, state post-conviction review is limited to claims that were not and could not have been raised on direct appeal and that arise under state or federal *constitutional* law.¹¹³

Most capital prisoners also seek U.S. Supreme Court review on certiorari of adverse state post-conviction proceedings, which the Supreme Court (very) occasionally grants.¹¹⁴ In the event that the Court does so, and grants relief, our classification scheme counts that decision as part of the state post-conviction inspection phase.¹¹⁵

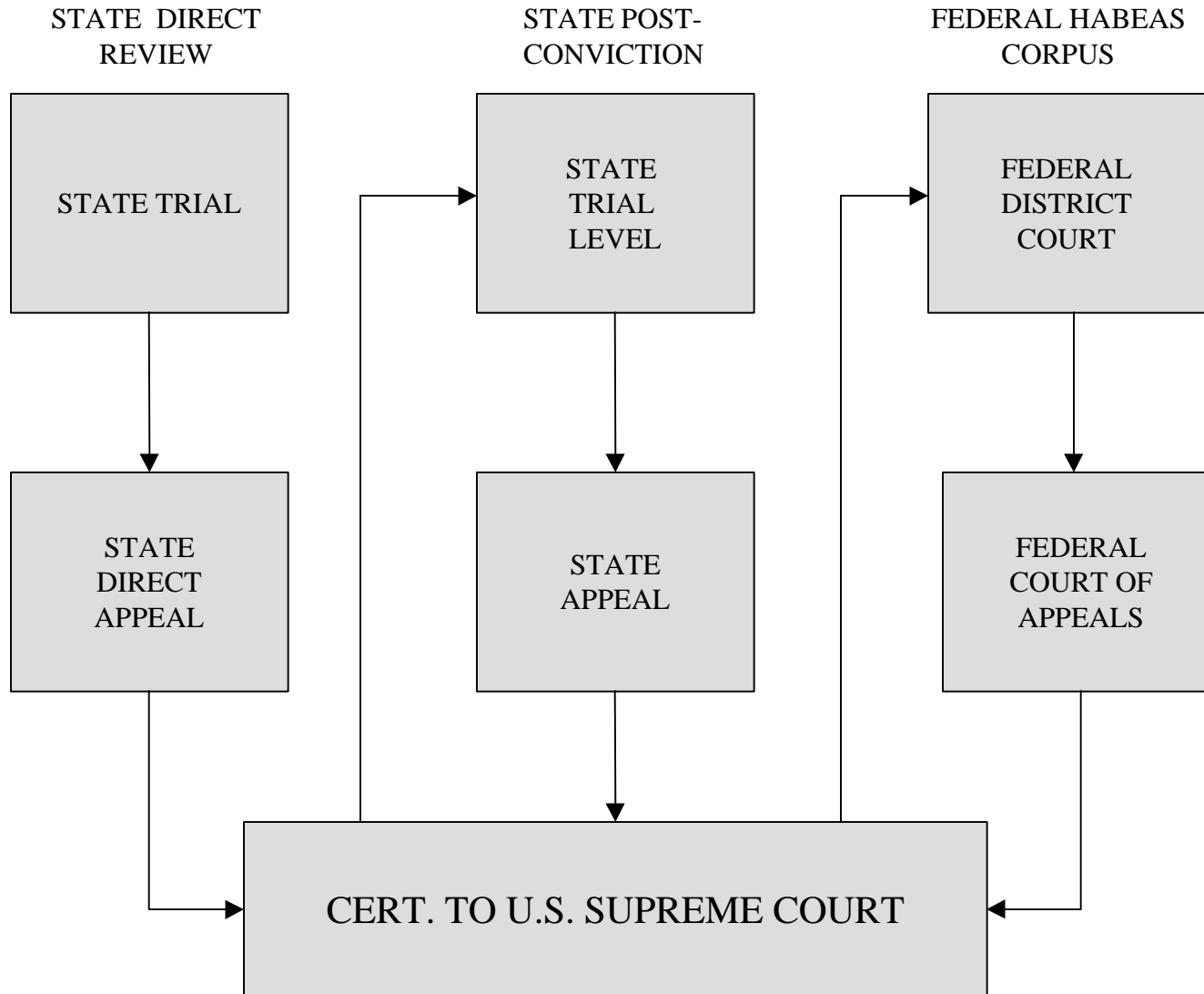
C. Third Inspection: Federal Habeas Corpus

Because federal habeas corpus practice is controlled by federal statute,¹¹⁶ it is far more uniform across states than are direct appeal and state post-conviction proceedings. Habeas proceedings begin with the filing of a petition in a United States District Court in the state in which the defendant was convicted and is incarcerated.¹¹⁷ If relief is denied, and if (but only if) the prisoner can show that his petition presents a

substantial constitutional claim, he may appeal the denial to a federal circuit court,¹¹⁸ and if the district court opinion is affirmed and a stay of execution is available, he may petition the Supreme Court for certiorari.¹¹⁹ Although habeas proceedings at the district court level are a matter of statutory right, stays of execution are not, thus limiting capital habeas proceedings to cases in which the prisoner can secure a federal stay of execution based on a substantial constitutional claim.¹²⁰ Habeas relief is limited to a category of “serious error” that is even narrower than the analogous category of “serious” direct-appeal error.¹²¹

A stylized depiction of the post-trial review process in capital cases that we are studying here is set out below.

THE CAPITAL CRIMINAL PROCESS: TRIAL THROUGH STATE AND FEDERAL POST-CONVICTION



VI. The Study

This study began in 1991 when the Chair of the Senate Judiciary Committee asked the lead author of this Report to calculate the frequency of relief in capital habeas corpus cases.¹²² Simply identifying the relevant cases turned out to be a monumental task, because there is no single repository of capital habeas corpus decisions either nationally or even (especially at the time) in most death-sentencing states, and keyword searches of reported cases are substantially under-inclusive (because some decisions that are capital are not identified as such) and over-inclusive (because many cases in which a death sentence was not imposed either began as capital cases or refer to capital cases). Working with volunteer law student assistants, therefore, the senior author undertook a painstaking search for capital habeas cases relying on (1) the NAACP Legal Defense Fund's (LDF's) quarterly death row census,¹²³ (2) computerized and book research, and (3) a series of conversations with staff members of state death penalty resource centers and other local death penalty lawyers who were familiar with some of the cases and death row inmates in their states.

In late 1995, the study was expanded from a simple count of cases and their outcomes to a search for information that might help explain why relief is granted in so many capital habeas cases. In that year, a team with social scientific expertise was assembled, and began collecting approximately 1300 items of information about each case—relating to defendants, victims, offenses, evidence, lawyers, judges, timing, claims, defenses, court procedures, and the like. We soon determined that the only reasonably accessible source of this kind of information was published judicial decisions of federal habeas courts themselves and of state courts when they denied relief at earlier inspection stages.¹²⁴

During 1996, 1997 and 1998, the senior authors developed, tested and revised a study instrument,

developed and fine-tuned a set of research protocols, assembled and trained a series of law student researchers to collect the information called for by the study information, periodically checked and rechecked their completed forms, and in this way collected data on 599 initial federal habeas corpus cases and 173 second or successive federal habeas corpus cases. The research protocol called for researchers first to identify the “final federal habeas corpus decision” (the decision of the last and highest federal court to finally resolve the merits of the habeas application), then to identify all other available state and federal decisions addressing the same capital judgment (*i.e.*, either the capital conviction, sentence or both), and then to extract from each of those decisions a variety of information that was then coded onto the research instrument. Beginning in 1997 and continuing through 1999, the information on the study instrument in each case was entered into a data base and again checked and rechecked.

We collected the results of all federal habeas corpus decisions that became “final” between January 1, 1973 and October 2, 1995.¹²⁵ By “final,” we mean that (1) the highest federal court to which the case has been timely brought either by the filing of a petition or an appeal has finally ruled on the validity of the capital judgment (meaning both the conviction and death sentence), (2) the time for reconsideration or rehearing by that court has passed, and (3) the time for U.S. Supreme Court review has passed without that Court’s choosing to review the decision or, if it did choose to review it, with its own final merits decision having been rendered. Here again, a finding of “serious error” is made only if the capital conviction, the capital sentence, or both were overturned due to prejudicial, reversible error.¹²⁶

Early on, it appeared that a major factor in determining outcomes in federal habeas cases was the state that imposed the capital judgment under review. For example, although judges of the same (Eleventh) federal circuit court reached nearly all of the final federal habeas decisions in cases from Florida, Alabama and Georgia, their reversal rates in cases emanating from each of those three states were quite different

(respectively, 37%, 45%, and 65%), suggesting that there was something about each particular state's death sentences that made them more or less error-prone.¹²⁷ To study this possibility, we collected information (in 1997 through 1999) about how states differ in regard to their demography, law, politics, judicial organization and funding, death-sentencing history and the like.

An early hypothesis in this regard was that the rate of error found by federal habeas proceedings might be related to the rate of error found in state direct appeals—either because lax state inspections might impose extra work on later federal ones (suggesting an inverse relationship between error rates found at the two stages), or because excessive amounts of error might overwhelm judges at the first checkpoint, permitting considerable remaining error to slip through and be caught (if at all) by judges at a later checkpoint (suggesting a more direct relationship between error rates found at the two stages).¹²⁸ To test this hypothesis, we collected information about each state's capital direct appeal outcomes—prompting our second major study, covering the approximately 4,600 state direct appeal decisions during the 1973-1995 study period. Working back and forth from the LDF death row census and computerized legal research data bases, we compiled a list of all capital direct appeal decisions in the study period, then collected a small set of information about each case from published opinions that our search identified.

We collected the results of all direct appeal decisions that became “final” between January 1, 1973 and December 31, 1995. By “final,” we mean that (1) the highest state court with jurisdiction over the appeal had finally ruled on the validity of the judgment (meaning both the conviction and death sentence), (2) the time for reconsideration by that court had passed, and (3) the U.S. Supreme Court did not review the decision or, if it did review it, had rendered a final merits decision by the end of 1995.¹²⁹ A finding of “serious error” was made if reversible error was found and the capital conviction, sentence or both were overturned.¹³⁰

Substantially later in the process, we began collecting data on state post-conviction outcomes. Those data are especially hard to find. Unlike state direct appeal decisions and appellate-level federal habeas decisions, which almost always are published in capital cases, state post-conviction decisions often are not published, even in capital cases. This is particularly so because state post-conviction review often begins—and when it leads to reversal, ends—in trial courts that almost never publish their decisions.¹³¹ Nor is there any central repository of information about when and where capital state post-conviction petitions are *pending*, making it difficult to ascertain (1) the number of state post-conviction cases that actually were *decided* at that stage during the study period (as opposed to the number that were *available* for resolution at that stage, because they had “cleared” state direct appeal) and, thus, (2) the proportion of *actually decided* cases in which “serious error” was found.

For these reasons, as is more fully described in the introduction to Appendix C, we limited our collection of state post-conviction data to a list of known state post-conviction *reversals* of capital judgments in the study states in which capital cases had progressed significantly beyond the direct appeal stage by the end of 1995. This list, set out in full in Appendix C, enables us to derive an interesting, though incomplete, picture of the rates of error detected by state post-conviction courts in reviewing death sentences. To do so, we make three obviously inaccurate, but reliably *conservative*, assumptions: First we assume that we have a *complete* list of capital state post-conviction reversals due to serious error that occurred during the study period. In fact, our list is incomplete, although it probably contains most such reversals. Second, we assume that every capital case that was *available* for state post-conviction review because it had “cleared” direct appeal during the 1973-1995 study period was *finally decided* on state post-conviction during that period. In fact, many of the “available” cases were *not* finally decided and were still being litigated on state post-conviction as of the end of 1995. Taken together, these two assumptions

lead to a third assumption—that every capital judgment that was available for state post-conviction review and is not known to have been reversed due to serious error during the study period was affirmed. Calculating error rates in this manner systematically *underestimates* those rates (and overstates success rates) by (1) underestimating the numerator (the number of serious errors found, which we have undercounted) and (2) *overstating* the denominator (the number of cases *finally reviewed* for serious error, for which we have substituted the obviously larger number of cases *available* for review).¹³² Accordingly, our estimates of the rate of serious error found on state post-conviction review are understated and conservative.

Analysis of the data collected in our habeas corpus and direct appeal studies began in earnest in mid-1999 and continues at this writing, along with analyses of our newer, state post-conviction data. This Report presents the findings of our initial analyses. These focus on the basic operation and outcomes of the post-trial system for reviewing capital judgments: How many and what proportion of death sentences were reviewed at each of the three inspection stages during the study period—nationally, in each capital-sentencing state, and in each federal judicial circuit and corresponding geographic region? How much error was found, and by whom? How long did the process take? How do states compare in their sentencing and execution rates and along other dimensions that might help explain differences in the frequency of capital-sentencing error?

VII. The National Capital Punishment Report Card

In this Part, we present a “national composite capital-sentencing report card.” The report card describes a variety of information, including the error rates found to characterize, and the time needed to review, death sentences in capital states during the study period. This Part also explains the two-page report card format that we use to report state, federal judicial circuit and regional as well as national data. (In Part VIII below, we present state-by-state comparisons of the information on state report cards for the 28 death-sentencing states in which at least one final direct appeal and federal habeas decision occurred during the 1993-1995 period.¹³³ In Part IX below, we present similar comparisons of information on the federal judicial circuit court/regional report cards.¹³⁴)

The national capital-sentencing report card is set out below. It combines information about the rates of error detected on direct appeal of capital judgments imposed in all **34** death-sentencing states in which at least one state capital direct appeal was completed during the 1973-1995 study period. Our 34-state cohort is: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and Wyoming. Because capital cases in six states (Colorado, Connecticut, New Jersey, New Mexico, Ohio and Oregon) had not advanced far, or at all, into the state post-conviction stage of review, and no case from those states had completed federal habeas review, the bulk of the composite data—those covering the state post-conviction and federal habeas stages and the “overall rates”—omit these states and focus on what we call our **28**-state cohort.

National Composite Capital Punishment Report Card, 1973-1995

History (34 States)

First Death Sentence	1973
First Direct Appeal	1973
First Consensual Execution	1977
First Non-Consensual Execution	1979

Sentences and Executions (34 States)

Total Number of Death Sentences	5,760
Total Number of Executions	313
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal (34 States)

Number Reviewed on Direct Appeal	4,578
Number Reversed on Direct Appeal	1,885
Percentage Reversed on Direct Appeal	41%
Number Awaiting Direct Appeal	1,182
Percentage Awaiting Direct Appeal	21%
Number Forward to State Post-Conviction	2,693

State Direct Appeal (28 States)

Number Reviewed on Direct Appeal	4,364
Number Reversed on Direct Appeal	1,782
Percentage Reversed on Direct Appeal	41%
Number Forward to State Post-Conviction	2,582

State Post-Conviction (28 States)

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$248
Percentage Reversed on Post-Conviction	\$10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined (28 States)

Overall Rate of Error Found by State Courts	\$47%
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Error Rates (Continued)

Federal Habeas Corpus (28 States)

Number Reviewed on Habeas	599
Number Reversed on Habeas	237
Percentage Reversed on Habeas	40%

Overall Rates Including [and Excluding] State Post-Conviction (28 States)

Overall Error Rate	68% [64%]
Overall Success Rate	32% [36%]

Time (28 States)

Time From First Death Sentence to First Non-Consensual Execution	6
Average Time from Sentence to Execution	9
Average Time from Sentence to Final Federal Relief	7.6

Sentencing and Execution Rates (34 States)

	Death States	Whole Nation
Death Sentences per 1000 homicides	14.90	12
Death Sentences per 100,000 pop.	3.9	2.46
NC Executions per 1000 homicides	.68	.54

Demographic Information (34 States)

	Death States	Whole Nation
Average Population	181,374,347	237,905,964
Average Homicides	16,860	21,197
Average Homicides Rate per 100,000 Population	9.3	9
Percentage Population Non-White	19%	20%

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; UCRDB; USCen

The National Composite Capital Punishment Report Card contains six categories of information for either the 34 capital-sentencing states in which at least one capital judgment had been finally reviewed on state direct appeal during the study period, or for the 28 of those states in which at least one capital judgment was finally reviewed on federal habeas during the study period. Because the same six categories appear on all of the succeeding report cards—along with a seventh category in the state report cards—this section describes the types of information that all seven categories contain, then discusses the actual national composite results for each category.

A. Capital-Sentencing History

In the “History” category of each report card is information about the years in which four important capital-sentencing events occurred in the jurisdiction or set of jurisdictions in question following the Supreme Court’s invalidation of all preexisting capital statutes and sentences in *Furman v. Georgia*.¹³⁵ The requisite information for the *nation as whole* (in this case comprised of the 34-state cohort of capital-sentencing jurisdictions) as revealed by the top category in the National Report Card is as follows:

- The **first post-*Furman* death sentences** were meted out in **1973**.¹³⁶
- The **first post-*Furman* state direct appeal decision** finally determining the legality of a post-*Furman* death sentence also occurred in **1973**.¹³⁷
- The **first post-*Furman* execution** of any sort (Gary Gilmore’s consented-to execution by the State of Utah) was in **1977**.¹³⁸
- The **first “non-consensual” execution after *Furman***—*i.e.*, the first time an American jurisdiction carried out a post-*Furman* capital judgment that had passed inspection by all available levels of judicial review—was in **1979**, when Florida executed John Spenkelink.¹³⁹

We focus on non-consensual, as well as all, executions because we are interested in error rates, and only non-consensual executions reveal the inspection system's conclusion that the death sentence is free of "serious error" as defined above.¹⁴⁰

B. Sentences and Executions

This section reports the number of death sentences imposed, the number of executions carried out, and executions as a proportion of death sentences in each jurisdiction or group of jurisdictions. Nationally, during the years 1973-1995, 34 American jurisdictions imposed **5,760 death sentences**¹⁴¹ and carried out **313 executions**.¹⁴² In other words, **only 5% of the death sentences imposed were carried out**.

C. Error and Success Rates

The third section of the report cards identifies (1) the rates of serious, reversible error discovered at each level of judicial inspection,¹⁴³ (2) the overall error rate, meaning the proportion of capital judgments undergoing judicial inspection that were thrown out before reaching the end of the inspection process,¹⁴⁴ and, conversely, (3) the overall success rate, meaning the proportion of capital judgments found after full review to be *free* of serious error. In the "overall rates" category, we give the error and success rates considering all three judicial inspections and also, in brackets, the rates considering only the direct appeal and federal habeas inspections. Nationally, our data reveal that:

- **Direct appeal.** State courts in 34 capital-sentencing jurisdictions finally reviewed 4,578 death sentences on direct appeal during 1973-1995.¹⁴⁵ Because 5,760 death sentences were imposed during that period, this figure reveals that 1,182—or **21%—of the death sentences were awaiting direct appellate review at the end of the study period**.¹⁴⁶ Of the 4,578

capital judgments finally reviewed on direct appeal, **1,885—or 41%—were overturned based on serious error.**¹⁴⁷ This means that 2,693 death sentences¹⁴⁸ from 34 jurisdictions passed the first judicial inspection and were available to be reviewed at the second, state post-conviction stage of review.¹⁴⁹ Many of our subsequent analyses focus on the 28 capital-sentencing jurisdictions in which a full complement of review procedures took place in at least one capital case between 1973 and 1995. On the national report card, therefore, we calculate the direct appeal error rates a *second* time for just the 28 states. That analysis reveals **the same 41% rate of serious error** detected at that stage (1,782 capital judgments overturned due to serious error, out of 4,364 reviewed at that stage), and shows that 2,582 capital judgments from the 28-state cohort passed the first judicial checkpoint and were available for state post-conviction review.¹⁵⁰

- **State post-conviction.** As is discussed above and in Appendix C, our state post-conviction data include only known state post-conviction reversals during the 23-year study period; it does not contain information about the number of state post-conviction proceedings that actually were *completed* during that period.¹⁵¹ For that reason, each report card lists as “*Unknown*” both the “Number Reviewed on Post-Conviction” (*i.e.*, the number of capital judgments that went forward to state post-conviction review and were finally reviewed there), and also the “Number Forward [from State Post-Conviction] to Federal Habeas Corpus.” What we *are* able to calculate is the known reversals¹⁵² as a proportion of the number of capital judgments moving forward from state direct appeal to state post-conviction in our 28-state cohort of capital-sentencing jurisdictions.¹⁵³ Although we report this calculation as the rate of error discovered on state post-conviction—*i.e.*, as the “Percentage

Reversed on [State] Post-Conviction”—we in fact *underestimate* that error rate by a substantial amount, because we take the known reversals as a percentage of the cases *available* for review, rather than as a proportion of the cases *actually* reviewed, during the study period.¹⁵⁴ That underestimation accounts for our use of the “\$” symbol in this row of each report card and our use of the phrase “at least” in discussing that row. Nationally, for the relevant 28 study states, there were at least **248** state post-conviction reversals due to serious error during the study period, so that **serious error was found in more than—probably *significantly* more than—10% of the cases reviewed at that stage.**¹⁵⁵ Although state post-conviction proceedings are not generally thought to be major sources of post-sentencing reversals of seriously flawed capital judgments, in fact **there were more state post-conviction findings of reversible error infecting American capital judgments (248) than there were analogous federal habeas findings (237).**

- **State direct appeal and state post-conviction combined.** This item in the national report card indicates the combined rates of error found at the two **state court** checkpoints. Nationally, state courts as a whole found **47%—nearly one out of every two—**capital judgments they reviewed to be infected with serious error.¹⁵⁶
- **Federal habeas corpus.** Between 1973 and 1995,¹⁵⁷ federal habeas courts with jurisdiction over prisoners in capital-sentencing states around the nation **finally reviewed**¹⁵⁸ **599 death sentences.** They **overturned 237—or 40%—of those sentences based on serious error.**¹⁵⁹
- **Overall rates:** This portion of the report card gives the overall error (and success) rates, meaning the proportion of capital judgments from the relevant jurisdiction or set of jurisdictions that underwent full judicial inspection and were found to have (and to be free

of) serious error.¹⁶⁰ Overall, between 1973 and 1995, **less than one-third—32%—of all death sentences passing through the nation’s state and federal judicial inspection system were cleared of serious error. Conversely, over two-thirds—68%—were thrown out because of serious error.**¹⁶¹

The information presented thus far make this a useful place to discuss **error rates over time**. Earlier, in discussing Figure 2, pp. 12-13 above, we touched on patterns of capital error and success rates over time. There, we noted that, although executions have been on the rise since 1988, the principal cause of that rise seems to be the steady increase in the number of individuals piled up on death row who are potentially available to be executed, and not any sharp increase in the success rate of capital judgments. Figures 3 and 4 below look at patterns over a longer period of time, beginning in 1973.

Figure 3 below depicts the rates of error detected on state direct appeal, federal habeas corpus, and in those two stages combined, by year, from 1973 to 1995.¹⁶² (The first two years for which we plot the rate of error found on federal habeas review are 1978 and 1980, because no capital habeas proceedings were completed before 1978 or during 1979.) Figure 3 reveals the following about error rates detected over time during the first (state direct appeal) and third (federal habeas) inspection stages:

- From the 1970s through 1982, when relatively few cases were under review, rates of error detected on state direct appeal and federal habeas review were extremely volatile and high.
- As of 1983, as larger numbers of capital judgments came under review at both stages, error rates stabilized, and they remained relatively stable throughout the remainder of the period. Thus, **during the final 13 study years (1983-1995):**
 1. **Capital-sentencing error rates found on state direct appeal across the nation consistently remained within the 30% to 45% range.**

2. With the exception of three years (two with a lower rate; one with a higher rate), **capital error rates found on federal habeas review stayed within that same 15-point range.**
3. With one exception, the **combined error rates detected at those two stages stayed consistently within the 54% to 69% range.**
4. Broadly speaking: while the error rate found on federal habeas modestly dipped during the 1987-1991 period, the error rate found on state direct appeal (affecting a much larger pool of cases) modestly rose during that same period. Both rates dipped some during the years 1992 through 1994, then rose sharply in 1995.

Figure 3 is incomplete because it does not contain rates of serious error found, by year, at the state post-conviction stage, nor thus any *overall* reversal rate, by year, for the three inspection stages as a whole. Rates of serious error detected during state post-conviction review cannot be calculated because only data on the number of *reversals*—but not on the total number of cases *decided*, and thus the reversal *rate*—are available by year for the state post-conviction stage.¹⁶³ The next chart, however—Figure 4—provides some information about state post-conviction error rates over time, revealing that in the same years when a modest downward trend in federal habeas reversal rates was occurring (1987-1994), **a marked increase in state post-conviction reversals occurred**¹⁶⁴ If we assume (though we can't know for certain) that the number of capital state post-conviction cases finally decided during the 1985-1994 period was fairly steady, then an increase in the error rate detected at the state post-conviction stage would have occurred and offset the decrease in the federal habeas reversal rate. Making that assumption leads to an estimate of **the overall rate of error detected by all three judicial inspections during the 1988-1994 period of roughly 60-65%.**

Figure 3: Error Rates Detected on State Direct Appeal, Federal Habeas, and the Two Combined, 1973-95

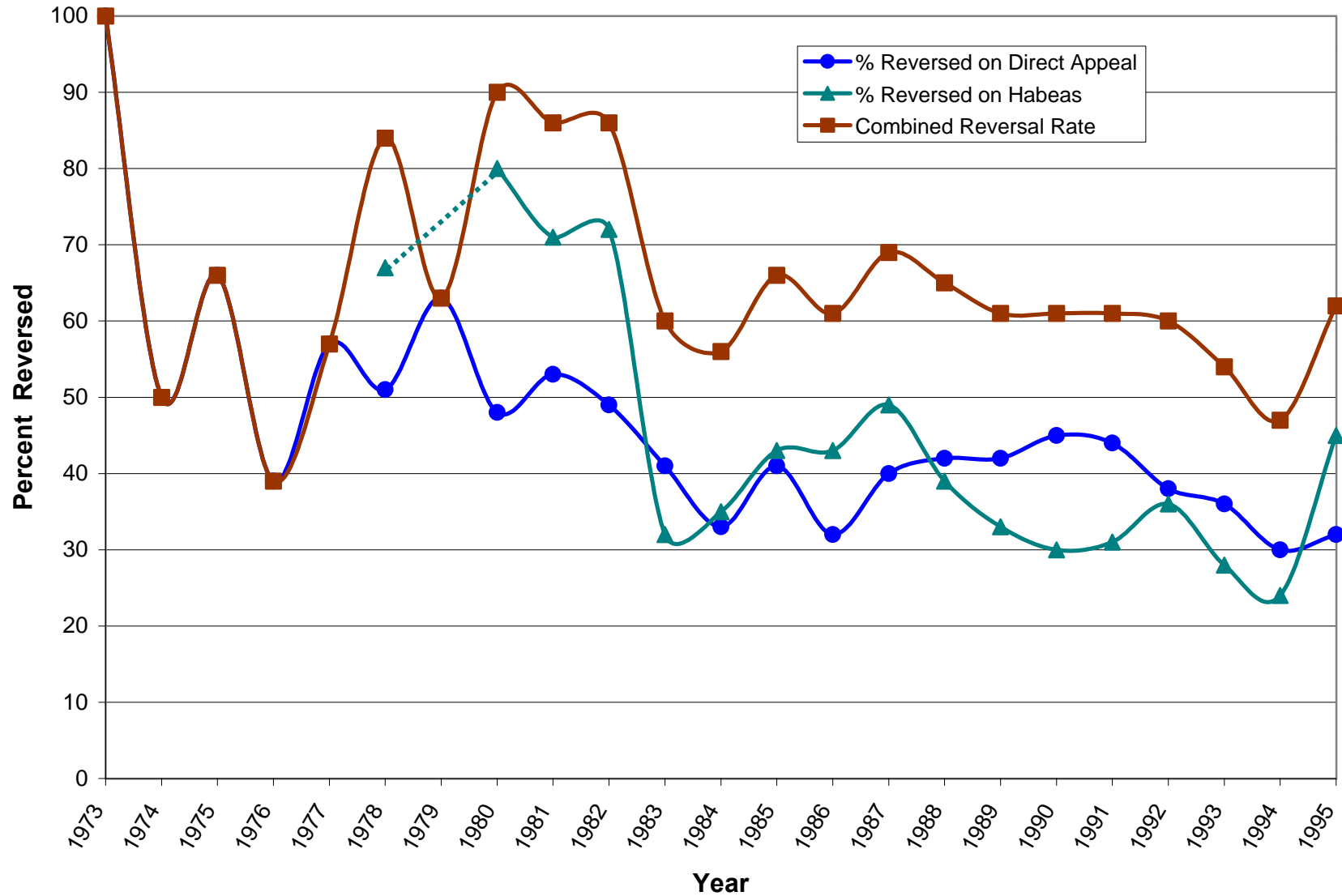
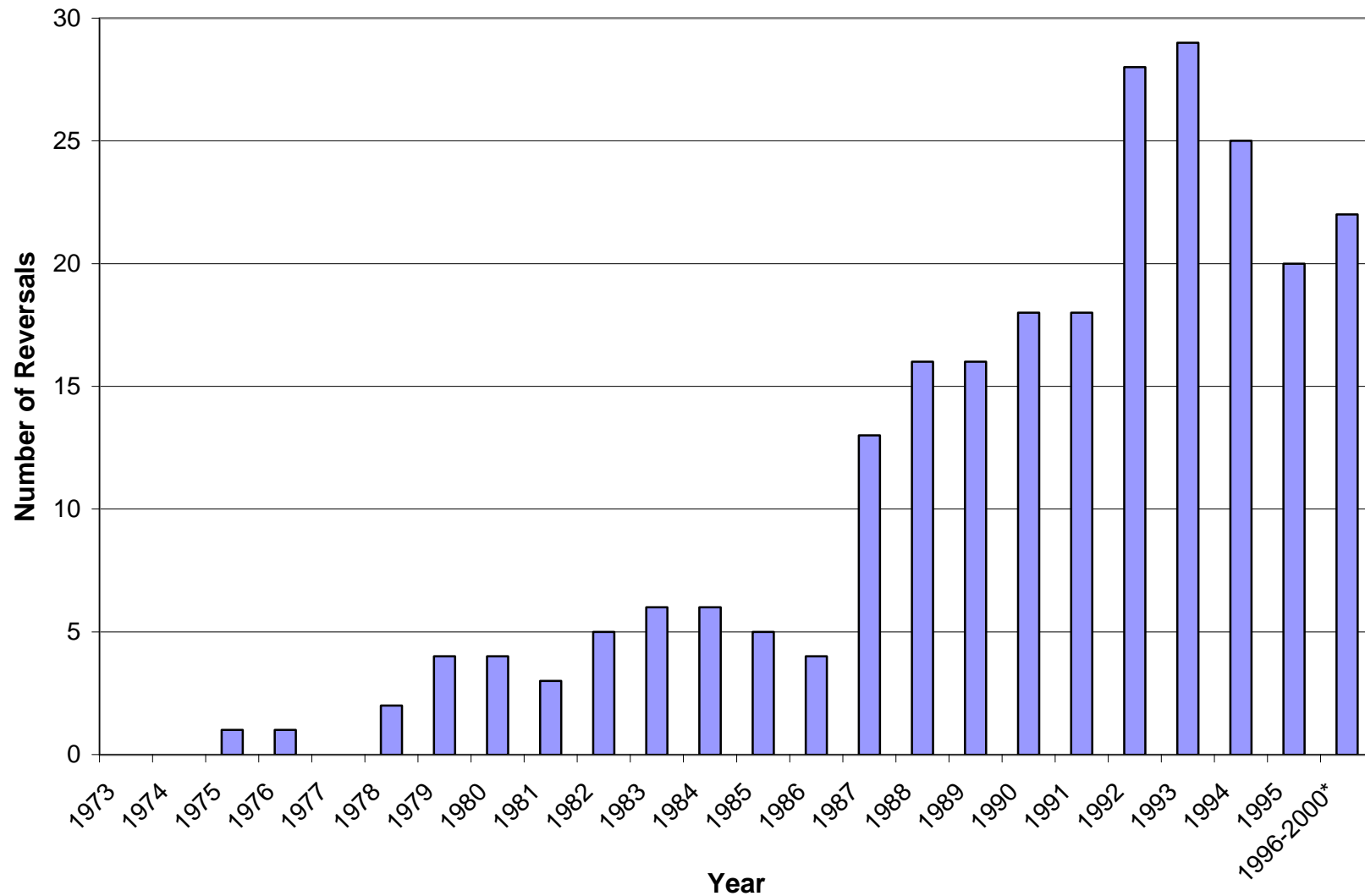


Figure 4. Known State Post-Conviction Reversals, 1973-2000



For 1996 through April, 2000, there are 92 known reversals, an average of 21 per 12 month period.

D. Length of Time of Review

This section of each report card provides information for the relevant jurisdiction or set of jurisdictions on (1) the number of years that elapsed between the state's first death sentence and its first non-consensual execution (not necessarily in the same case); (2) the average number of years it took death sentences to proceed through the three-stage inspection process to execution in the small proportion of cases in which an execution took place; and (3) the average time from death sentence to federal habeas reversal in the 10% of cases in which reversal occurred at the third (federal habeas) checkpoint, as opposed to taking place at one of the earlier (state court) checkpoints. The national report card reveals the following about the length of time required to identify the high amounts of error described above:

- Nationally, 6 years passed between the imposition of the first death sentence and the first non-consensual execution.¹⁶⁵
- We don't know how much time was required for judicial inspection of death sentences at the direct appeal and state post-conviction stages. One of the report-card categories discussed above—the percentage of death sentences awaiting direct appellate review as of the end of 1995—does, however, suggest the extent to which the direct appeal stage is a bottleneck in the review process. **Nationally, 21% of all death sentences imposed between 1973 and 1995 were still awaiting a state direct appeal decision as of 1995.**¹⁶⁶ That 21% (1,182 death sentences) represents close to **five years' worth of death sentences backed up at the direct appeal stage** as of the end of 1995, at the average annual rate of 250 death sentences imposed per year.¹⁶⁷ This suggests that, as of 1995, an average of about 5 years was elapsing between imposition of a death sentence and the end of state direct appeal—and thus that **about half of the time required for the entire review process was being consumed by the first, state direct appeal inspection.**

- **In the minority of cases in which death sentences passed the three-stage inspection and were carried out by execution, the average time, nationally, from sentence to execution was 9 years . In the last 9 study years (1987-1995), by which point the pile-up on death row was substantial(see Figure 2, p.12 above), the average time from sentence to execution had **increased to 10.6 years** .¹⁶⁸**
- **In cases in which serious error was detected during the third, federal habeas review, the average time from sentence to federal reversal was 7.6 years** .¹⁶⁹

E. Capital-Sentencing and Execution Rates

The report cards next answer two questions. (1) How often does the relevant jurisdiction or set of jurisdictions impose death sentences? To answer this question, we consider death sentences as a proportion of three populations: per 1,000 homicides, per 100,000 population, and (in the state report cards, but not the national one) per 1,000 incarcerated inmates in the jurisdiction. (2) How often (relative to homicides, population and prison population) does the jurisdiction execute offenders? Because we are interested in success rates, we consider only “non-consensual” executions, *i.e.*, ones based on capital judgments that have been fully reviewed and found to be free of serious error.¹⁷⁰ Because not all states have the death penalty, our national report card computes these figures for the nation as a whole and for our 34-state cohort.

These numbers are most useful for the comparative purposes to which we put them below.¹⁷¹ Providing a national baseline for those comparisons, the capital-sentencing and execution rates for the nation as a whole, and for the 34 death-sentencing states that decided at least one direct appeal during the study period, are as follows:

- For the 34 capital-sentencing states, an average of 14.9 death sentences were imposed for every 1,000 homicides during the study period. For the same states, an average of 3.9 death sentences were imposed for every 100,000 people during the same period.¹⁷²
- Because so few death sentences actually result in executions, the execution rates determined by each of these population categories are much lower. During the study period, death-sentencing states carried out an average of: .68 executions for every 1,000 homicides; and .15 executions for per 100,000 persons.¹⁷³
- Comparing the last two points reveals that during the study period, **death states capitally sentenced 22 times more defendants per 1,000 homicides than they executed. And they sentenced 26 times more defendants per 100,000 population, than they executed**
- For the whole nation during the study period, an average of: (1) 12 death sentences were imposed for every 1,000 homicides; (2) 2.46 death sentences were imposed for every 100,000 people; and (3) .54 non-consensual executions were carried out for every 1,000 homicides.¹⁷⁴

F. Demographic Factors

The demographic information reported in the sixth report card category reveals the population pools against which each jurisdiction's number of death sentences and executions are compared to determine sentencing and execution rates. They also provide bases for distinguishing among states and thus, potentially, for explaining variations among states in terms of the capital error rates detected on direct appeal and habeas corpus inspection. At the national level we again report data for the 34 death states as well as for the nation at large.

“Average population” is the relevant jurisdiction’s yearly average population from 1973-1995. For the whole nation, the average population during the study period was 237,905,964. For the 34 death states, it was 181,374,347.¹⁷⁵

“Average homicides” are the total number of homicides from 1973-1995 divided by 23, the number of years in our study . For the whole nation, the average number of homicides each year during the study period was 21,197. For the 34 death penalty states, it was 16,860.¹⁷⁶ Comparing this and the last category reveals that death-sentencing states account for about 76% of the nation’s population and about 80% of its homicides.

Homicides per population establishes a jurisdiction’s homicide rate. By “average homicides/average population,” we mean the number of homicides per year for every 100,000 persons in the jurisdiction, averaged over the population during the study period. For the whole nation, average homicides/average population during the study period was 9. For the 34 death sentencing states, it was 9.3.¹⁷⁷ This again reveals that homicide rates are slightly higher in death-sentencing than in nondeath-sentencing states.

“Average prison admissions” means the average number of persons admitted each year to the state’s prisons during the study period.¹⁷⁸

“Average prison population” means the jurisdiction’s average population over study period.¹⁷⁹

We also report here the percentage of each jurisdiction’s population during the study period that was nonwhite, which for the nation as a whole was 20% and for the 28 study states was 19%.¹⁸⁰

G. Court Factors: The Context of State Court Decision Making

In the state (but not the national and circuit/regional) report cards, we report four measures of the social and political contexts in which judges make decisions. Contextual measures such as those analyzed here have been shown in empirical studies to help explain variation in sentencing from county to county within states and across states.¹⁸¹ We consider them here to see whether they can help explain state variations in capital-sentencing error rates, and also in capital-sentencing and execution rates themselves.

The “political pressure” index measures the extent to which state judges are subject to electoral scrutiny and discipline. Although nearly all the state judges in our study are subject to election at some point if they wish to remain in office, the forms and frequency of elections differ in ways that are likely to increase or decrease the extent to which judges are put at political risk because of the capital outcomes produced in their courts (meaning, at the trial level, whether the verdict was death or life and, at the appellate level, whether a death sentence under review was affirmed or reversed). The index considers whether judges initially are elected or appointed, whether judicial elections are partisan, the length of judges’ terms of office, and whether judges’ continuation in office is determined by contested or retention elections.¹⁸²

The “party competition index” is a composite of the vote share of each party in state gubernatorial elections from 1968-1996.¹⁸³

Our penultimate (“state court criminal caseload”) item reports the yearly average number of criminal case filings in each jurisdiction from 1985-1994 per 1,000 people in the population.¹⁸⁴ We include this figure to test the hypothesis that high criminal caseloads may in some way affect the quality of state-court capital judgments.

Finally, aiming to test a similar hypothesis having to do with available judicial resources, we report each state’s average annual court-related expenditures during the fiscal years 1982-1992.¹⁸⁵

VIII. State Comparisons

Appendix A to this Report presents capital punishment report cards for each jurisdiction in our 28-state cohort, arranged alphabetically. Observers and policymakers in each state may find their state's report card to be interesting in and of itself. The report cards are especially informative, however, when used comparatively. With the help of a number of tables and figures, this section undertakes a variety of state-by-state comparisons.

A. Rates of Serious Error Found on State Direct Appeal

Table 4 and Figure 5 below compare the rates of capital error discovered on direct appeal during the 23-year study period in each of the 28 study states to the rates in the other states and to the national composite of 41%. Table 4 and Figure 5 show that **at the first state inspection stage, elected high court judges in a large majority (64%) of American capital-sentencing states found that over a third of their states' capital judgments were seriously flawed.** In well over half the study states, state high court judges found serious error in 40% or more of their capital judgments. The error rate found on direct appeal was *50% or more in a quarter of American death-penalty jurisdictions.*

**Table 4: Percent of Capital Judgments Reviewed on Direct Appeal
in Which Reversible Error Was Found, 1973-1995**

State	Percent Reversed on Direct Appeal
National Composite	41
1. Wyoming	67
2. Mississippi	61
2. North Carolina	61
4. Alabama	55
5. South Carolina	54
6. Maryland	53
7. Kentucky	50
8. Florida	49
9. Oklahoma	48
10. Louisiana	46
11. Washington	45
12. Arizona	42
12. Idaho	42
12. Montana	42
15. Arkansas	40
16. Illinois	39
17. Georgia	35
17. Utah	35
19. Indiana	32
20. California	31
20. Texas	31
22. Nevada	30
23. Nebraska	29
23. Tennessee	29
25. Pennsylvania	28
26. Delaware	26
27. Missouri	17
28. Virginia	10

Source: DADB

**Figure 5. Percent of Death Sentences Reversed
on State Direct Appeal, 1973-95**

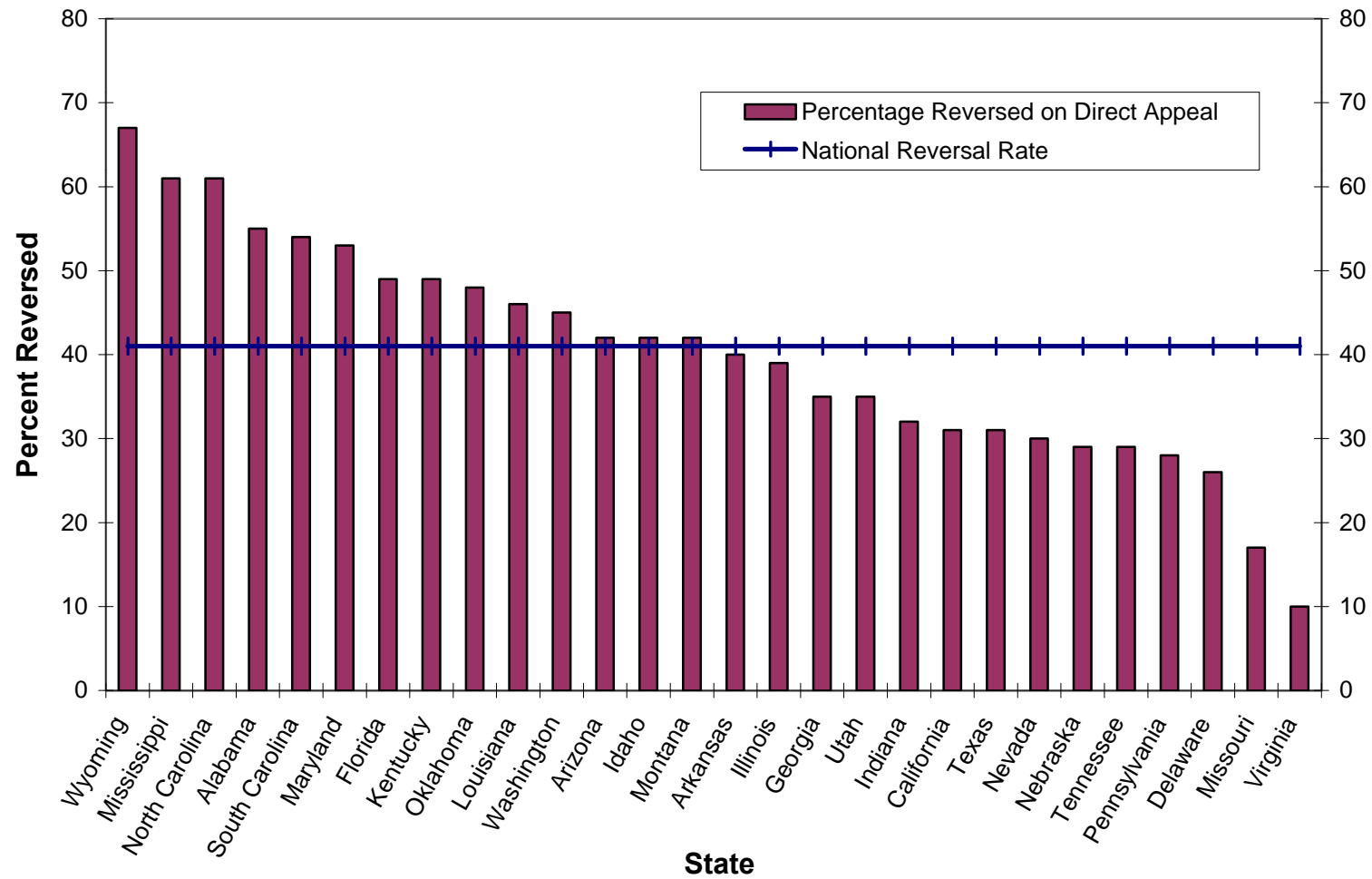


Table 4 and Chart 5 identify two states whose records are so different from others as to raise questions about why: Missouri’s high court finds error only 17% of the time—9 percentage points less often than the next lowest state (after which the distribution of states becomes more continuous). And the Virginia Supreme Court finds error only 10% of the time—7 percentage points below Missouri, 16 percentage points below where the distribution becomes continuous, and 31 percentage points below the national average. All other states range from two-thirds (67%) to just over 1.5 times the national average of 41%; by contrast, Missouri’s rate is only 40%, and Virginia’s is less than 25%, of the national average. A question for further study is whether the fact that all other state high courts discover serious error in anywhere from 26% to 67% of their capital judgments provides a reason to question the care with which the Missouri and Virginia high courts screen for such error, given that they find it only 17% and 10% of the time,¹⁸⁶ or whether capital judgments in those states are substantially less prone to error than capital judgments everywhere else.¹⁸⁷

B. Rates of Serious Error Found on State Post-Conviction

Table 5 below reveals what we know about the comparative amounts and rates of serious capital error found during state post-conviction review proceedings. As we have noted, the available data do not permit an accurate determination of the rates of error *actually* found in *decided* cases, because there is no accurate count of those cases. The data do, however, enable us to derive a *systematically underestimated* proxy for that state post-conviction reversal rate by taking the (incomplete) number of state post-conviction reversals we have been able to identify as a proportion of the cases that were *available* for state post-conviction review (whether or not they actually completed that review) during the study period.¹⁸⁸ Table 5 presents that (under)estimated rate of error found on state post-conviction in each state.

Table 5: Known State Post-Conviction Reversals, 1973-1995, By State

State	Known Number of State Post-Conviction Reversals	Reversals as % of Cases Available for State Post-Conviction Review*
National Composite	248	10
1. Maryland	14	52
2. Wyoming	1	33
3. Indiana	13	25
4. Utah	3	23
5. Mississippi	11	20
6. South Carolina	10	18
7. Florida	64	17
7. Tennessee	13	17
9. Nebraska	2	13
10. Georgia	24	12
11. Arizona	12	10
11. North Carolina	9	10
13. Alabama	11	9
13. Montana	1	9
15. Nevada	5	8
16. Illinois	10	7
16. Louisiana	4	7
18. Texas	22	6
19. Idaho	1	5
20. Arkansas	2	4
20. California	7	4
20. Missouri	3	4
23. Virginia	3	3
24. Oklahoma	2	2
25. Pennsylvania	1	1
26. Kentucky	0	0
Delaware	unknown	unknown
Washington	unknown	unknown

*This column does *not* report the proportion of capital judgments *actually reviewed* on state post-conviction that were reversed due to serious error, because that information is not available. It instead reports the reversals known to have occurred (despite the difficulty of collecting data) as a percentage of *all* of the capital judgments that were available to be reviewed (almost all of which eventually complete state post-conviction review, but many of which had not completed that review (*i.e.*, they instead were *awaiting* final review) at the end of the study period. This table thus undercounts the actual number and rate of reversals on state-post conviction. See *infra* Appendix C, pp. C-1 to C-2.

Source: Appendix C; DRCen; DADB

Table 5 shows the following:

- State post-conviction review is an important source of review in some states, including Florida, Georgia, Indiana, Maryland, Mississippi, North Carolina, and Tennessee. In Maryland, at least **52%** of capital judgments reviewed on state post-conviction during the study period were overturned due to serious error; the same was true of at least **25%** of the capital judgments that were similarly reviewed in Indiana, and at least **20%** of those reviewed in Mississippi.
- Table 5 is especially revealing when the *post-conviction* reversal-rate rankings it assigns to particular states are compared to their *direct appeal* reversal-rate rankings in Table 4 (p. 47). That comparison identifies a number of states in which high error rates are found at *both* state court review stages. Of particular interest are three southeastern states—South Carolina, North Carolina and Maryland, all of which fall within the jurisdiction of the United States Court of Appeals for the Fourth Circuit (“Fourth Circuit Court”), based in Richmond, Virginia. All three of those states (and, most especially Maryland and South Carolina) rank fairly high on *both* state direct appeal *and* state post-conviction reversal rates. In this regard, they contrast sharply with the one remaining state within the jurisdiction of the federal Fourth Circuit Court—Virginia—which falls in the very *bottom* cohort of states in regard to error detection at *both* state review stages.
- Other states in which relatively high rates of error manifest themselves at both the state direct appeal and state post-conviction stage are Wyoming and Mississippi (both falling within the top fifth of states in terms of capital error rates found at both state court inspection stages) and Florida, which ranks seventh and eighth on the two error rates.
- Falling in the bottom rank insofar as error detection by both sets of state courts is concerned, in addition to Virginia, are California, Missouri, and Pennsylvania.

- By contrast, in some states, close scrutiny at one state-review stage seems to compensate for less exacting scrutiny at another. In Indiana and Tennessee, for example, relatively low error-detection rates on direct appeal (the states are ranked 19th and 23rd, respectively, in terms of their reversal rates at that stage) are partly offset by high error-detection rates on state post-conviction (where the states are ranked 3rd and 7th, respectively). Georgia, Nebraska and Utah also fit this pattern.
- The inverse pattern—high direct appeal, but low state post-conviction, error-detection rates—characterizes states such as Kentucky and Oklahoma.

C. Rates of Serious Error Found on State Direct Appeal *and* State Post-Conviction

Table 6 and Figure 6 below display the *combined* rates of error detected in the two *state-court* inspection phases.

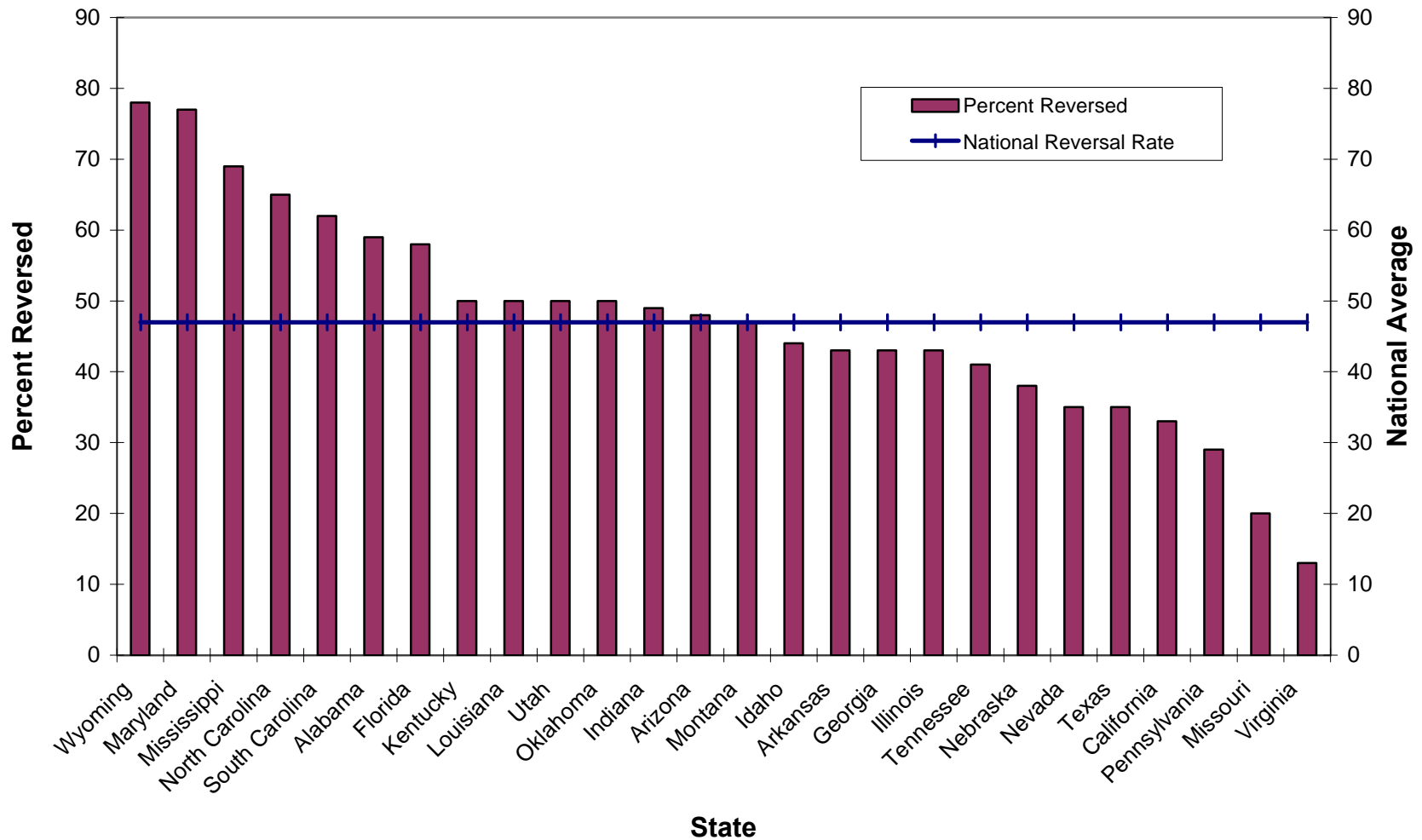
**Table 6: State-by-State Comparisons of Rates of Error Detected
by All State Courts (State Direct Appeal and State Post-Conviction)**

State	Percent Reversed in State Courts, Overall*
National Composite	47%
1. Wyoming	78%
2. Maryland	77%
3. Mississippi	69%
4. North Carolina	65%
5. South Carolina	62%
6. Alabama	59%
7. Florida	58%
8. Kentucky	50%
8. Louisiana	50%
8. Utah	50%
8. Oklahoma	50%
12. Indiana	49%
13. Arizona	48%
13. Montana	47%
15. Idaho	44%
16. Arkansas	43%
16. Georgia	43%
16. Illinois	43%
19. Tennessee	41%
20. Nebraska	38%
21. Nevada	35%
21. Texas	35%
23. California	33%
24. Pennsylvania	29%
25. Missouri	20%
26. Virginia	13%
Delaware	unknown
Washington	unknown

*This column does *not* report the proportion of capital judgments *actually reviewed* in state court that were reversed due to serious error, because the post-conviction information needed to make that calculation is not known. Instead, it reports the reversals known to have occurred (despite the difficulty of collecting state post-conviction data) as a percentage of *all* of the capital judgments that were available to be reviewed on state direct appeal or state post-conviction (almost all of which were *eventually* reviewed on state post-conviction but many of which were not *finally* reviewed (*i.e.*, they were as yet undecided and *awaiting* final review) at that stage at the end of the study period. The actual state court reversal rate thus is higher in most or all instances. *See infra* Appendix C, pp. C-1 to C-2.

Source: DADP; Appendix C; DRCen

Figure 6. Percent of Death Sentences Reversed on State Direct Appeal or State Post-Conviction, 1973-95



Note: State post-conviction reversal rates for Delaware and Washington are unknown.

Table 6 and Figure 6 reveal the extent of serious error detected by state courts as a whole. The results are remarkable:

- **Even before any federal courts become involved, state courts across the country find serious error in close to *half* (at least 47%) of the capital judgments that reach their two checkpoints.**
- **State courts found capital error rates of 40% or more in *five-sixths* of the death-penalty states. They found serious error in 60% or more of the capital judgments in a *fifth* of those states.**
- A number of the states in the nation's "death belt" (where most American death sentences are imposed and the largest death rows exist) have some of the nation's highest rates of serious capital-sentencing error—by the lights of the *states' own elected judges*: **Florida at 58%; Alabama at 59%; South Carolina at 62%; North Carolina at 65%; Mississippi at 69%; and Maryland at 77%.**
- As in other analyses, **Virginia is a distinct anomaly.** Its courts' capital error-detection rate during the study period was less than a third the national average, and 35% below the next nearest state, Missouri—which itself has an error-detection rate 31% below the next lowest state, after which the differences among states are small.

D. Rates of Serious Error Found on Federal Habeas Review

Table 7 and Figure 7 below compare the rates of error detected on federal habeas corpus review of death sentences in the 28 capital-sentencing jurisdictions with at least one completed federal habeas proceeding during the study period. As discussed above, virtually all capital judgments reviewed on federal habeas had previously been given *two* state court inspections: one on state direct appeal (at which 41% of the judgments reviewed were thrown out) and a second on state post-conviction (after which, the state courts together had thrown out 47% of the capital judgments they reviewed).

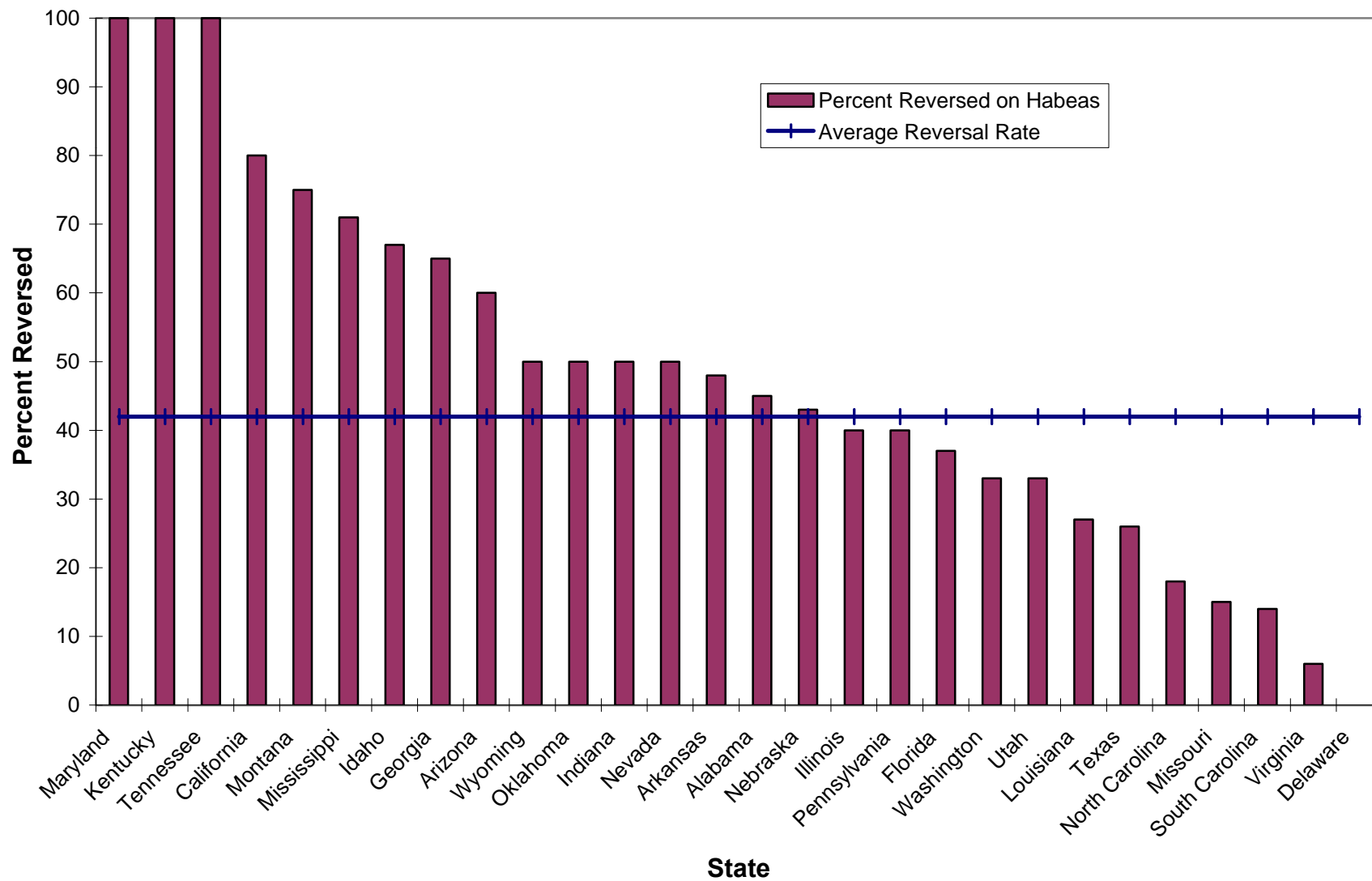
**Table 7: Percent of Capital Judgments Reviewed on Federal Habeas Corpus
in Which Reversible Error Was Found, 1973-1995**

State	Percent Reversed on Habeas Corpus
National Composite	40
Kentucky*	100
Maryland*	100
Tennessee*	100
California	80
Montana	75
Mississippi	71
Idaho*	67
Georgia	65
Arizona	60
Indiana	50
Nevada	50
Oklahoma	50
Wyoming*	50
Arkansas	48
Alabama	45
Nebraska	43
Illinois	40
Pennsylvania	40
Florida	37
Utah*	33
Washington*	33
Louisiana	27
Texas	26
North Carolina	18
Missouri	15
South Carolina	14
Virginia	6
Delaware*	0

* States with three or fewer completed federal habeas cases during the study period.

Source: HCDB

Figure 7. Percent of Death Sentences Reversed on Federal Habeas Review, 1973-95



Although Table and Figure 7 include all 28 states, our narrative analysis here puts aside the states (indicated with an asterisk) with three or fewer federal habeas cases during the study period. Among the 20 capital-sentencing states that had a substantial number of their capital judgments reviewed on federal habeas during the study period:

- **Federal courts found serious error¹⁸⁹ in 40% of the capital judgments they reviewed at this *third* inspection point.**
- **In two-fifths of the study states, federal courts detected error rates of 50% or more at this third inspection.**
- **Virginia is again an anomaly in this analysis. The 6% error-detection rate among Virginia capital habeas cases is well under *half* that of the *next lowest state* (South Carolina at 14%), and is exactly *15% of the national average*.¹⁹⁰**

Table 7 and Figure 8 below reveal an important fact about federal habeas review, which undermines two frequent, but contradictory, criticisms of federal judges. According to one criticism, unelected federal judges tend to oppose the death penalty, prompting them to *overturn* capital judgments whenever they can.¹⁹¹ According to the opposed view, federal judges—especially since appointees of Presidents Reagan and Bush became a majority in the mid-1980s—are ideologically “conservative” and prone to *uphold* state-imposed death sentences at every turn.¹⁹² Our data suggest that federal judges are more discerning and sensitive to context than either view claims. Thus, the same judges on the same federal circuit court often find very *different* rates of reversible error in capital judgments they review depending on the state of origin of the judgments in question. This suggests that factors specific to each states’ capital judgments have more of an effect of federal judges’ behavior in capital habeas cases than the judges’

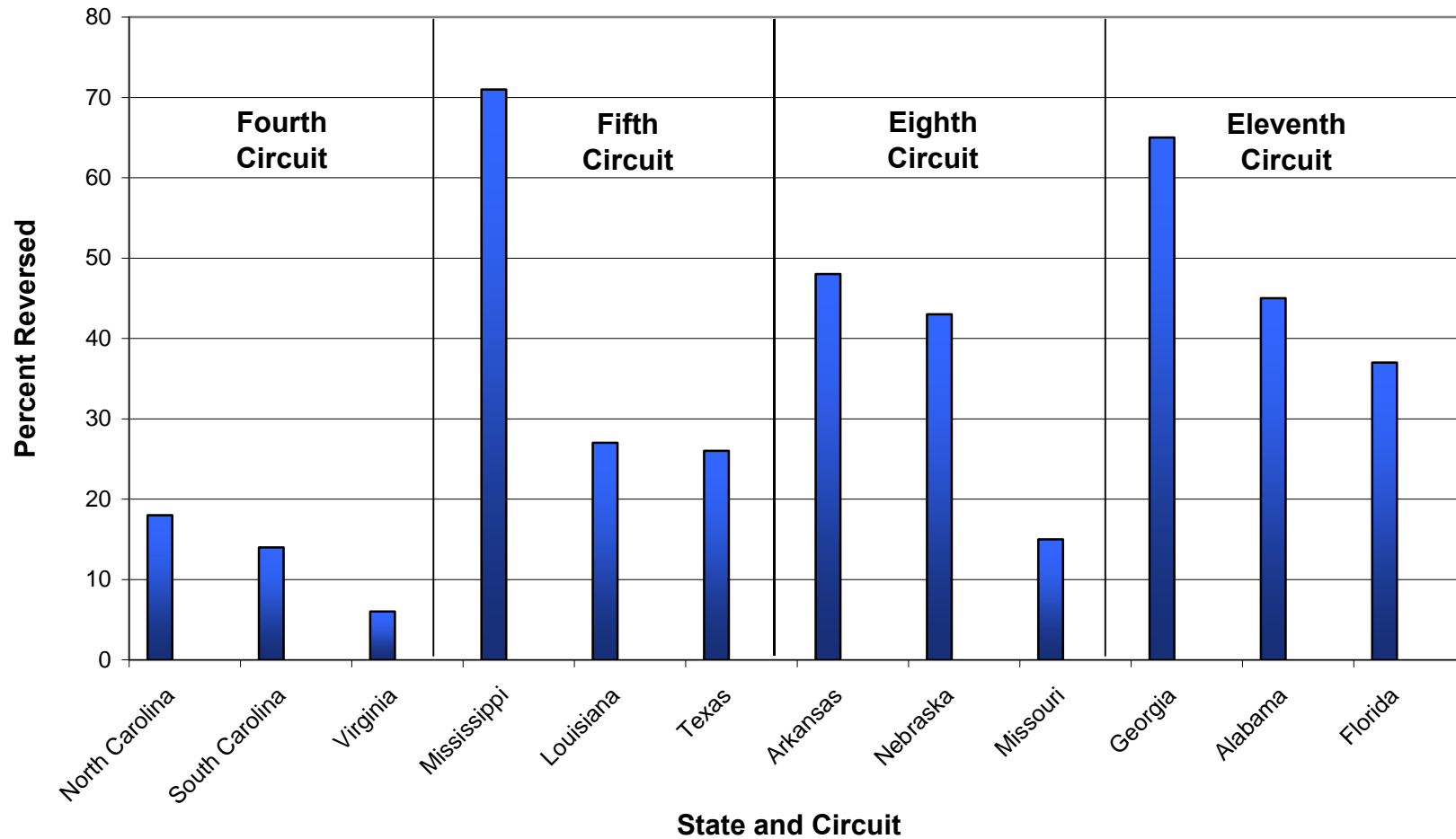
ideological dispositions. Table 8 and Figure 8 below compare the rates of error that 4 federal circuit courts found in capital judgments imposed by states subject to their jurisdiction during the study period.

Table 8: Error Rates, by Selected States, Found by Federal Circuit Courts on Habeas Review, 1973-1995

Circuit State	% Capital Judgments Reversed on Habeas
Fourth Circuit	
North Carolina	18
South Carolina	15
Virginia	6
Fifth Circuit	
Mississippi	71
Louisiana	27
Texas	26
Eighth Circuit	
Arkansas	48
Nebraska	43
Missouri	15
Eleventh Circuit	
Georgia	65
Alabama	45
Florida	37

Source: HCDB

**Figure 8. Percent of Capital Sentences
Reversed on Federal Habeas by State and Circuit, 1973-95**



E. Rates of Serious Error Found by State Versus Federal Courts

Figures 9 and 10 below compare the rates at which state courts in each of the study jurisdictions found serious error in that state's capital judgments to the corresponding rates for federal courts. Figure 9 compares the rate of serious capital error that was found for each state by its courts on *direct appeal* to that found by federal courts on *habeas review*.¹⁹³ Figure 10 makes a similar comparison of the rate of serious capital error found for each state by its courts on *both* state direct appeal *and* state post-conviction review to the corresponding serious-error rate found by federal courts on habeas.¹⁹⁴

Figures 9 and 10 arrange the states by the extent of the *difference* between the rates of serious capital error found on *state* versus *federal* review. On the left side of each chart are states as to which *state* courts found more serious capital error than federal courts. On the right side are states as to which *federal* courts found more serious error than state courts. In between are states as to which state and federal courts found similar rates of capital error.

Figure 9. Percent of Capital Judgments Reversed on State Direct Appeal and Federal Habeas, 1973-95

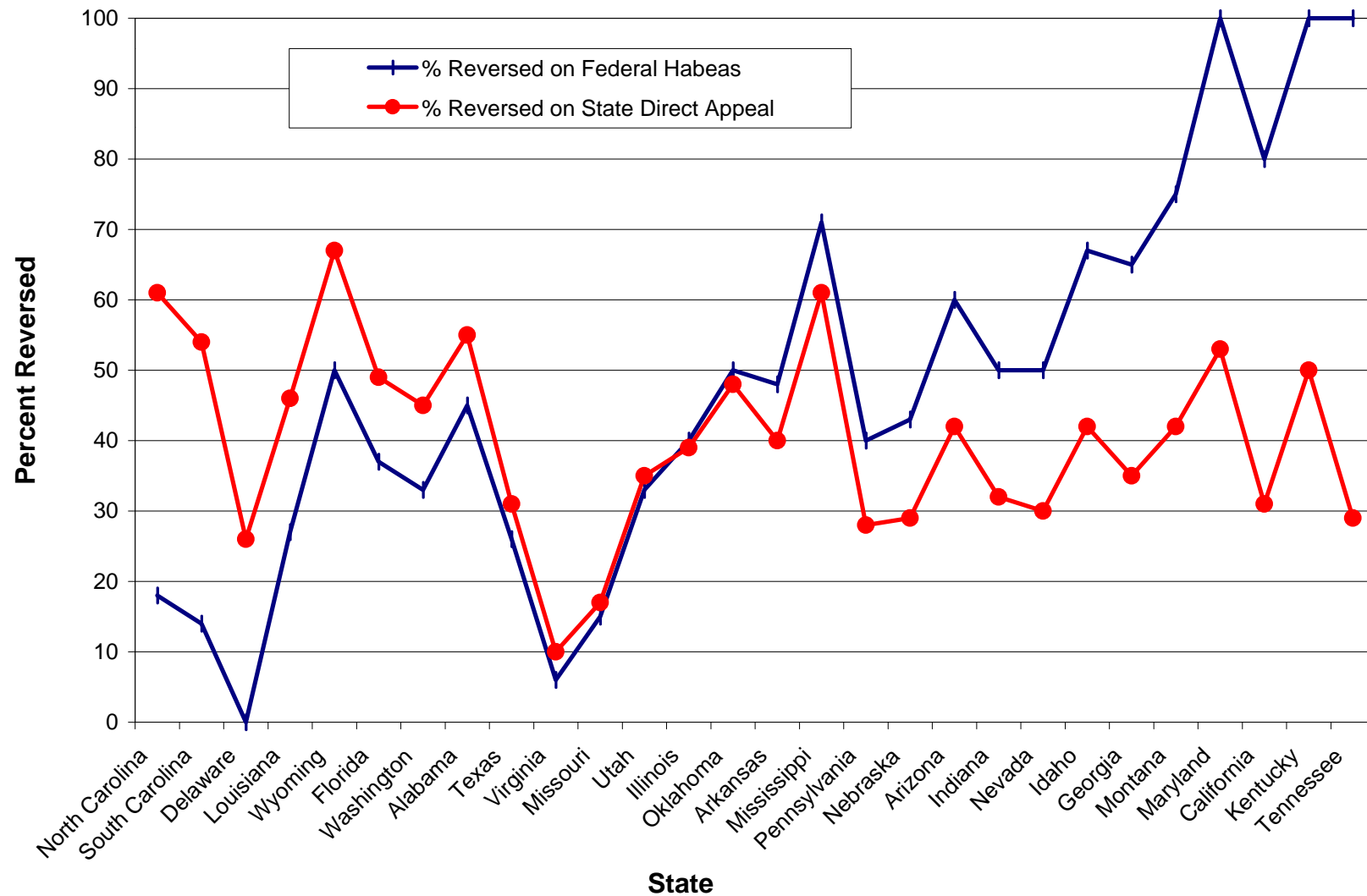
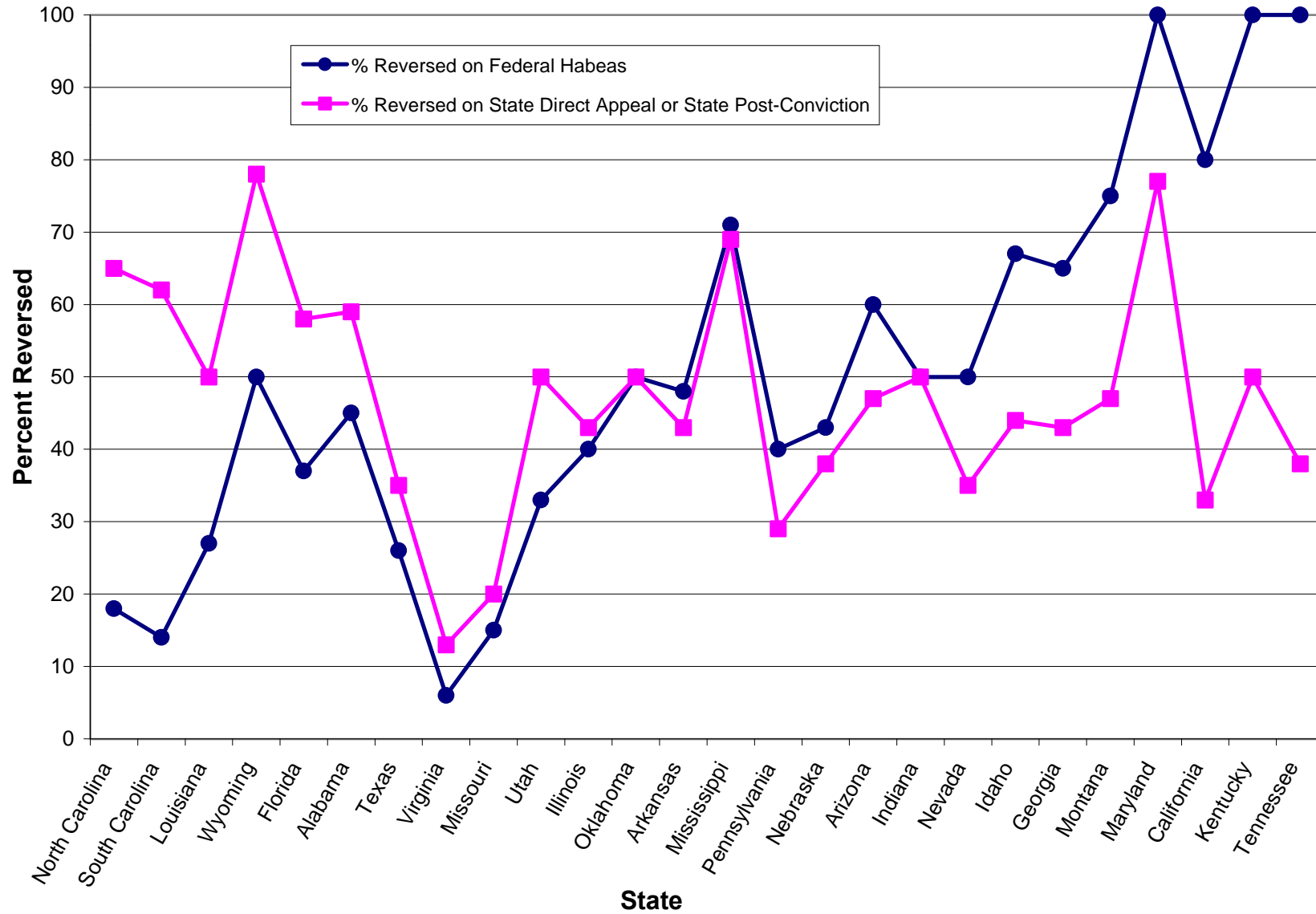


Figure 10. Percent of Capital Judgments Reversed on State Direct Appeal or State Post-Conviction and on Federal Habeas, 1973-95



Especially when we put to one side the (asterisked) states that had too few capital habeas reviews to permit analysis, both charts reveal a strong degree of similarity between the rates of capital-sentencing error detected by state and federal courts in each state (i.e., in how close together the two lines are). More important is the **even stronger degree of similarity between state and federal courts' judgments about the various state's comparative rates of capital-sentencing error** (i.e., in how closely each line's upward and downward ticks as it moves from one state to the next are paralleled by the other line's upward and downward ticks). What Figures 9 and 10¹⁹⁵ thus suggest is that state and federal courts examining the same pools of capital judgments generally find—and react similarly to—the same relative levels of serious capital-sentencing error. In plain English: **Where state courts find comparatively high, low or average rates of error in a particular jurisdiction's capital judgments relative to error rates found elsewhere, so do the federal courts reviewing the same jurisdiction's capital cases.** Figures 9 and 10 thus refute the notion that elected *state* judges as a group react differently to the possibility of error in capital cases from the way that *federal* judges react as a group. In fact **state and federal judges' reactions to capital error** on both these measures of comparative amounts of error¹⁹⁶ **are very much in sync.**

That said, it is interesting to consider the relatively small numbers of states that fall on the left and the right edges of the chart where the state and federal error-detection lines diverge. In doing so, we focus on Figure 10 (the more informative of the two charts¹⁹⁷) and on the (non-asterisked) states with sufficient numbers of federal habeas cases.

One interpretation of Figure 10 is that the courts of North Carolina, South Carolina, Louisiana, Florida and Alabama—the states on the left side of the chart—are doing the lion's share of error detection for capital judgments in those states, leaving significantly less error to be detected by the relevant federal

courts. Alternatively, the courts of those five states may have increased their level of vigilance to compensate for what they perceive (based, *e.g.*, on past experience and (more probably) on information transmitted by lawyers) to be unusually lax error-detection by the federal courts. This latter interpretation might explain the North and South Carolina courts' robust error-detection in capital cases. Both states fall within the United States Court of Appeals for the Fourth Circuit, which has by far the lowest capital-error detection rate of any federal judicial circuit in the country.¹⁹⁸

The corresponding interpretation for Georgia, Montana and California—on the *right* side of the chart—is that federal courts have taken the lead error-detection role as to capital judgments from those states to compensate for low *state* court error-detection.

The hypotheses offered in the preceding two paragraphs present important questions for future research.

We conclude our discussion of Figure 10 by again noting a discrepancy between Virginia and the other states. Unlike almost every other state (Missouri, again, and Texas are in an intermediate category) Virginia's state-review "square" *and* its federal-review "circle" are *both* located at the very bottom of the chart. In this respect, the Virginia courts may be contrasted to those of the other states in the Fourth Circuit, which are discussed on pp. 51 and 65 above: unlike the courts of the neighboring states, there is no evidence that Virginia's courts have tried to compensate for very low error detection by the Fourth Circuit. Quite the contrary, Virginia courts have the lowest error-detection rates of the 28 study states. As a consequence of simultaneously low state and federal error detection, the rate of error detected in Virginia capital judgments is both extremely, and unusually, low.

F. Overall Rates of Serious Error Found on State Direct Appeal, State Post-Conviction, and Federal Habeas Corpus

Tables 9 and 10, and corresponding Figures 11 and 12, compare the various study states based on their **overall rates of serious capital-sentencing error** (*i.e.*, the rates of serious error found during full state and federal court review¹⁹⁹). Table 9 and Figure 11 consider only the first (state direct appeal) and third (federal habeas) review stages.²⁰⁰ A more comprehensive picture is provided by Table 10 and Figure 12, which include, in addition, what we know about the second, state post-conviction stage. For that reason, we display and discuss Table 10 and Figure 12 here. Table 9 and Figure 11 are in Appendix E (pp. E-5 and E-6).

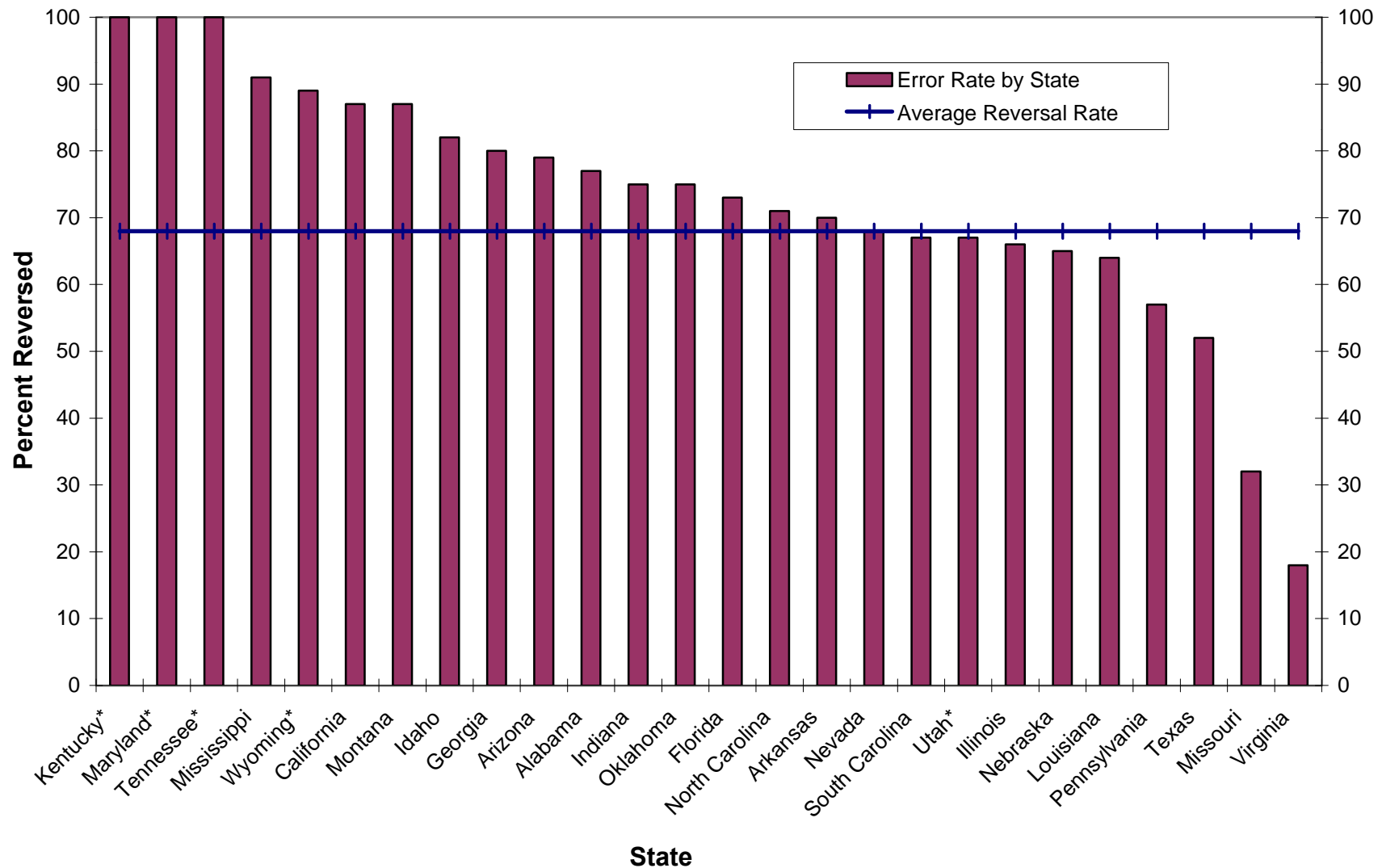
Table 10: Overall Error Rates, by State, 1973-1995
Including State Post-Conviction

State	Overall Error Rate, Including State Post-Conviction*
1. Kentucky*	100%
1. Maryland*	100%
1. Tennessee*	100%
4. Mississippi	91%
5. Wyoming*	89%
6. California	87%
6. Montana	87%
8. Idaho	82%
9. Georgia	80%
10. Arizona	79%
11. Alabama	77%
12. Indiana	75%
12. Oklahoma	75%
14. Florida	73%
15. North Carolina	71%
16. Arkansas	70%
17. Nevada	68%
18. South Carolina	67%
18. Utah*	67%
20. Illinois	66%
21. Nebraska	65%
22. Louisiana	64%
23. Pennsylvania	57%
24. Texas	52%
25. Missouri	32%
26. Virginia	18%
Delaware*	unknown
Washington*	unknown

* States with three or fewer federal habeas cases.

Sources: DADB; Appendix C; DRCen; HCDB

Figure 12. Combined Error Rate on State Direct Appeal, State Post-Conviction and Federal Habeas, 1973-95



* States with three or fewer federal habeas cases.

Note: The number of state post-conviction reversals in Washington and Delaware are unknown.

Table 10 and Figure 12 reveal that:

- **For the study states as a whole, the overall rate of serious error was 68%.**²⁰¹
- **Overall error rates vary enormously, from 18% in Virginia to 91% in Mississippi.**²⁰²
- **All but two states (Virginia and Missouri) had overall error rates of 52% or higher. All but four states (those two, plus Texas and Pennsylvania) had overall error rates of 64% or higher.**
- Put the other way around, **only two states out of 26 produced capital judgments that passed inspection for serious error more than half the time.**
- **Numerous states, in all sections of the country—including Alabama, Arizona, California, Georgia, Indiana, Mississippi, Montana and Oklahoma—had error rates of three-quarters or more, with Mississippi’s being more than 9 out of 10 (a success rate of less than 1 in 10).**
- As noted above, the Governor of Illinois cited evidence of high rates of serious error in Illinois capital judgments, and particularly a spate of exonerations of innocent men released from death row, as the reason for declaring a moratorium on executions there.²⁰³ This prompted other policymakers, including the Governors of Florida and Texas, to suggest that actions in Illinois are not relevant elsewhere, because high error rates are unique to Illinois.²⁰⁴ In fact, **the rate of error detected by state and federal courts in Illinois capital sentences, 66%—while high in absolute terms—is not at all unique. On the contrary, the Illinois error rate is very close to, and a bit *lower than*, the national average of 68%.**
- As one would expect from our previous discussion, and as Figure 12 demonstrates, Virginia is a distinct outlier here, falling almost literally “off the charts” on the low side of error detection.

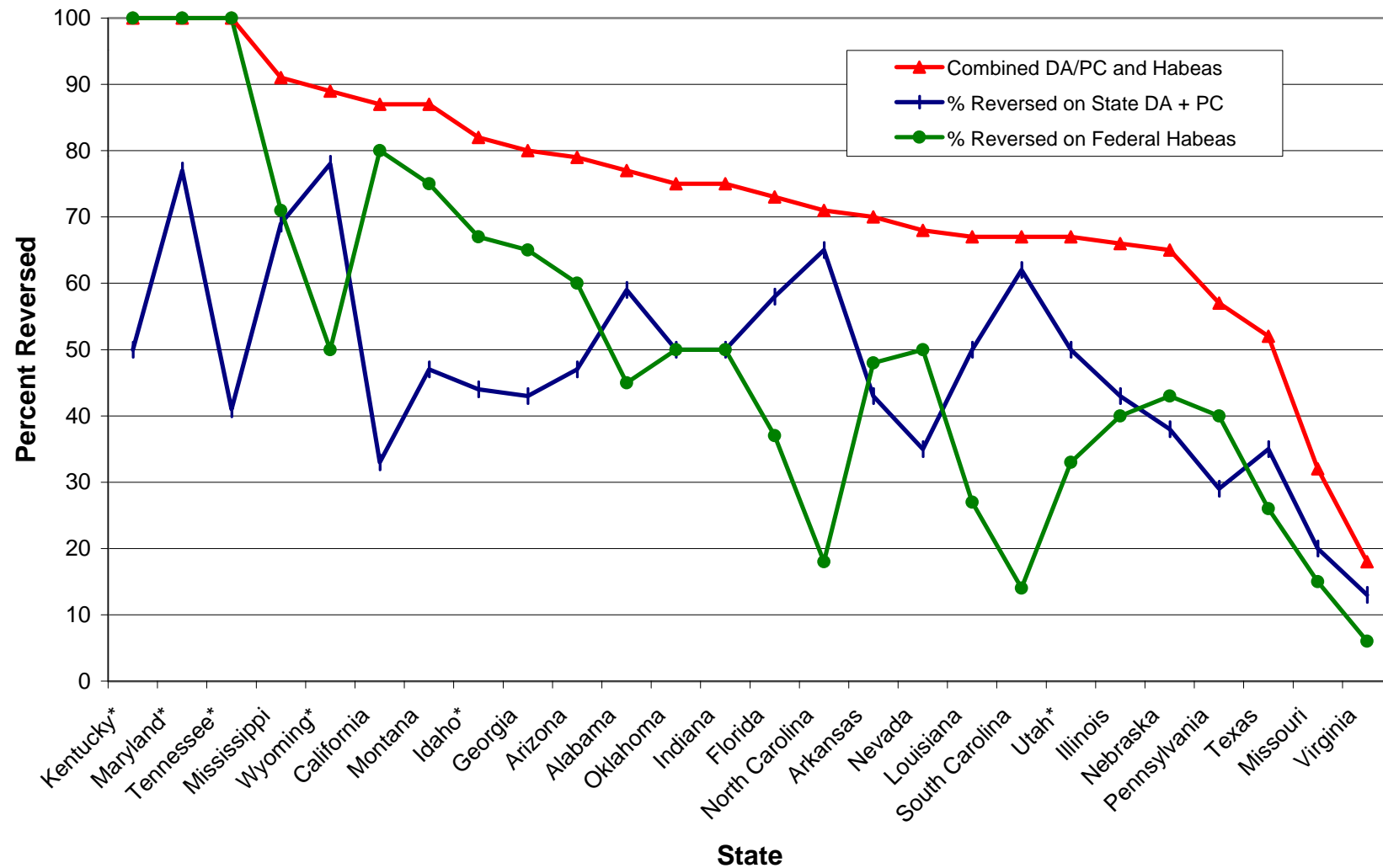
Virginia's overall rate of detected error is barely half that of the next closest state (Missouri, which itself is much lower than all the other states), and barely a quarter the national rate. In technical terms, Virginia's overall-error detection rate is nearly 3 standard deviations below the mean (2.88).

Figure 13 below plots (1) the combined state direct appeal and state post-conviction reversal rates, (2) the federal habeas reversal rate, and (3) the overall error rate that is a composite of the other two.²⁰⁵

Figure 13 illustrates three points that (for the most part) we have discussed above:

- **High overall error rates across most states.**
- **Similar state and federal patterns of error detection in most states**, with some exceptions where high state court error detection compensates for low federal court error detection (*e.g.*, North and South Carolina state courts compensating for the federal Fourth Circuit), and *vice versa* (*e.g.*, the federal Ninth and Eleventh Circuits compensating for low state court error detection in California and Georgia, respectively).
- Virginia's outlier status.

Figure 13. Overall Error Rate (Including State Post-Conviction) and Reversal Rate by Type of Review, 1973-95



* States with three or fewer federal habeas cases.

Note: State post-conviction reversals in Delaware and Washington are unknown.

G. Length of Time of Review

The multiple inspections needed to detect all this error take time—a 23-year average of about 9 years if the outcome is execution (with that figure rising to 10.6 years in the latter third of the study period), and 7.6 years if the outcome is reversal on habeas corpus.²⁰⁶ Figures 14-16 below provide a variety of perspectives on the length of time required to cleanse capital judgments of chronically high rates of error.

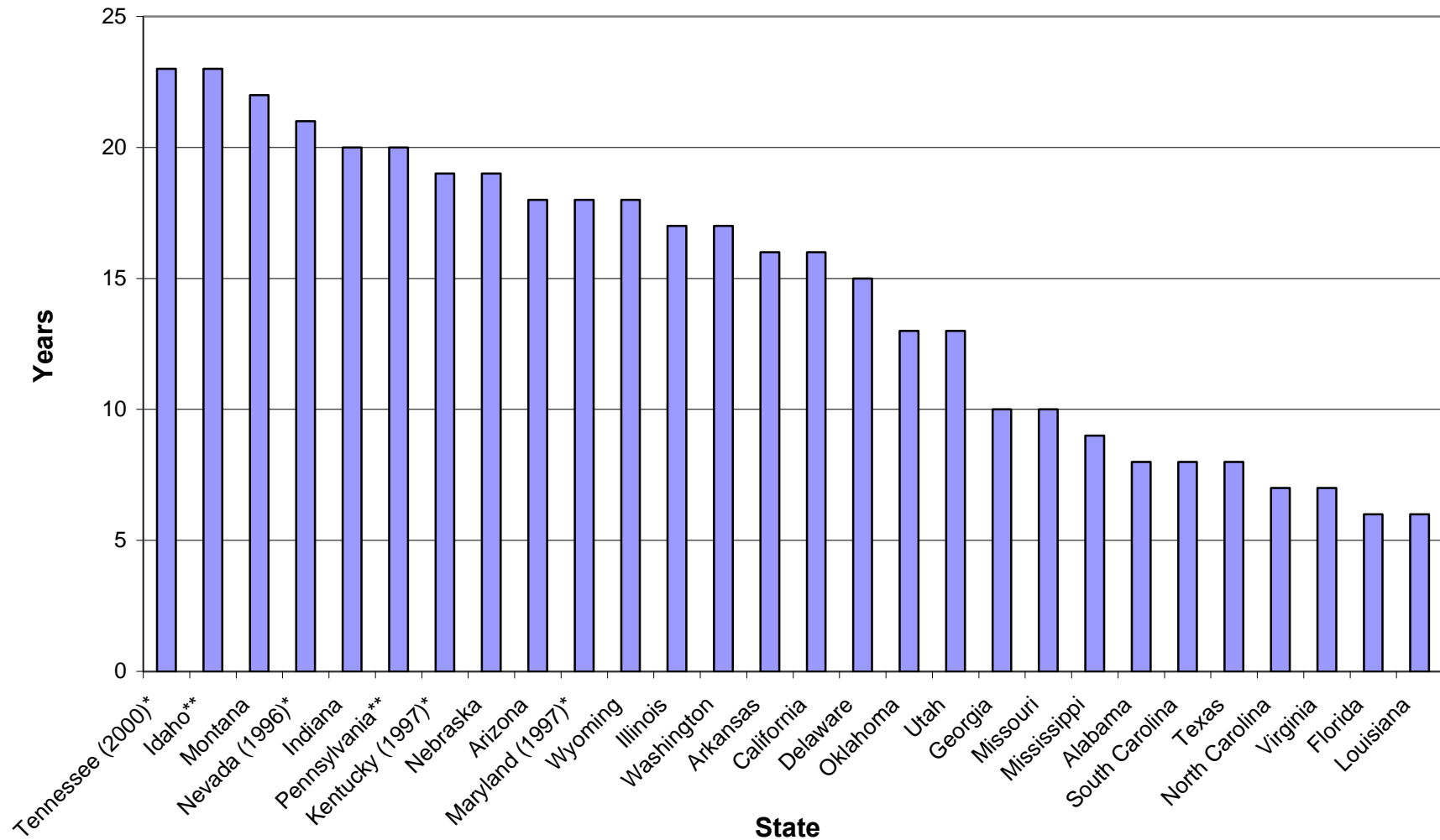
Figure 14²⁰⁷ below compares states on the basis of how many years elapsed between each state's first death sentence and its first non-consensual²⁰⁸ execution (not necessarily in the same case):

- **In 16 (57%) of the 28 study states, it took (or will take²⁰⁹) 15 or more years to get from the state's first death sentence to its first execution following full review.**
- **In 71% of the states it took 10 or more years .**

Figure 15²¹⁰ compares the 23 study states in which at least one execution (consensual or non-consensual) took place between 1973 and 1995 based on the amount of time that elapsed, on average, between the same prisoner's death sentence and execution. Subject to missing data, and the fact that the table counts consensual executions, which causes it to understate the time needed for full review,²¹¹ Figure 15 reveals that:

- **In the vast majority of states, executions took place on average 7 or more years after death sentences during the study period.**
- **In over two-thirds of the states, executions took place an average of 9 or more years after the death sentence was imposed.**

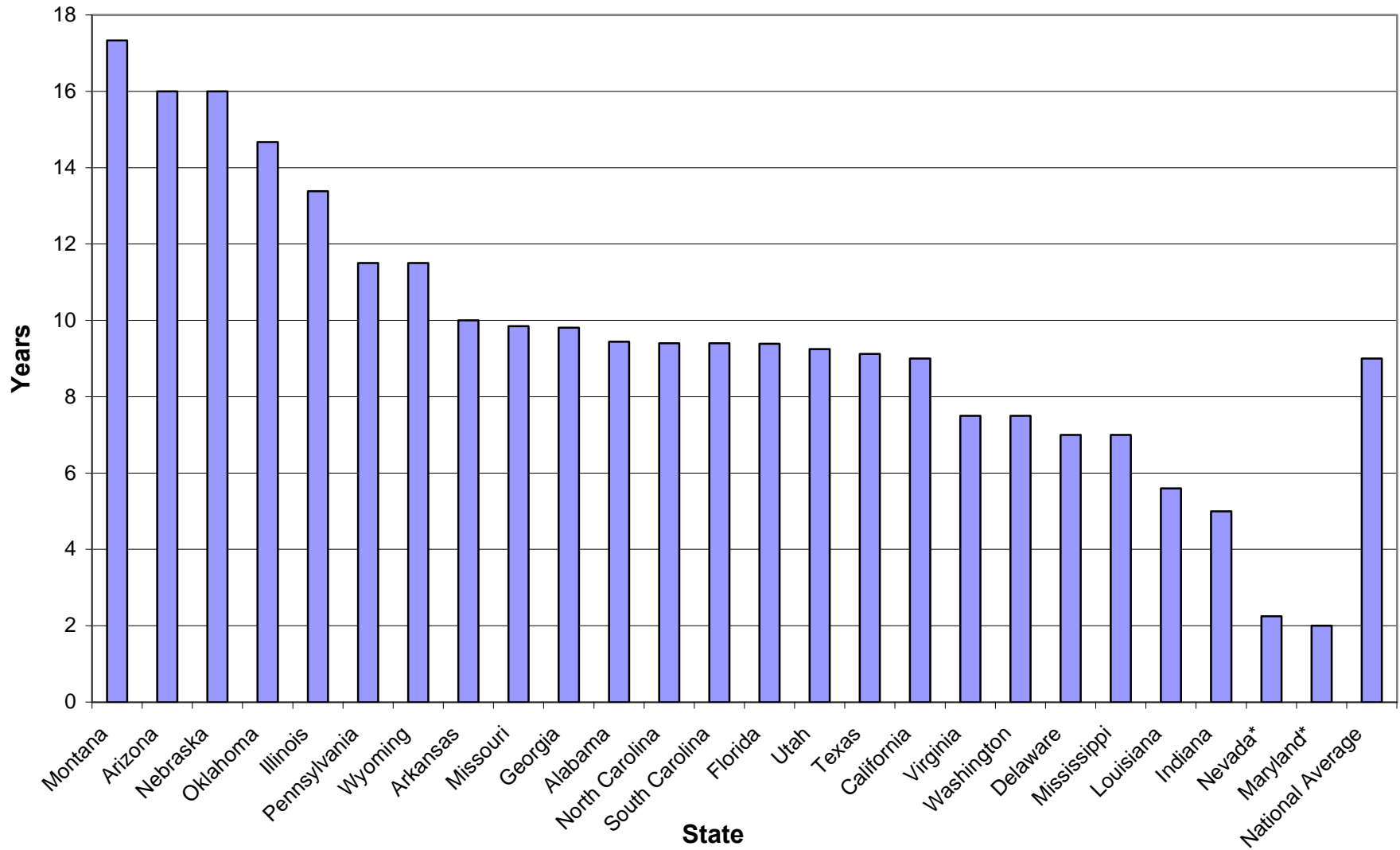
Figure 14. Years from First Death Sentence to First Nonconsensual Execution, 1973-2000



* The first nonconsensual execution occurred after the end of the study period (i.e., after 1995) in the year indicated.

** As of this publication there has not yet been a nonconsensual execution.

Figure 15. Average Years from Death Sentence to Execution, 1973-95

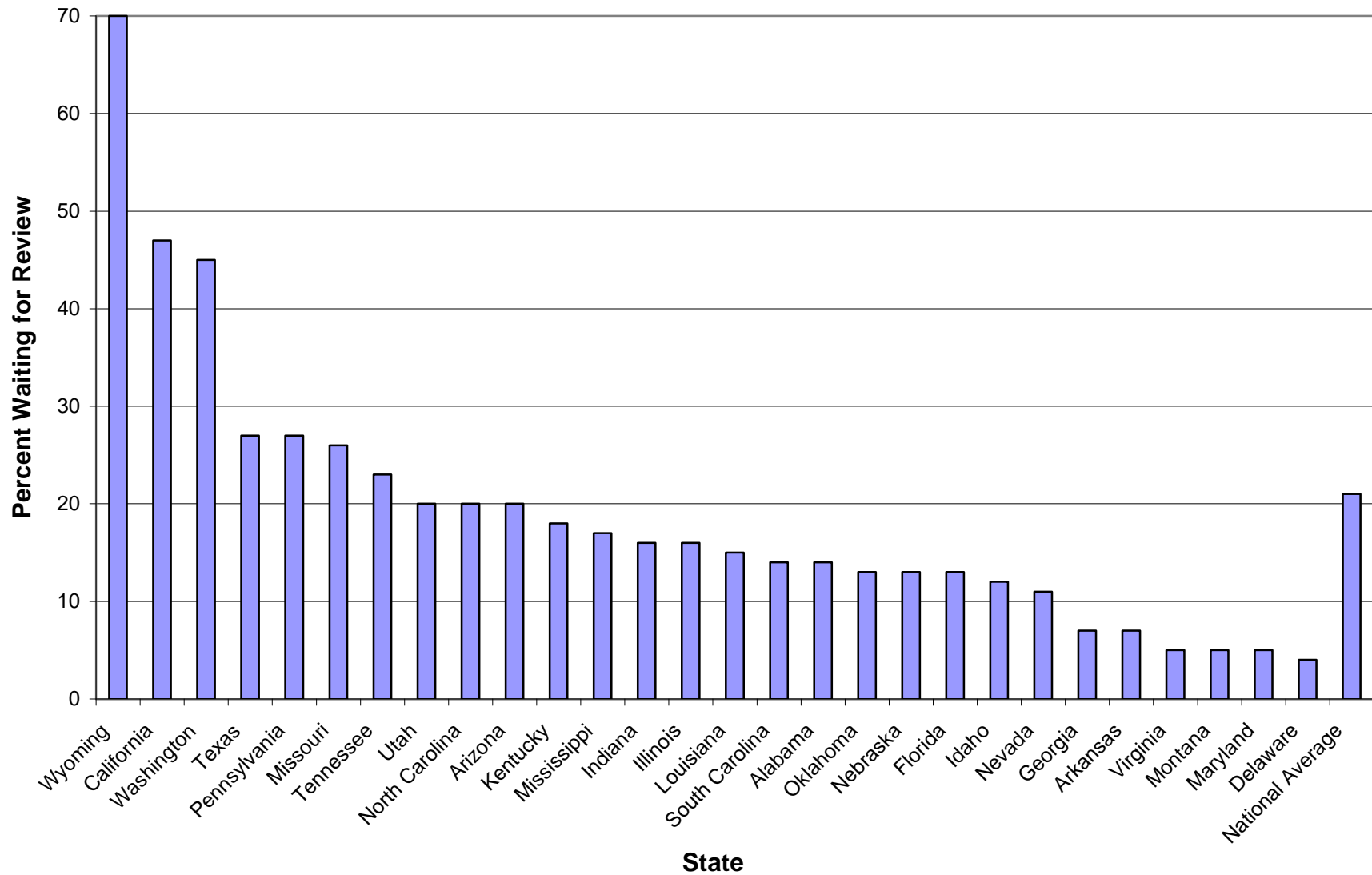


* States with only consensual executions.

Figure 16²¹² below compares states based on the proportion of their 1973-1995 death sentences that were awaiting direct review in 1995. As is discussed above, this comparison provides a rough measure of the extent to which state direct appeal is a bottleneck in the inspection process.²¹³ Nationally, 21% of capital sentences imposed between 1973 and 1995—about 5-years-worth of death sentences—were awaiting direct appeal in 1995:

- In over a third of the 28 states, 20% or more of all post-*Furman* death sentences were backed up at the state direct appeal stage 23 years after *Furman*.
- In three of the nations most prolific capital-sentencing states, Texas, Pennsylvania and California, the 1995 log-jam of cases awaiting state direct appeal contained (respectively) 27%, 27% and 47% of the state's post-1972 cases. In Washington and Wyoming, the 1995 logjam contained 45 and 70% of the post-*Furman* cases.
- Of note, although the federal Ninth Circuit Court of Appeals is sometimes blamed for holding up executions in the states within its jurisdiction, the three states in that circuit with the largest death rows—California, Arizona and Washington—were all in the top cohort of states as of 1995 in terms of the proportion of cases bottled up in the *state* courts awaiting direct appeal.

**Figure 16. Percentage of 1973-95 Death Sentences
Awaiting Direct Review as of 1995**

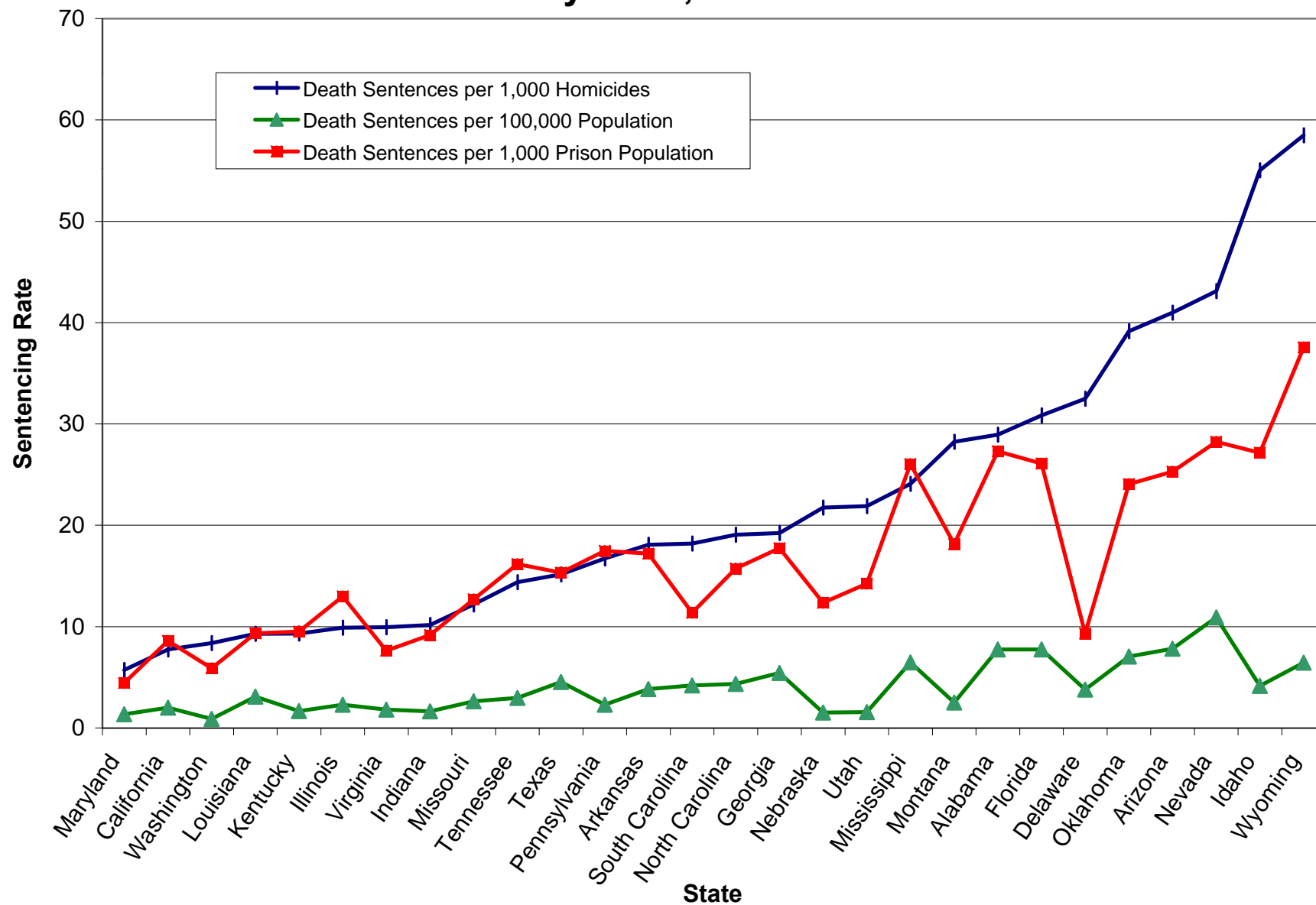


H. Capital-Sentencing and Execution Rates, and the Two Compared

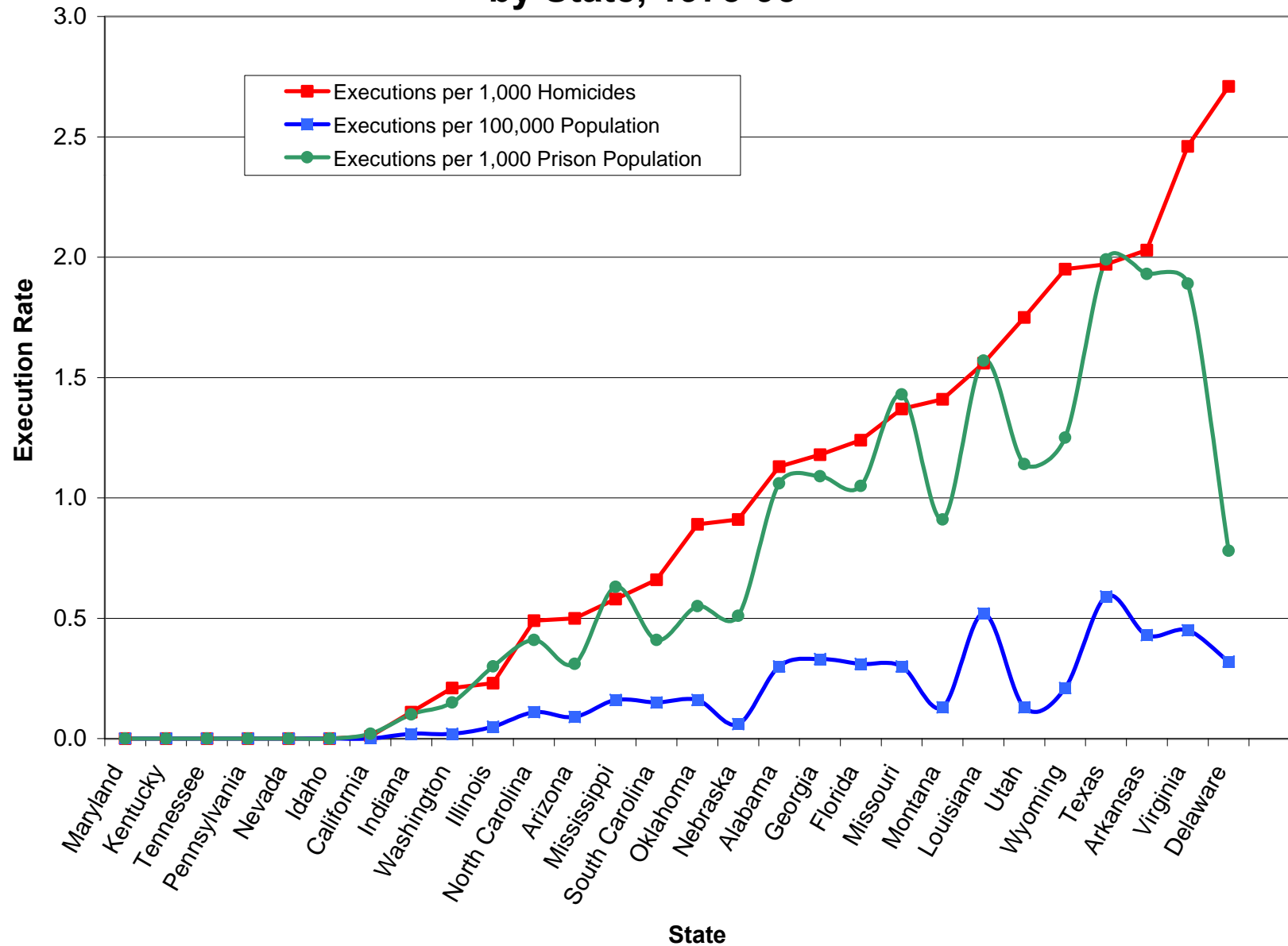
This section compares states to each other based on (1) how many death sentences they impose “per capita” and (2) how many executions they carry out “per capita.” We use three different per capita measures—sentences and executions per 1,000 homicides, per 100,000 population, and per 1,000 prison population.²¹⁴ The middle measure is particularly interesting, given the expectation that the number of death sentences each jurisdiction imposes and carries out would be responsive to the number of homicides committed there. This section also asks whether, as one would expect, states that undertake to capitally *sentence* more offenders per capita than other states also *execute* more people per capita.

Figure 17 below compares states based on their *death sentencing* rates per 1,000 homicides, per 100,000 population and per 1,000 prisoners. Figure 18 below compares states based on their *non-consensual execution* rates per the same three populations.

**Figure 17. Per Capita Death Sentencing Rates
by State, 1973-95**



**Figure 18. Per Capita Non-Consensual Executions
by State, 1973-95**

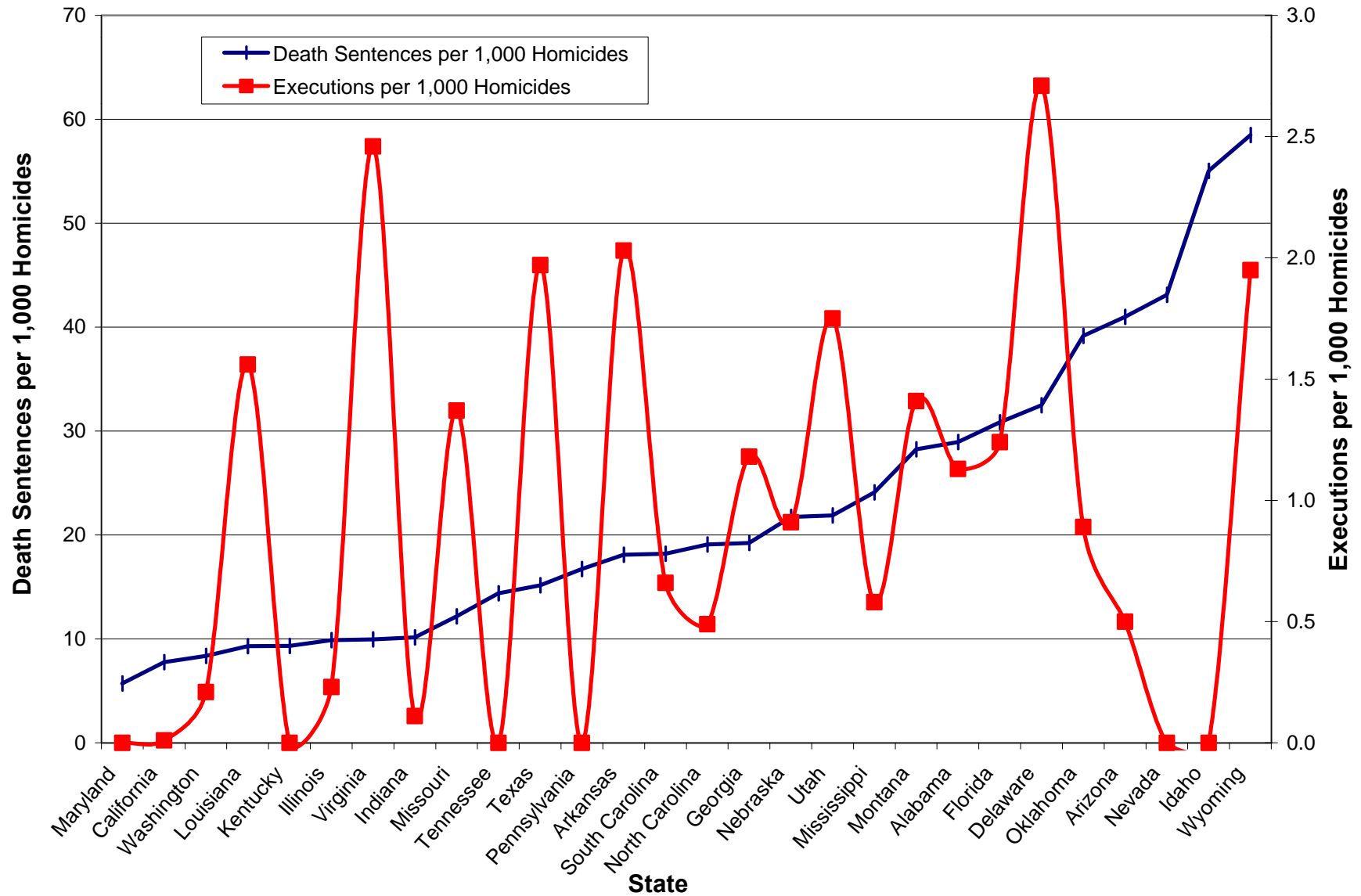


Figures 17 and 18 reveal huge variations among states in both their death-sentencing rates and their execution rates measured per homicides and per population:²¹⁵

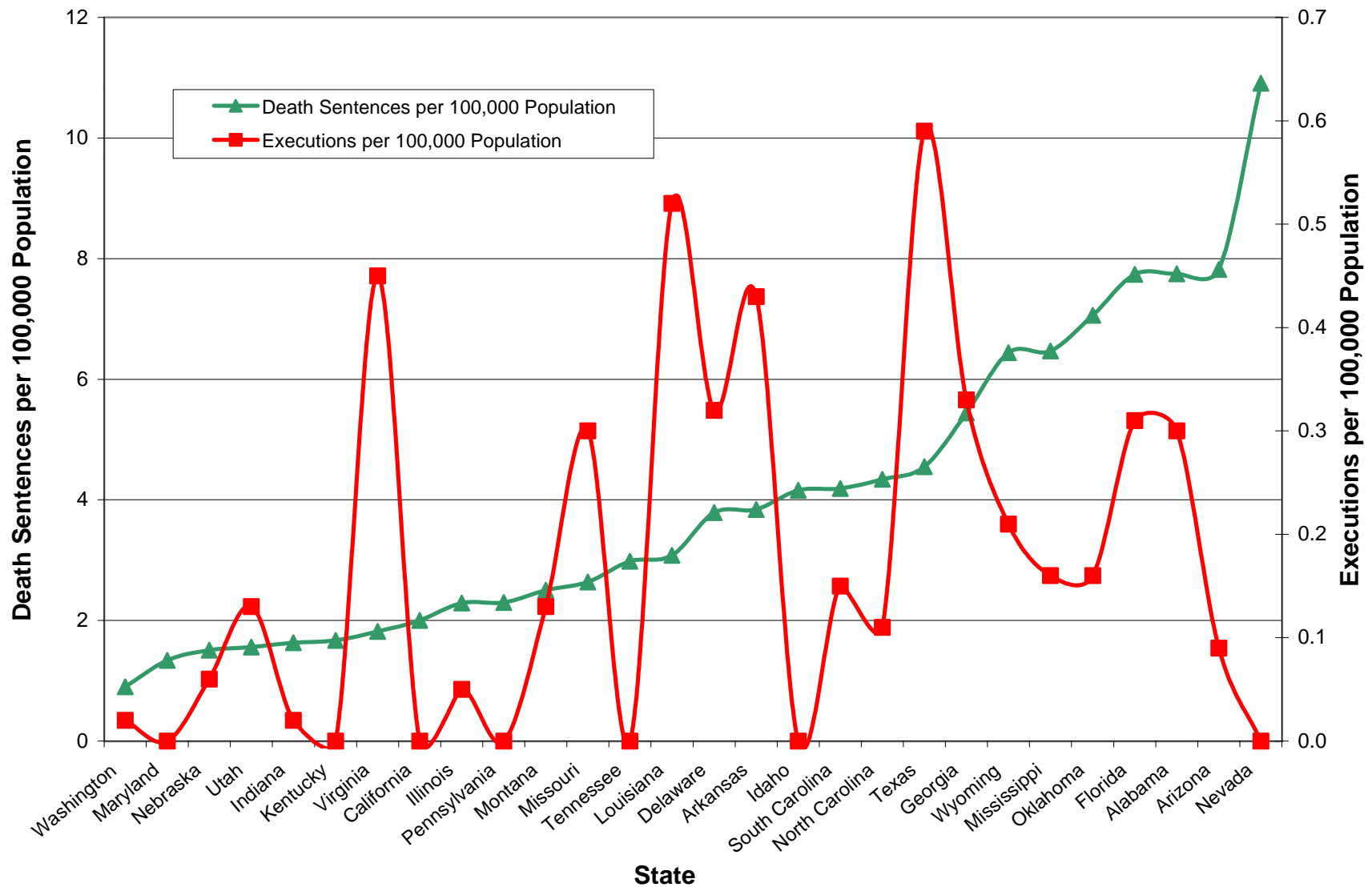
- Measured against both populations, **some death-sentencing states have death-sentencing rates that are 10 times those in other death sentencing states.**
- In Wyoming, for example, nearly 6% of all homicides result in a death sentence—over four times the national average for death-sentencing states. In Maryland, less than six-tenths of 1% of homicides lead to a death sentence.
- Nevada condemns nearly 11 people out of every 100,000—about three times the national average for death-sentencing states. Washington State does so to less than 1 person out of every 100,000.
- Similar disparities characterize the execution rates in the various death-sentencing jurisdictions.
- The disparities among states in death sentences and executions per 1,000 homicides are particularly interesting, revealing the absence of what one would expect to be a consistent relationship between homicides and capital punishment.

Figures 19-21 below consider whether high (or low) death-sentencing rates (per homicide, per population or per prisoners) translate, as one would expect, into high (or low) execution rates.

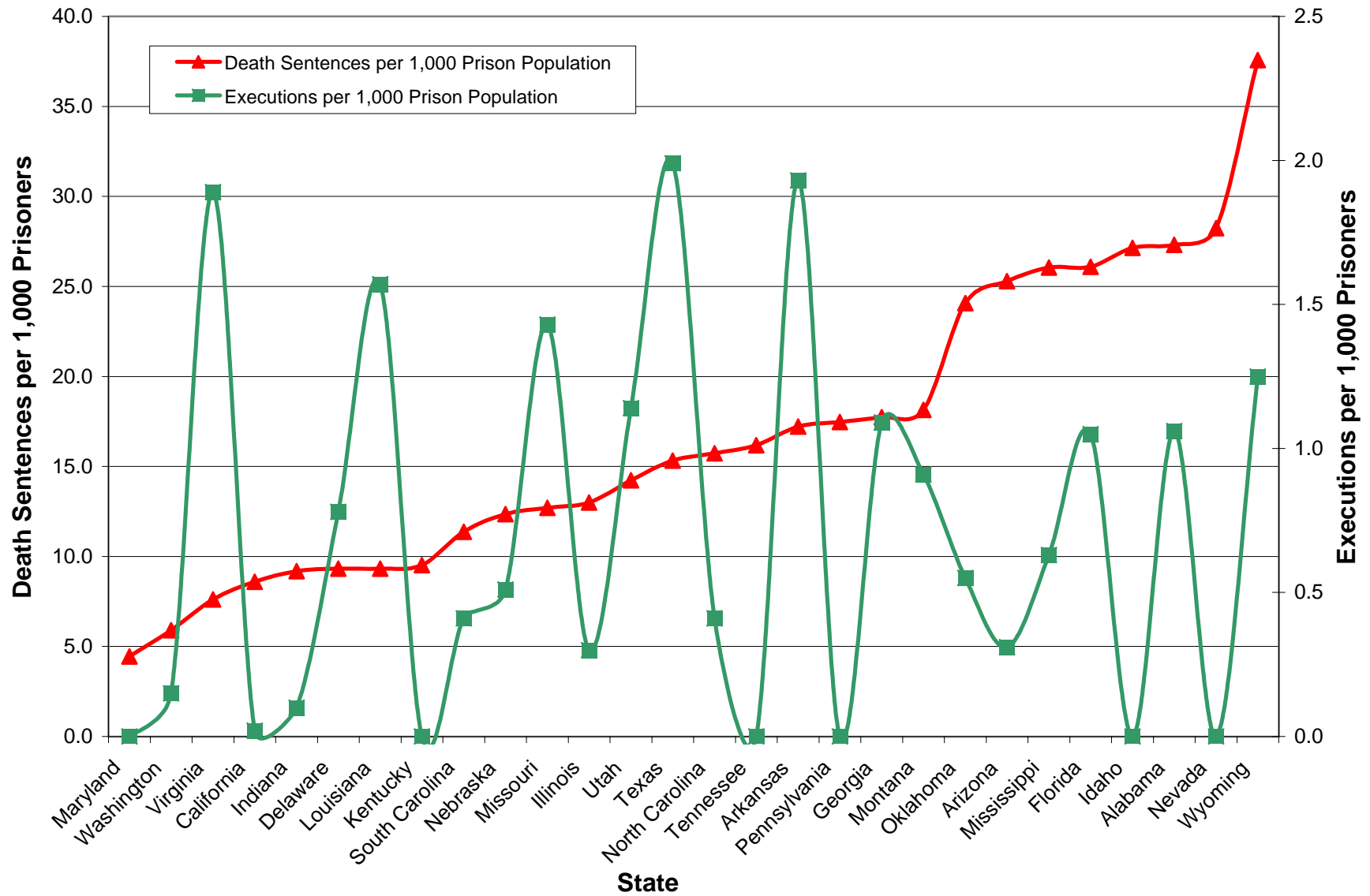
**Figure 19. Death Sentences and Executions
per 1,000 Homicides by State, 1973-95**



**Figure 20. Death Sentences and Executions
per 100,000 Population by State, 1973-95**



**Figure 21. Death Sentences and Executions
per 1,000 Prisoners, 1973-95**



Judging from figures 19-21, **there is *no* relationship between death-sentencing and execution rates**. When states are arranged in order of their death sentences per capita, the line representing their executions per capita fluctuates wildly and randomly:

- Idaho, Nevada, Arizona and Oklahoma rank **2nd, 3rd, 4th, and 6th** (and range from 3 to 4 times the national average) when it comes to how often homicides result in death sentences. Those same states, however, are **tied for 23rd, tied for 24th, 17th, and 14th** among 28 states (near or well below the national average) when it comes to how often homicides result in execution.
- On the other hand, Texas, Virginia and Louisiana rank **18th, 22nd, and 25th** in death sentences per homicide (ranging from slightly above, down to two-thirds, the national average) but **4th, 2^d, and 7th** in executions per homicide (ranging from over twice to nearly four times the national average).²¹⁶ Thus, the three states most associated in the public's mind with executions—Louisiana, which was the nation's execution capital in the late 1980s,²¹⁷ and Texas and Virginia which claimed that distinction in the 1990s²¹⁸—did not attain that status by *sentencing* disproportionately large numbers of people to death row. Instead, they have done so by translating *below*-average death-sentencing rates into above-average execution rates.

Figure 22 below asks a related question: Are states that are most likely to punish homicides with death also most likely to translate death sentences into executions?

**Figure 22. Per Capita Death Sentences and
Percent Death Sentences Carried Out, 1973-95**

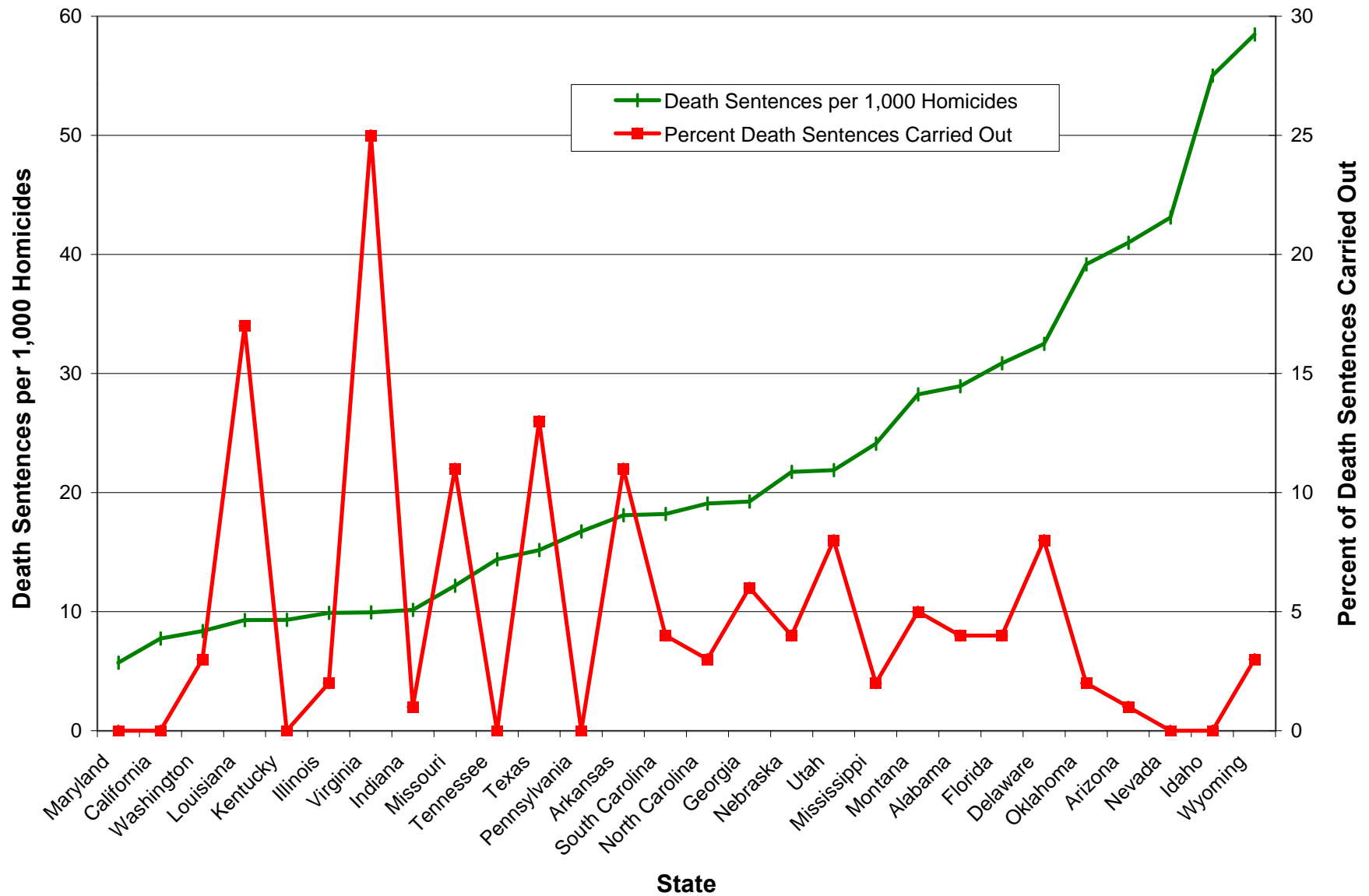


Figure 22 reveals no relationship between death sentencing and execution rates. Indeed, for nearly half the states—Louisiana, Virginia, Missouri, and Texas (with comparatively low death-sentencing but high death-sentences-carried-out rates) and Wyoming, Idaho, Nevada, Arizona, Oklahoma, Florida, Alabama, and Mississippi (with comparatively high death sentencing rates but low death-sentences-carried-out rates), the relationship is the inverse: the more frequently states sentence killers to die, the less frequently they execute them, and vice versa.

Overall, therefore, it seems clear that a powerful disposition to sentence offenders to die does *not* go hand in hand with a strong capacity to carry out the death sentences that are imposed. Figuring out why this is so is a question we will address in a subsequent report. Our analysis so far, however, suggests one place to look for the source of the discrepancy: the disturbingly high rates of capital-sentencing error that we document above.

I. Demographic Factors

This section considers two other possible explanations for the frequency with which states sentence individuals to die, and the frequency with which they carry out the capital sentences they impose. The first is violent crime—measured by each state’s homicide rate per 100,000 population.²¹⁹ The second is race—based on the proportion of each state’s population that is non-white.²²⁰

Figures 23 and 24 below consider the relationship between homicide rates per 100,000 population and, respectively, capital-sentencing and execution rates.

Figure 23. Death Sentencing Rates Per 1,000 Homicides and Per Capita Homicide Rates, 1973-95

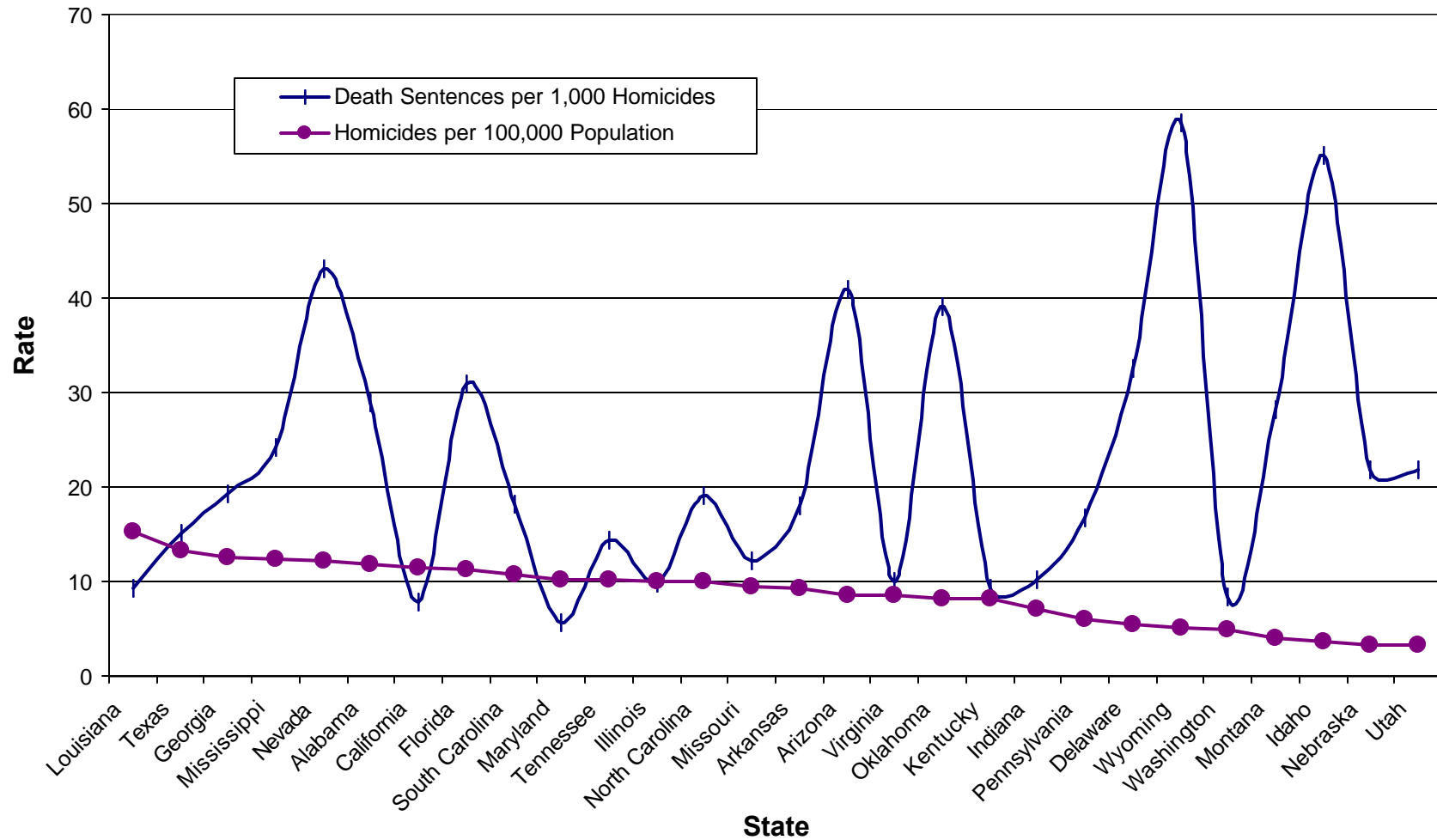
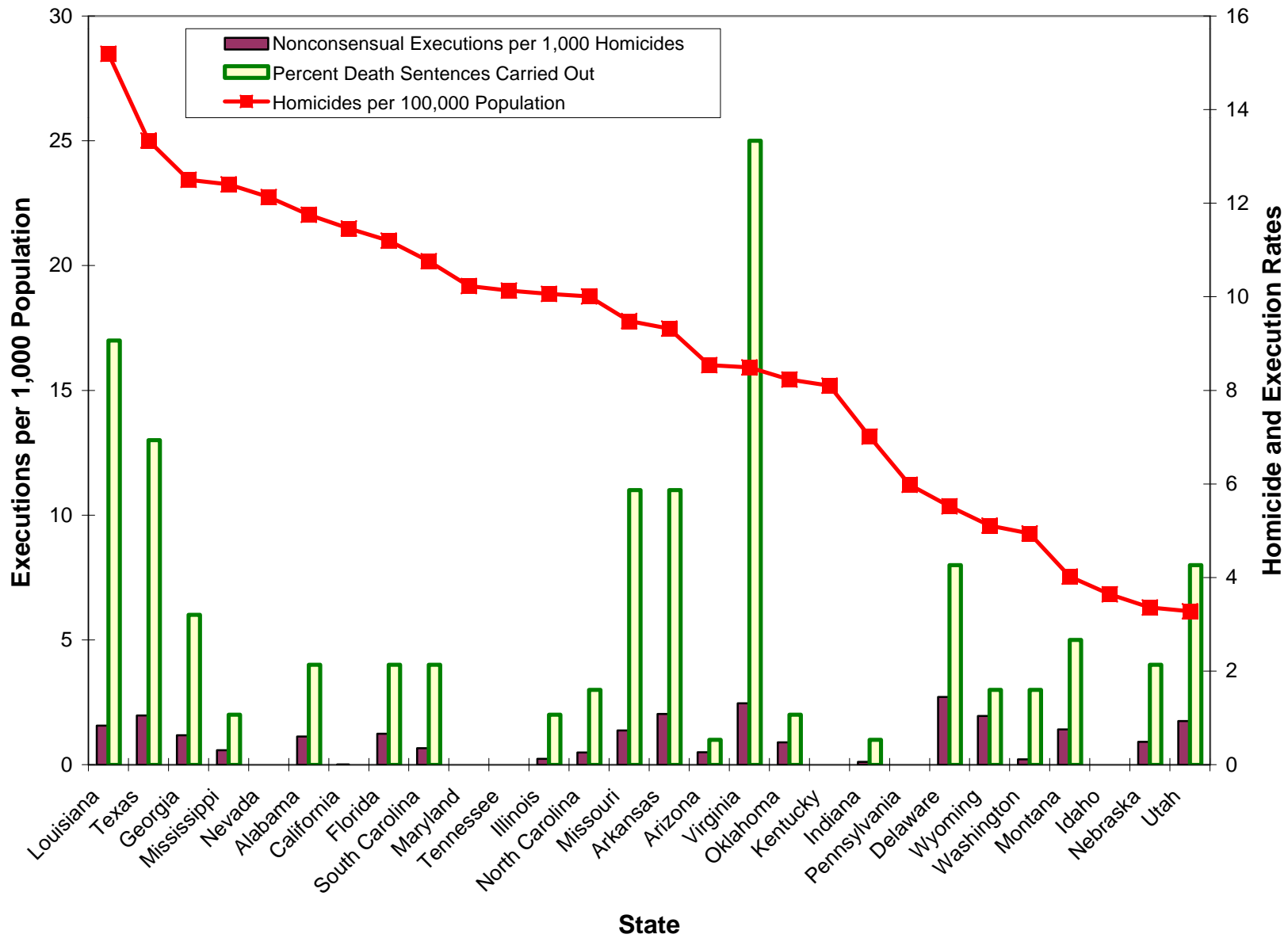


Figure 24. Execution Rate and Homicide Rate, 1973-95



If there is any relationship at all between homicide and capital-sentencing rates (a matter requiring more sophisticated analysis), Figure 23 suggests that it is weak and inverse. Figure 24 asks whether variations in rates of serious crime, as measured by homicides per 100,000 population, can explain variations in execution rates, or vice versa. Figure 24's decisive answer is that there is *no* such relationship between a state's serious crime rate and its willingness or capacity to execute its citizens.

Turning to the issue of race, Figure 25 below compares capital-sentencing states' relative death-sentencing rates (per 1,000 homicide) to their percent nonwhite population.

Surprisingly, perhaps, this chart suggests that proportionately larger minority populations are associated with somewhat lower death-sentencing rates, and vice versa. Figure 25 also reveals the sharp variation among capital-sentencing states in terms of the proportion of their populations that are nonwhite, ranging from 5% in Idaho (which, incidently, has a very high death sentencing rate per homicide) to 37% in Mississippi (where the death-sentencing rate per homicide is relatively low).

Figure 26 below considers whether race influences *execution*, as opposed to *death-sentencing*, rates. Here, the relationship is weaker than in Figure 25, and runs in the opposite direction: Although states with larger proportions of racial minorities tend to capitally sentence less often than states with proportionately smaller minority populations, those same states tend to carry out relatively *more* of the death sentences they impose.

**Figure 25. Per Capita Death Sentencing Rate
and Percent Non-White Population**

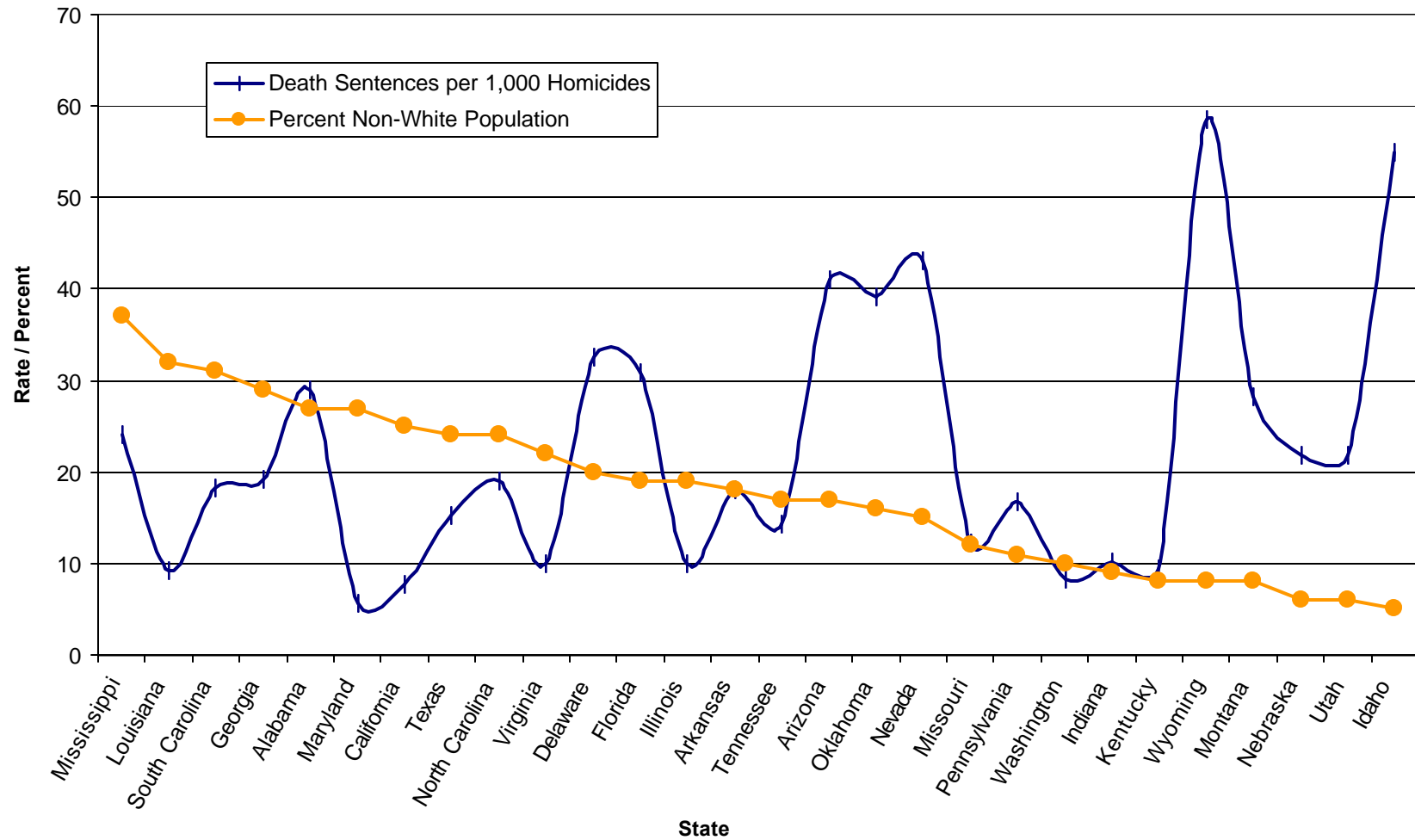
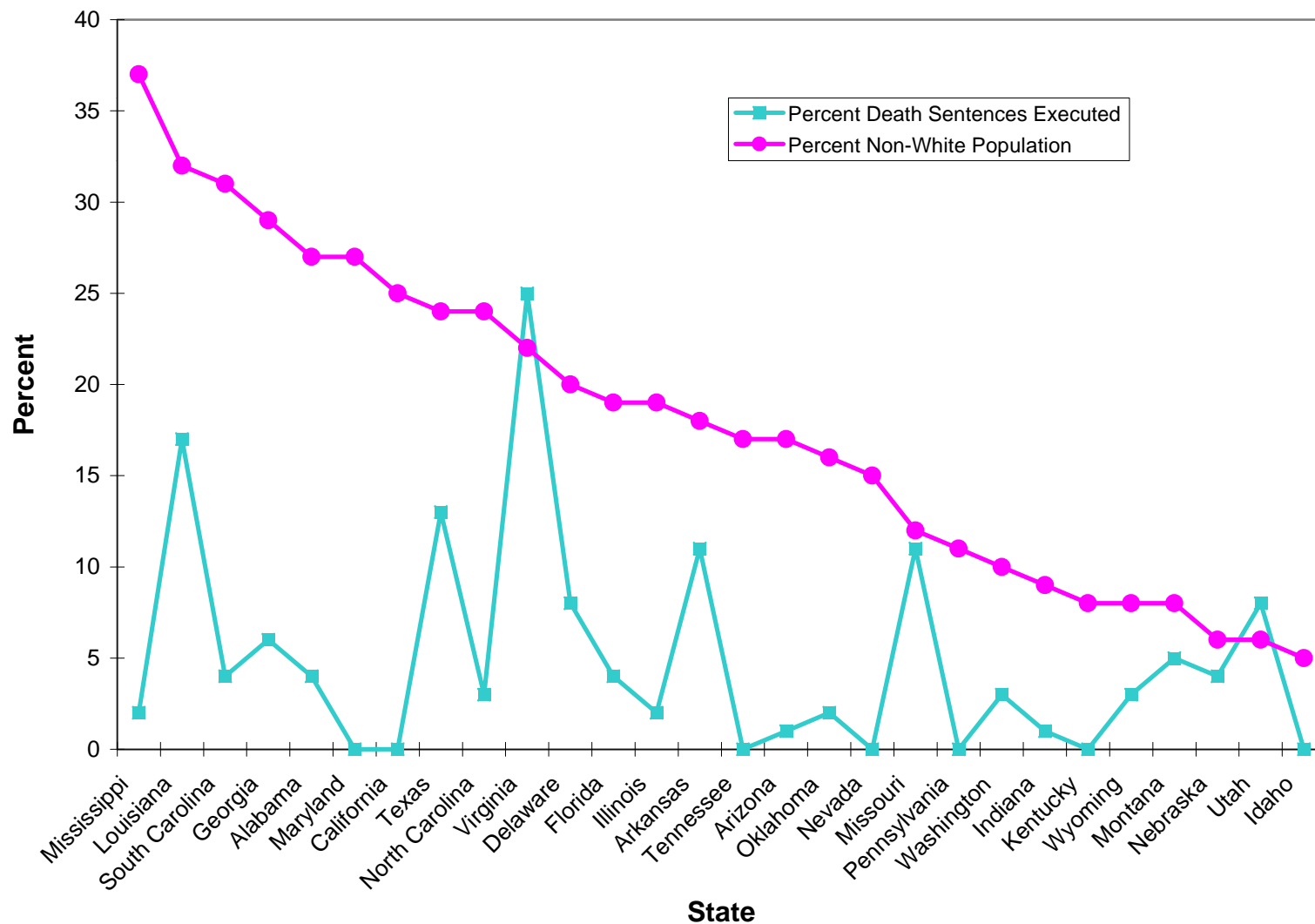


Figure 26. Percent of Death Sentences Carried Out and Non-White Population



J. Court Factors

Here, we consider whether differences among states' judicial systems account for the marked variability in their capital-case error rates, death-sentencing rates, and execution rates. Relevant, reliable, and comparable state-court contextual data are difficult to obtain. For purposes of this initial report, we have developed three comparative measures: "political pressure" (the extent to which state sentencing and appellate judges are subject to electoral discipline for actions they take as judges²²¹), judicial workloads (which we measure by comparing the various states' criminal court caseloads per 1,000 persons during the relevant period) and judicial resources (comparing the dollars the respective states spent on their courts per capita during the relevant period).²²² The details of each of these measures are described at pp. 44-45 above.²²³

Figure 27 and Figure 28 below consider the impact of political pressure on, respectively, death-sentencing and execution (more specifically, death-sentences-carried-out) rates. Because error rates and the rates at which death sentences are carried out are so highly correlated (*see* Figure 1, *supra* p. 11), the latter chart is also a rough measure of the relationship between political pressure and capital error rates.

**Figure 27. Political Pressure and
Death Sentencing Rate, 1973-95**

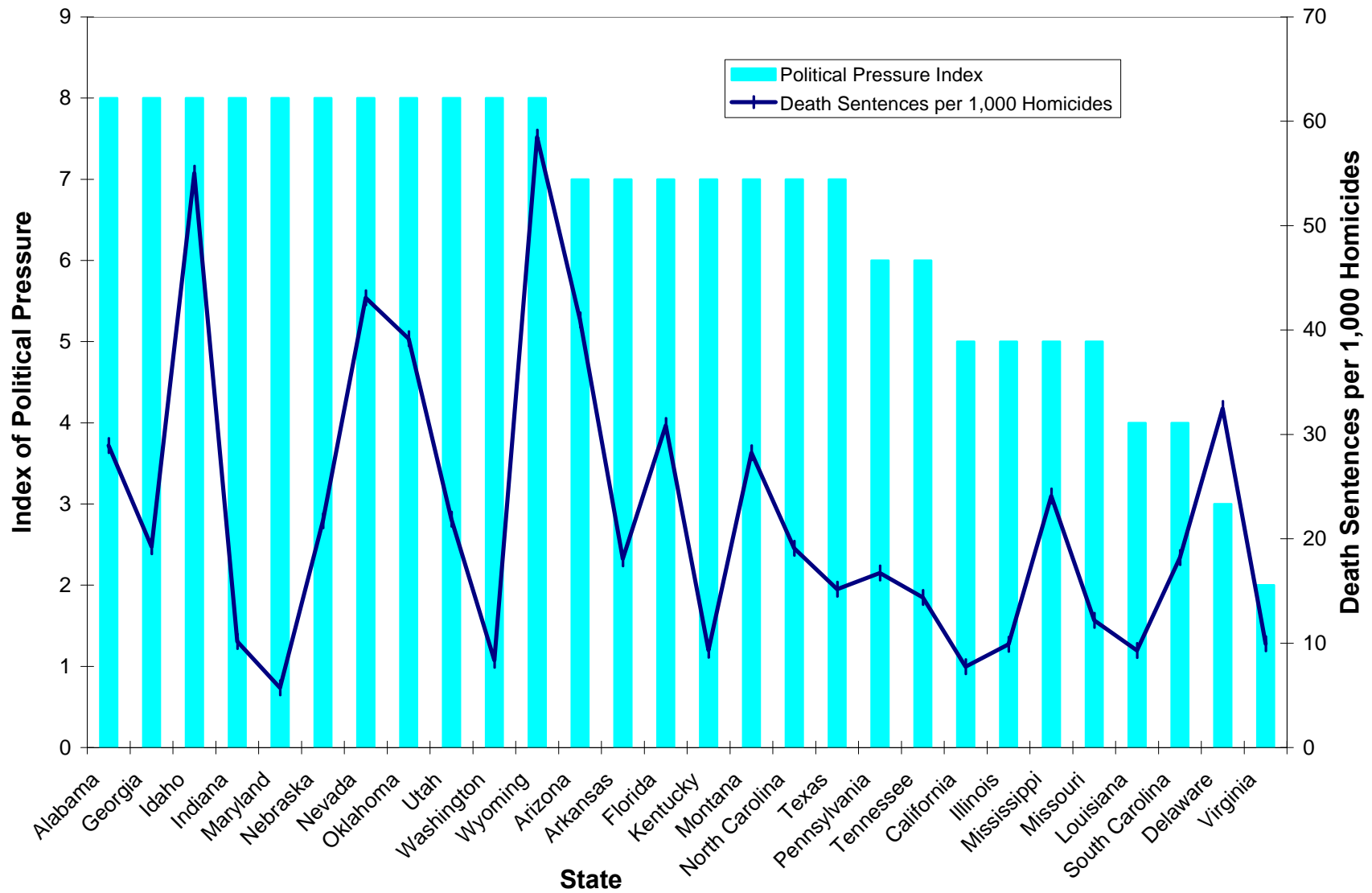
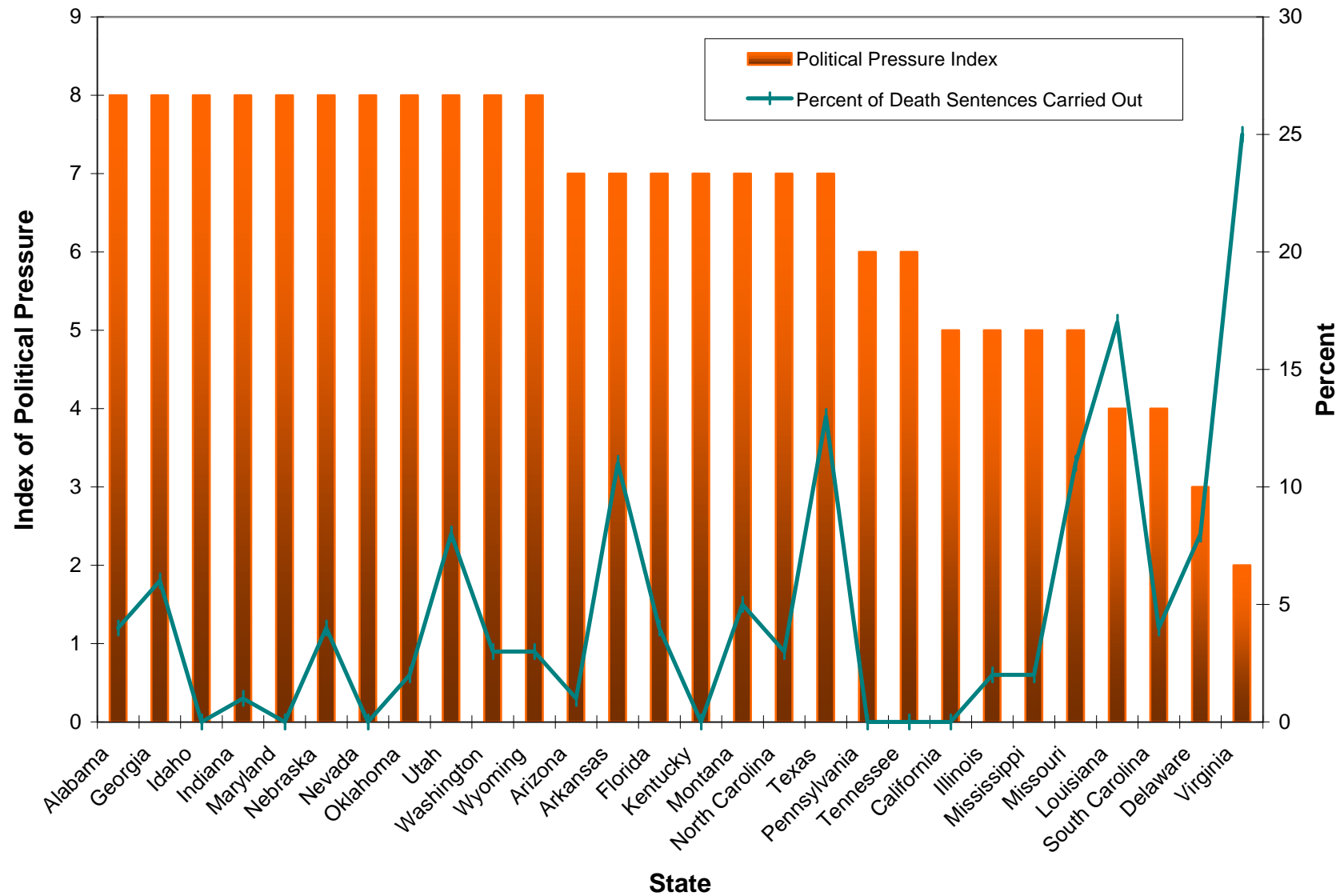


Figure 28. Political Pressure and Percent of Death Sentences Carried Out, 1973-95



Figures 27 and 28 reveal a curious and potentially significant pattern: In general, the more electoral pressure a state's judges are under, the *higher* the state's death-sentencing rate, but the *lower* the rate at which it carries out its death sentences. Assuming a causal relationship, this suggests that political pressure tends to *impel* judges—or to create an environment in which prosecutors and jurors are impelled—to *impose* death sentences, but then tends to *interfere* with the state's capacity to carry out the death sentences that are imposed.

Whether it is fair to infer a causal relationship here and, if so, what might account for that relationship is a question for further research. One hypothesis is suggested by possible relationships between high death-sentencing rates and high error rates, and between the latter and low execution rates: Public opinion may place a premium on obtaining death sentences.²²⁴ If so, a desire to curry favor with voters may lead elected prosecutors and judges to cut corners in an effort to secure that premium—simultaneously causing death-sentencing rates, *and error rates*, to increase. In that event, high rates of reversible error would explain why high political-pressure states, after imposing so disproportionately *many* death sentences—making so many errors in the process—end up carrying out so disproportionately *few* of their death sentences. These are questions for further research.

Figures 29 and 30 below relate, respectively, states' death-sentencing rates, and the rates at which they carry out death sentences, to their per capita court expenditures.

Figure 29. Per Capita Spending on Courts and Per Capita Death Sentencing Rates, 1973-95

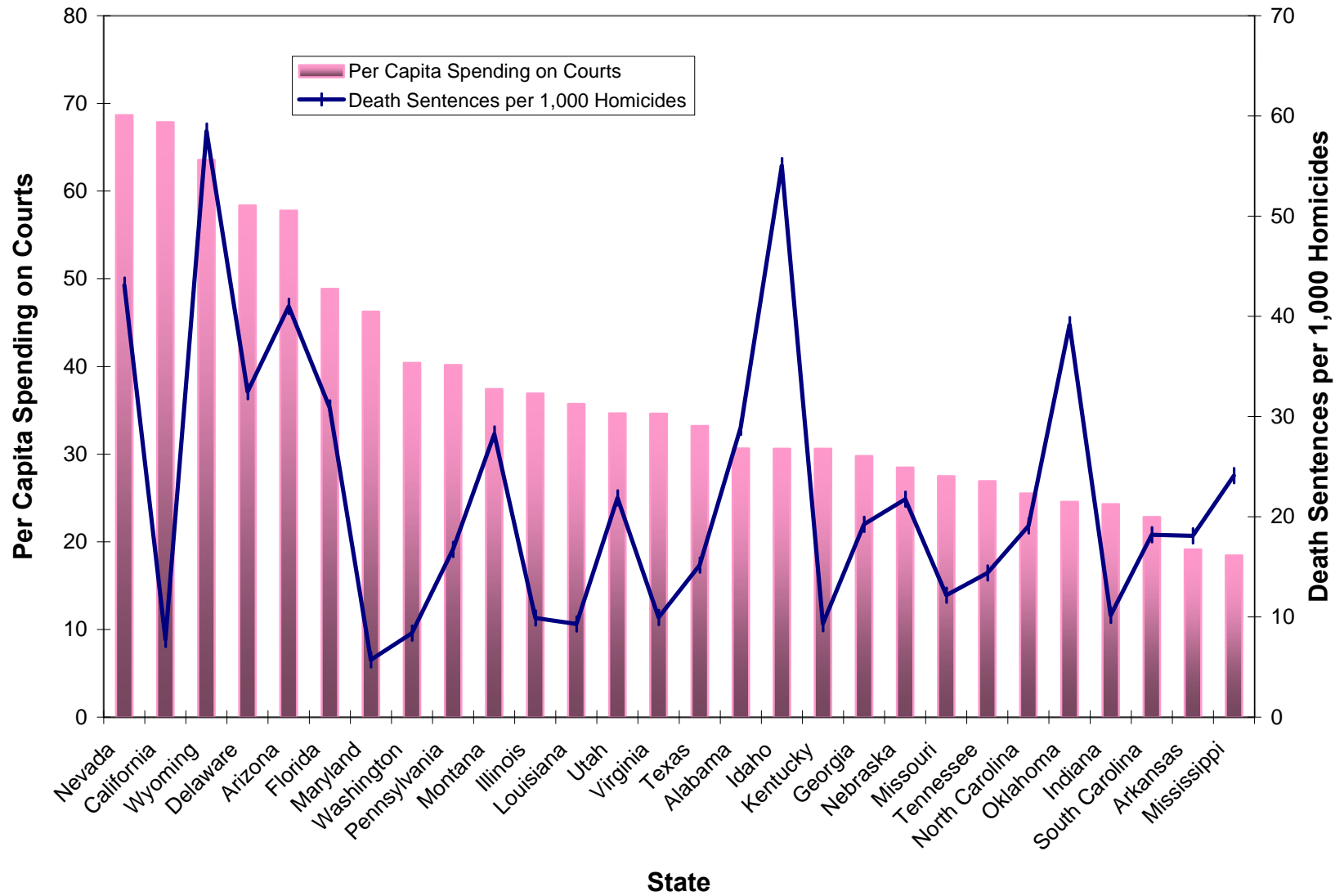
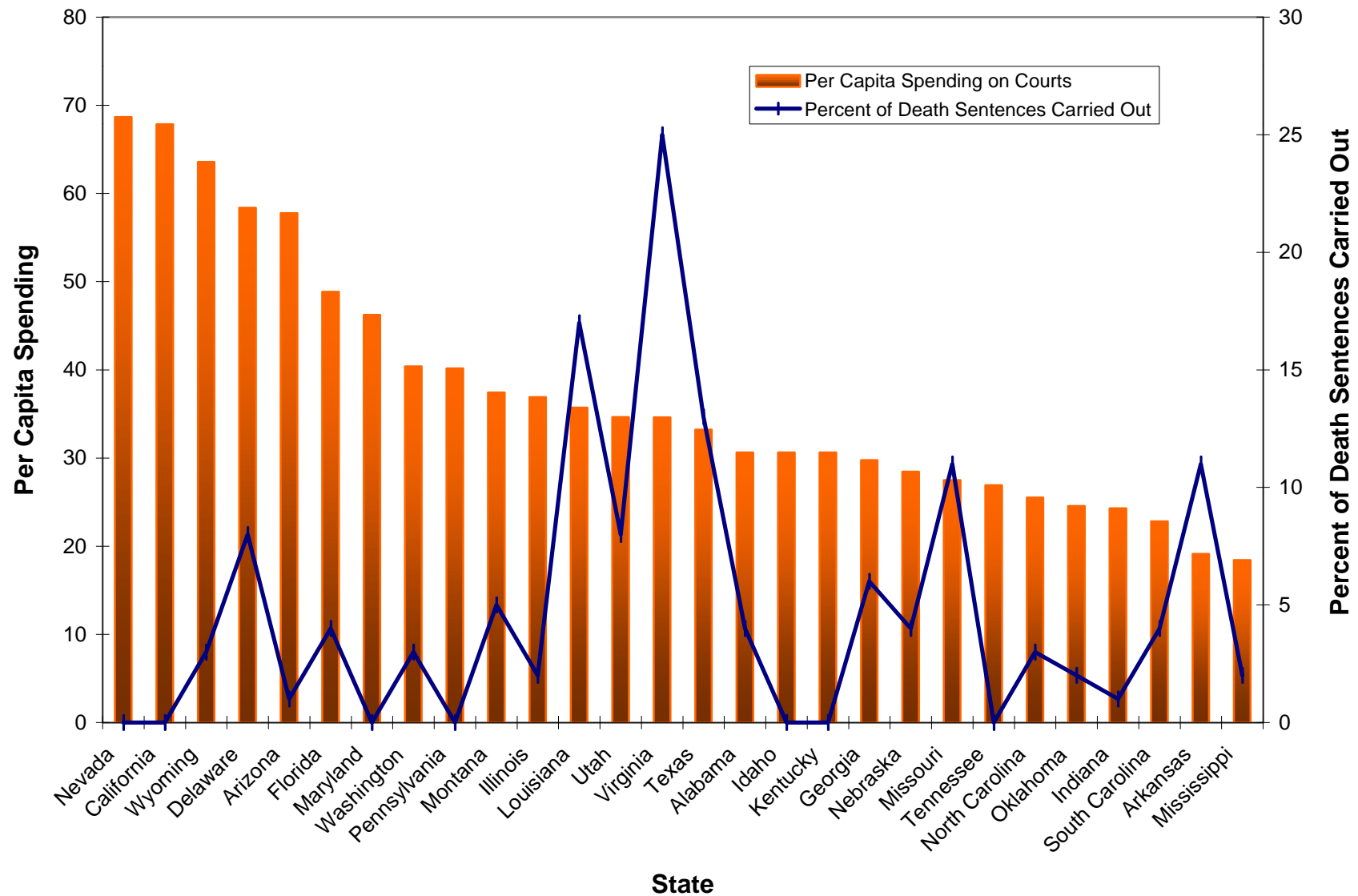


Figure 30. Per Capita Spending on Courts and Percent of Death Sentences Carried Out, 1973-95



With some exceptions, Figure 29 appears to indicate that comparatively high expenditures on courts are associated with relatively high death-sentencing rates. It is difficult to know what to make of this relationship, especially because capital cases are themselves costly and thus may partly account for high expenditures. It may be, however, that states whose courts have substantial amounts of resources are more capable of handling capital cases—and thus do so more often—than states with less well-funded courts.

As was the case when we looked at capital punishment and political pressure, the relationship between capital punishment and spending reverses when we move from analyzing death *sentencing* rates to rates of death sentences *carried out*: Figure 29 shows a *direct* relationship between court expenditures and death sentencing (the higher the one is, the higher the other tends to be); by contrast, Figure 30 shows a weak *inverse* relationship between court expenditures and death sentences carried out—as states’ spending on their courts increases, the proportion of the death sentences imposed that are carried out tends to decrease. The cause of that relationship (if any exists) is unclear. If, however, it were the case that the processing of death cases is itself responsible for significantly driving up court expenditures, then Figures 29 and 30 might suggest that spending relatively large sums to secure relatively large numbers of death *sentences* has little pay off—and, indeed, is counterproductive—when it comes to securing *executions*. If so, the policy alternative of spending less by securing fewer death sentences²²⁵—each of which, however, is more likely to be carried out—would be indicated.

Figures 31 and 32 below consider the relationship between state court caseloads and, respectively, death sentencing rates and the rate of death sentences carried out.

**Figure 31. State Court Caseloads
and Death Sentencing Rates per 1,000 Homicides**

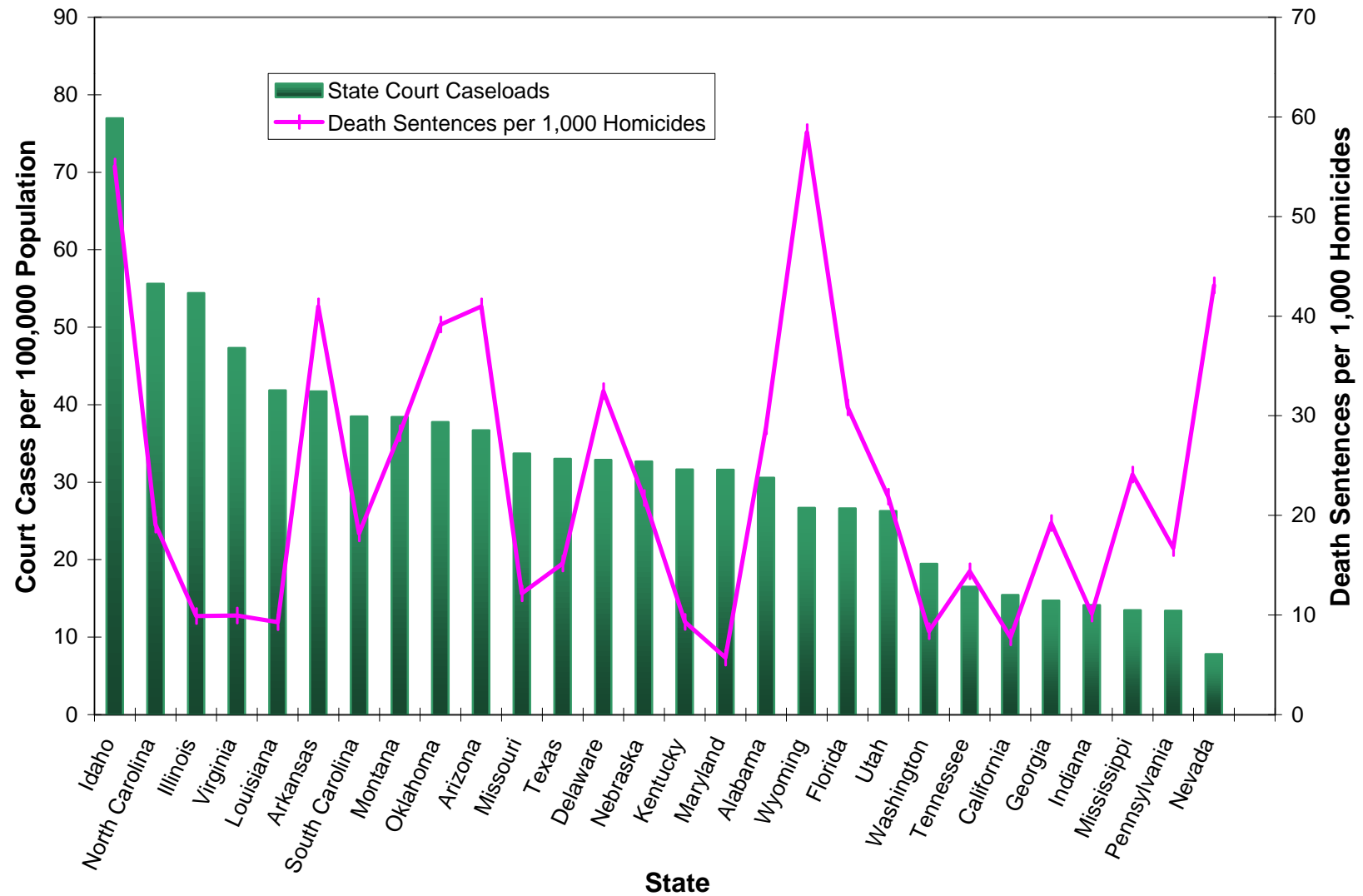
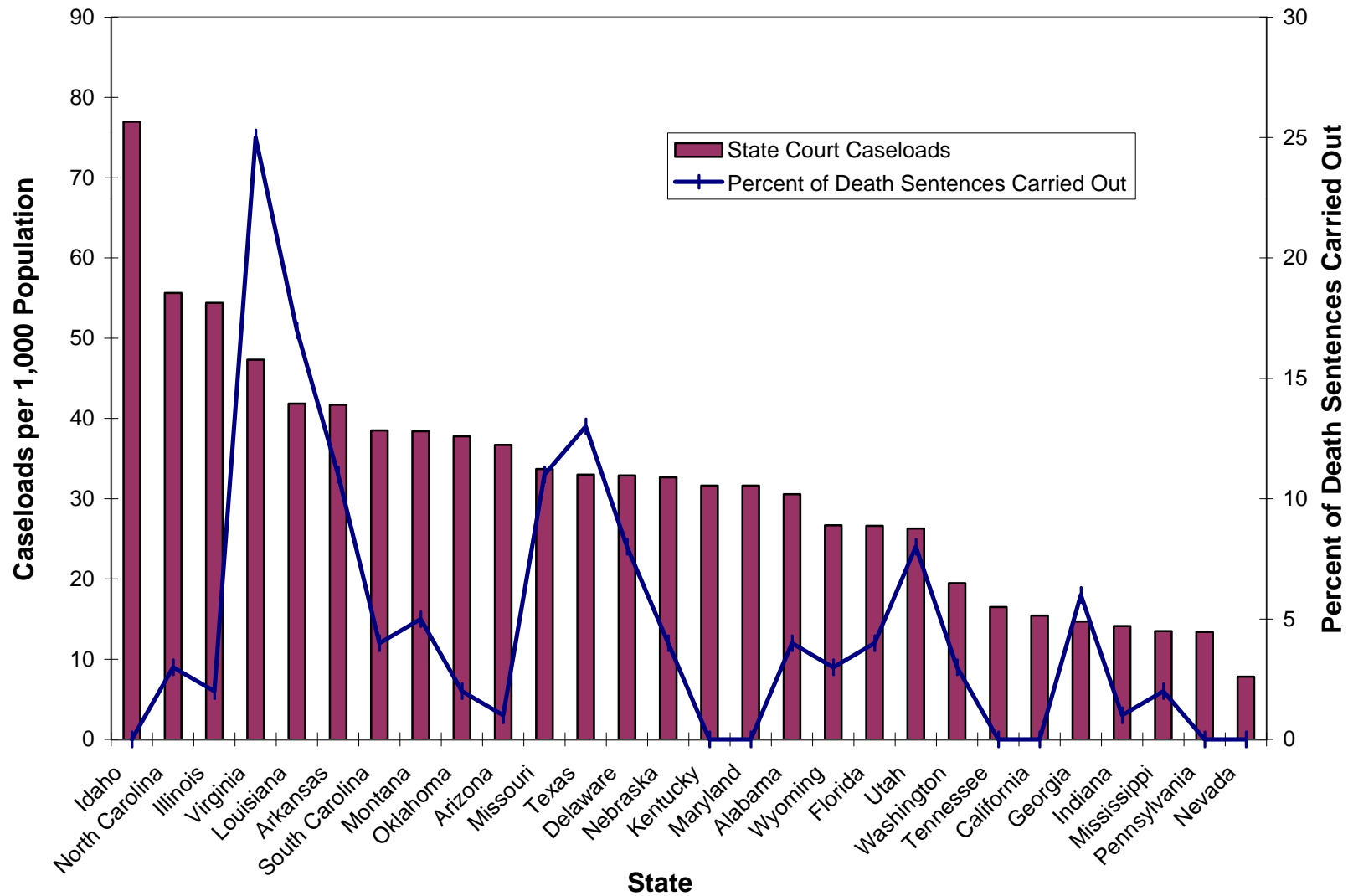


Figure 32. State Court Caseloads and Percent of Death Sentences Carried Out, 1973-95



Judging from Figure 31, there is no relationship between how many cases per capita state courts handle and the rate at which those courts impose death sentences. Figure 32 does, however, suggest a weak relationship between court caseloads and death sentences carried out: As per capita caseloads drop, the rate of death sentences carried out also tends to drop. One might hypothesize that states with smaller courts (ones with lower caseloads) are more likely to generate seriously flawed death sentences at the *trial* level, thus depressing the rate at which their death sentences are carried out. Alternatively, state *appellate* courts with lower caseloads may be superior error *detectors*, thus (given high error rates across all states) accounting for lower rates of executions—or, in this scenario, lower rates of *flawed* executions. Further research is called for.

IX. Federal Circuit Court and Regional Comparisons

Appendix B contains report cards for the nine federal judicial circuits that conducted federal habeas corpus review of state death sentences during the 1973-1995 study period.²²⁶ Those circuits reviewed between 2 (Sixth Circuit) and 215 (Eleventh Circuit) death sentences in that period

Referring to these tables as *Federal Circuit* report cards is at times misleading, because much of the information in them considers results generated by *state courts* or other state actors in the states (noted at the top of on each report card) that are grouped in that circuit. For purposes of the latter sorts of information, these are actually *regional* report cards, which aggregate the results of actions by a variety of *state* actors in multiple states in particular segments of the nation. Only the three items falling within the “Federal Habeas Corpus” category of each report (which we have marked with a number sign (#)) report the results of actions exclusively by the *federal* courts in the relevant circuit. An additional six rows of

information (which we mark with a plus sign (+)) report on a mixture of actions by the relevant state courts *and* the federal courts in the circuit.

In this section, we focus on information generated either by the federal courts alone, or by them in conjunction with state courts.

Table 25 displays the rates of error detected on federal habeas review and overall (state and federal review) by circuit. Figure 33 below compares the circuits' error detection rates on habeas.

**Table 25: Error Rates Detected on Habeas Review
and Overall (State Direct Appeal and Federal Review Combined)
by Federal Circuit/Multi-State Regions**

Circuit	Number Re-viewed on Habeas	Number Re-versued on Habeas	Error Rate Found on Habeas	Overall Error Rate (Region)
Sixth	2	2	100%	100%
Ninth	34	21	62%	78%*
Eleventh	215	108	50%	77%
Tenth	17	8	47%	74%
Seventh	14	6	43%	68%
Fourth	52	8	15%	62%
Fifth	200	63	32%	61%
Third	7	2	29%	55%*
Eighth	58	19	33%	54%
National Composite	599	237	40%	68%

* Does not include state post-conviction information for Washington (9th Cir.) or Delaware (3d Cir.)

Source: HCDB; DADB; Appendix C; DPCen

**Figure 33. Rate of Errors Detected on Habeas
in Circuits with Over 10 Cases, 1973-95**

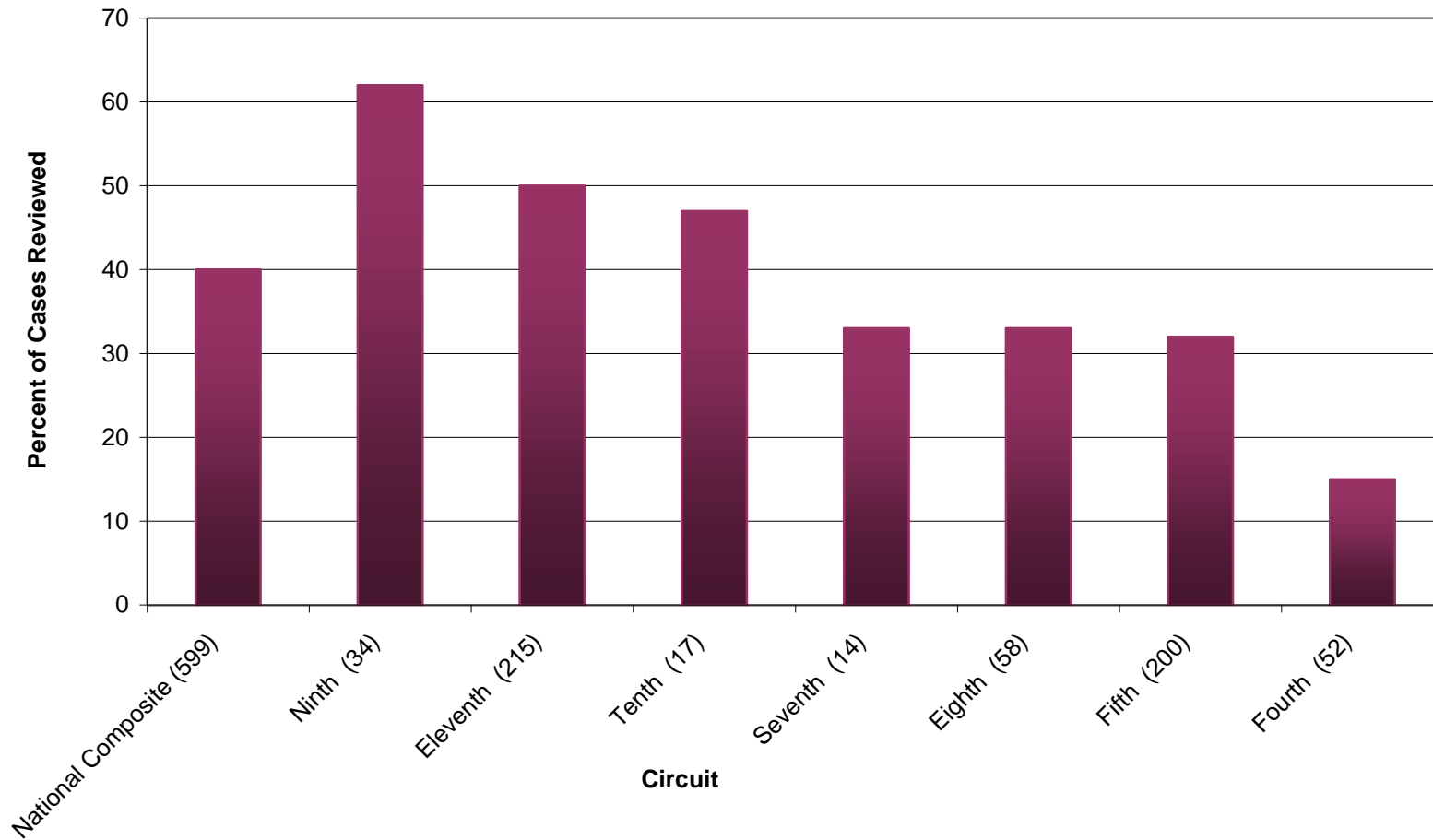


Table 25 and Figure 33 reveal that:

- During the 23-year study period, **7 of the 9 federal death-penalty circuit courts (including the three circuits with the most cases) found serious error in a third or more of the death sentences they reviewed** at the final (federal habeas) inspection stage— notwithstanding that two state court inspections had already occurred.
- **Over half the circuits detected error 40% or more of the time .**
- **The Eleventh Circuit—the nation’s most active capital reviewing federal court** (with jurisdiction over Alabama, Florida and Georgia capital judgments)—**detected error in 50% of the death sentences it reviewed.**
- Even after excluding the Sixth Circuit (which only reviewed two capital judgments), there is much wider variation among the rates of serious error detected by the circuits on federal habeas review *alone* (ranging from 15% to 62%) than the rates of error detected overall by a *combination of state and federal courts* (which only range from 54% to 78%). This indicates, as we have already suggested,²²⁷ that state and federal court review may somewhat compensate for each other, tending to moderate variations that occur when the results of only state court or federal court inspection is considered.
- Although there is substantial variation among circuits, there also—as we already have noted (*see* Table 8 and Figure 8, *supra* pp. 60, 61)—is substantial variation in federal habeas error detection *within* circuits. The Fifth Circuit, for example, finds error in 71% of the Mississippi death sentences it reviews but only 26% of the Texas death sentences it reviews—suggesting that more is at issue in determining error detection rates than a federal court’s uniform disposition with regard to error affecting capital sentences.

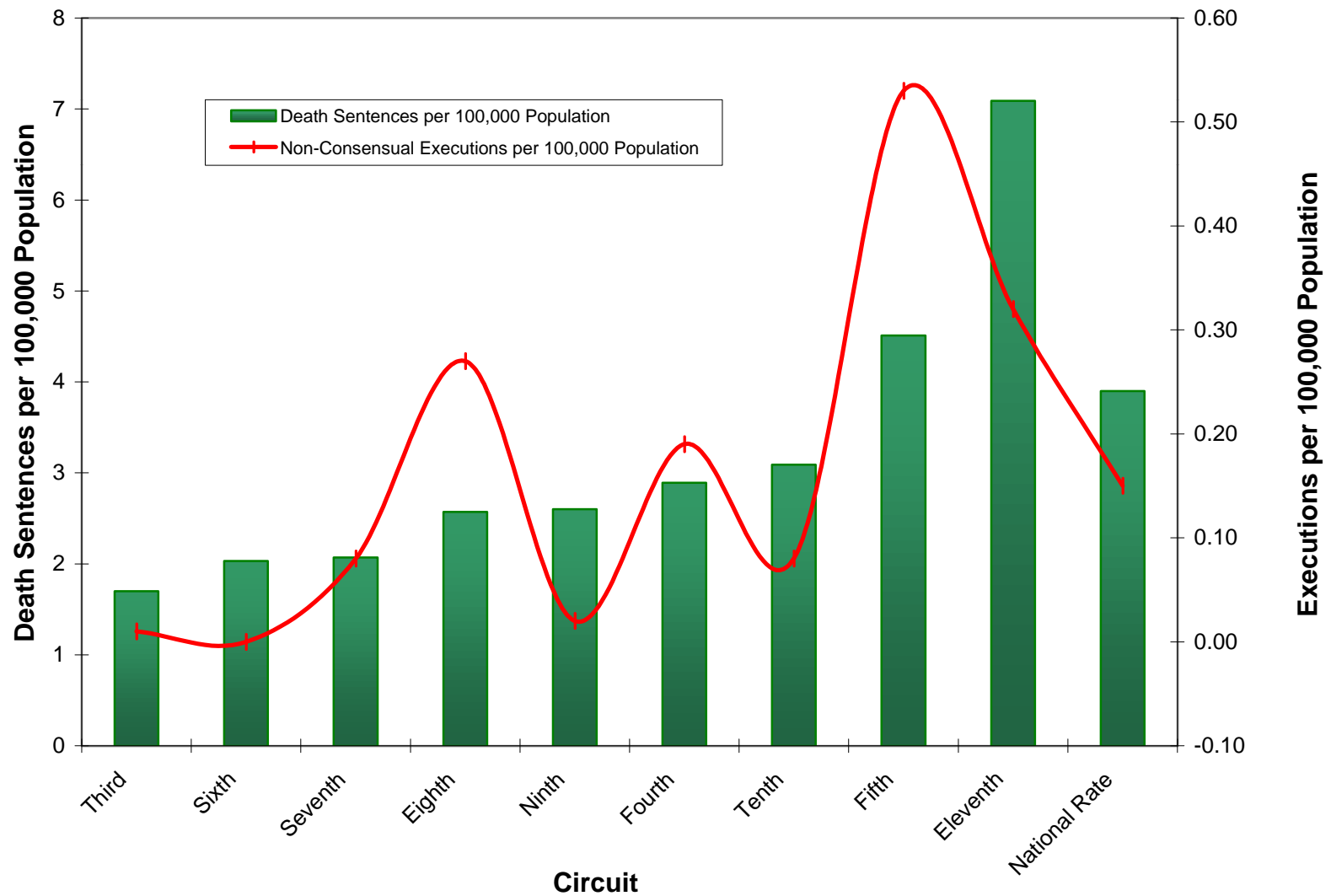
As did Figure 8 (p. 61) above, Table 25 and Figure 33 identify the Fourth Circuit—with jurisdiction over Virginia, North Carolina, South Carolina and Maryland—as an outlier on the low end of federal habeas corpus error detection. The Fourth Circuit finds error only half as often as the next lowest circuit and just under a third as often as do the other circuits as a whole minus the Fourth.²²⁸ Interestingly, though, as we already have noted (pp. 51, 65-66 above), state courts in three of the four states within the Fourth Circuit—all those save the Virginia courts²²⁹—largely compensate for the Fourth Circuit’s low error detection rate with unusually high direct appeal and state post-conviction error detection rates of their own. Thus, although the Fourth Circuit is way below the other circuits in error detection on *habeas*, when state and federal error detection are combined, the overall rate of error detected in the Fourth Circuit region (62%) is *higher* than the overall rate of error detected in three other regions (the Fifth, Third and Eighth Circuit) and not much lower than the national average (68%). If Virginia (whose Supreme Court rarely detects error) is excluded, the overall error rate for capital judgments from the other three states in the Fourth Circuit region rises to 76%, significantly *above* the national average. The “double whammy” effect noted earlier (p. 66) of distinctly lower error detection rates at the checkpoints operated both by the Virginia Supreme Court and by the U.S. Court of Appeals for the Fourth Circuit thus is a unique feature of Virginia capital judgments.²³⁰

In considering whether Virginia capital judgments are substantially less error prone than all others in the nation or, on the other hand, whether laxer error detection takes place there, the death-sentencing states that surround Virginia and lie within its same federal judicial circuit—Maryland, North Carolina and South Carolina—may be treated as partial “natural controls.”²³¹ Insofar as philosophical, cultural or historical factors—which probably do not vary much between Virginia and its neighbors—are thought to be the main influences on the amount of expected error in capital judgments, the fact that high capital error

rates are consistently found in states bordering Virginia casts doubt on the hypothesis that Virginia capital sentences are starkly less error-prone. For this analysis to show convincingly that Virginia courts are laxer detectors of serious capital error than courts in the surrounding states, there would have to be an explanation for *that* difference among presumably similar states. One such explanation is the unusual extent to which the Virginia courts limit review of capital judgments: (1) enforcing the region's (and nation's) strictest procedural default doctrine (the rule permitting even egregious error to be ignored on appeal if it was not objected to at trial); (2) often appointing substandard trial attorneys to represent the indigents who make up 97% of the state's death row, thus increasing the probability that necessary objections will *not* be made at trial, and thus that appellate review will be cut off; (3) applying a very strict test for reversing capital judgments based on incompetent lawyering (until the Supreme Court overturned Virginia's test earlier this year²³²; (4) limiting defendants' ability to petition for a new trial based on innocence to a **21-day** period following conviction, the shortest such time-frame in the region (and nation); and (5) failing to provide legal assistance to indigent (meaning nearly all) capital prisoners or funds for it at the state post-conviction phase, thus limiting the capacity of that second inspection (which has proved so important in Maryland, North Carolina, and South Carolina) to detect and correct serious error.²³³ These questions bear further study.

We close this section with a circuit comparison documenting the actions of *state officials* within the *states* that are regionally grouped in the respective circuits. Figure 34 compares the circuits based on their component states' *death sentencing* rates (death sentences per 100,000 population) and *execution* rates (non-consensual executions²³⁴ per 100,000 population).²³⁵

Figure 34. Per Capita Death Sentencing and Per Capita Execution Rates by Circuit, 1973-95



Like their state counterparts,²³⁶ the regional comparisons in Figure 34 show that relatively high *death-sentencing* rates often go hand in hand with relatively low *execution* rates, and vice versa. For example:

- Alabama, Florida and Georgia (the states in the Eleventh Circuit region) impose nearly 60% *more death sentences* per capita than Louisiana, Mississippi, and Texas (the states in the Fifth Circuit region), but carry out 60% *fewer executions*.
- The states in the Eleventh Circuit (Alabama, Florida and Georgia) likewise *sentence* nearly three times as many people to death as Arkansas, Missouri, and Nebraska (in the Eighth Circuit region), but the two regions' *execution* rates are very similar.

As we already have suggested, the impulse to make frequent use of death sentences does not translate into, and may even interfere in some way with, the capacity to do so reliably enough to permit death sentences to pass judicial inspection for serious error and be carried out.

X. Conclusion: A Broken System; the Need for Research into Causes

Over the course of the 23-year study period, **a large majority of death sentences subjected to judicial inspection nationally and in nearly all death-sentencing states were found to be seriously flawed and were reversed by the courts.** The **60% and 70% rates of serious error** that have existed **nationally** and in the **vast majority of states** have obliged courts to provide, and have obliged taxpayers to foot the bill for, **a elaborate and lengthy judicial inspection process**—one that, even so, almost inevitably must **fail to catch and correct some amount of the error that has flooded the system.** As an inevitable result of so many serious errors and the multi-tiered process needed to catch

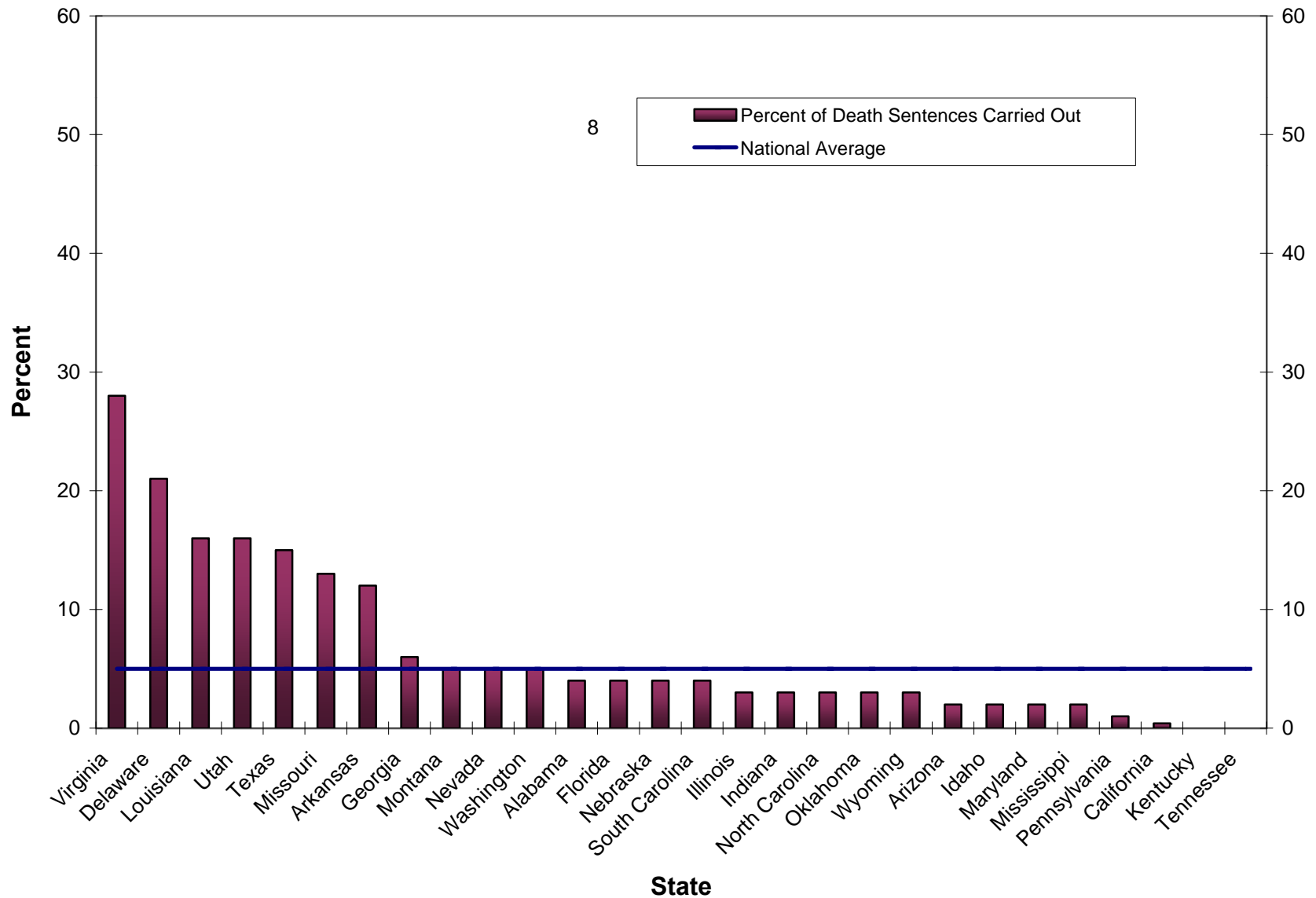
them, it has taken **nearly a decade**—more recently, it has taken *over* a decade—for the **small number of death sentences that pass inspection to be carried out.**

Very few death sentences succeed, and it takes years to cull out the majority of failures.

So far we have used the rate of serious error detected by state and federal courts as the measure of the success or failure of our capital punishment system. But there is another important measure that bears consideration. Presumably, the most immediate goal of a system of capital punishment is the *execution* of capital sentences. In this light, the most obvious measure of the “success” of our death penalty system—indeed, the most obvious measure of the system’s **sheer *rationality***—is its **capacity to translate the death sentences it imposes into executions.**

By this measure, the capital punishment system revealed by our 23-year study is *not* a success, and is not even minimally *rational*. Figure 35 below plots the proportion of the death sentences imposed at *some point* during the 23-year study period that had been carried out by the *end* of that period—comparing the 28-state cohort of capital-sentencing jurisdictions and the national average.²³⁷

Figure 35. Percent Death Sentences Carried Out, All Executions, 1973-95



As Figure 35 reveals:

- **Nationally**, during the study period, **the proportion of death sentences actually carried out was a meager 5.4%, one in nineteen**.
- Given high error rates, and the painstaking review needed to catch it, **well over half of all American death-sentencing states that have been in the business the longest failed to carry out 95% or more of their death sentences. Nearly half failed to convert more than 1 in 30 death sentences into executions**. Three-quarters carried out fewer than 7% of their death sentences. The vast majority (86%) carried out 15% or fewer.
- **Only 1 state, Virginia, managed to carry out more than a quarter of the death sentences it imposed over the 23-year study period**—and there is serious question whether it did so only by dint of inferior error detection.²³⁸

* * * * *

Through a variety of measures, our 23 years worth of findings reveal **a capital punishment system collapsing under the weight of its own mistakes**. In so doing, they pose **three principal questions** (and a host of subsidiary ones) that will be the subject of a **second report later this year**:

- *What has remained the same, and what has changed, since 1995?* By all indications examined here, the error-proneness and irrationality documented by our study of **thousands of cases** reviewed by **hundreds of state and federal judges**, in **three separate review processes**, in **34 states across the nation** over the course of nearly a **quarter century** has not somehow evaporated in the succeeding four years.²³⁹ In none of those four years, for example, as in none of the preceding 23, has the nation managed to execute even **3%** of its death row inmates—and in

1996 and 1998, it executed fewer than **2%** (about the same proportion as it had executed in, *e.g.*, 1984, 1987, 1993 and 1995).²⁴⁰ Indeed, if the recent findings of a variety of media investigations across the nation are any indication, error rates and the consequent confounding of the death penalty system may be getting worse.²⁴¹ In this regard, we hope to explore whether the surge of state and federal court reversals in the last study year (1995) was a harbinger,²⁴² and any other patterns that may appear.

- *What accounts for the generally high rates of serious error that state and federal courts have detected in American capital judgments?* In this Report, we have briefly examined the types of errors that predominate (incompetent lawyering and prosecutorial misconduct leading the way²⁴³); identified differences among the respective states and federal courts—for example, disproportionately low error-detection by the Virginia courts and the U.S. Court of Appeals for the Fourth Circuit; noted the relationship between high error rates and low execution rates (especially rates of death sentences carried out); discovered some potentially suggestive evidence that low execution rates (especially, low rates of death sentences carried out) are associated with high death-sentencing rates; and considered the effect on death-sentencing and execution rates of (1) some demographic factors (finding that homicide rates seem to have *no* effect on death-sentencing and execution rates, and that the size of nonwhite populations may be inversely related to death-sentencing rates but directly related to execution rates) and (2) judicial-contextual factors (finding that political pressure on state judges and that state expenditures on courts may be positively correlated with death-sentencing rates but negatively correlated with the rate at which death sentences are carried out). These analyses represent our first steps towards the main goal

or our next research phase: Identifying the causes of the huge amounts of serious error infecting American capital convictions and sentences.

- *What policy responses are called for?* In advance of these additional efforts to explore the causes of our capital system's error-proneness and irrationality, we have the least to say here about the policy implications of our findings. That, however, will be a third important focus of our next phase of research.

Endnotes

*. An abridged version of this Report will be published in the *Texas Law Review*, October 2000.

1. See, e.g., *Rethinking the Death Penalty*, ABC News Nightline, May 22, 2000 <http://abcnews.go.com/onair/nightline/transcripts/nl000522_trans.html> (“[A] lot of places are rethinking the death penalty. Last week in New Hampshire, the state Legislature voted to abolish capital punishment, although the governor there vetoed the measure. And around the country, people are asking new questions about overzealous prosecutors, incompetent defense lawyers, and . . . DNA testing, which has cleared some people on death row. Nightline[] . . . reports on an old issue, which is the focus of a whole new debate.”); Jonathan Alter & Mark Miller, *A Life or Death Gamble: A New Debate About the Fairness of a Death Sentence*, Newsweek, May 29, 2000 <<http://newsweek.com/nw-srv/printed/us/na/a20098-2000may21.htm>> (noting “a new debate about the fairness of the death penalty”).

2. See, e.g., Ofra Bikel, *The Case for Innocence*, Frontline, PBS, Jan. 11, 2000 <<http://www.pbs.org/wgbh/pages/frontline/shows/case/etc/script.html>>; Barry Scheck, Peter Neufeld & Jim Dwyer Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted (2000).

3. See, e.g., Paul Duggan, *Rising Number of Executions Welcomed, Decried*, Washington Post, Dec. 13, 2000, at A3, available in 1999 WL 30308153; Abraham McLaughlin, *98 Executions in '99 Reignite a Capital Debate*, Christian Science Monitor, Dec. 27, 1999, at 1, available in 1999 WL 5384560.

4. From 1984 to 1991, an average of about 15 men and women were executed each year in the United States. The average rose to about 30 a year between 1992 and 1994, to about 60 in the next four years, and to 98 (the most in a single year since 1951) in 1999. See Linda Greenhouse, *Death Penalty Gets Attention of High Court*, N.Y. Times, Oct. 30, 1999, at A1 (“[T]here were 82 executions in the first 10 months of [1999], a pace unequaled since the early 1950’s.”); NAACP Legal Defense and Educational Fund, *Death Row U.S.A.*, Spring 2000, at 8 [hereinafter, *Death Row U.S.A.*]. Notably, however, two states, Texas and Virginia, have accounted for half the executions in the United States during the last 15 years. See *id.* at 11-22; Frank Green, *Virginia Bucks Death Row Flow*, Richmond Times-Dispatch, March 13, 2000; *infra* note 218. In contrast, several other states with large death row populations—California, Ohio, Pennsylvania, Mississippi and Tennessee, for example—rarely execute more than one person in any year. See *Death Row U.S.A.*, *supra* at 11-22. Moreover, since 1976, the number executed annually in the United States has never exceeded three percent of the nation’s death row population, and stayed continuously within the one-half to two percent range from 1984 to 1998. See *infra* Table 2, Appendix E, at E-3. The likelihood that any death row prisoner will be executed has been, and remains, low.

5. See Dalia Sussman, *Split Decision on Death Penalty*, ABCNEWS.com, Jan 10, 2000 <<http://abcnews.go.com/sections/politics/dailynews/poll00019.html>> (reporting that in an ABCNews.com poll, 64% of Americans say they support the death penalty for people convicted of murder); Frank Newport, *Support for Death Penalty Drops to Lowest Level in 19 Years, Although Still High at 66%*, Gallup News Service, Feb. 24, 2000 <<http://www.gallup.com/poll/releases/pr000224.asp>>. See also David Frum, *The Justice Americans Demand*, N.Y. Times, Feb. 4, 2000, at A29, available in LEXIS, News Library, NYT File

(questioning the democratic legitimacy of a moratorium on executions in light of broad popular support for the penalty); Frank Green, *Falwell Opposes a Moratorium*, Richmond Times-Dispatch, Apr. 11, 2000, at B4, available in 2000 WL 5035053 (reporting Rev. Jerry Falwell's disagreement with other conservative evangelical Protestant figures who have called for a moratorium, and Falwell's call for expedited executions); Eugene H. Methvin, *Death Penalty Is Fairer than Ever*, Wall St. J., May 10, 2000, at A26, available in 2000WL-WSJ 3028765 (arguing that lengthy appeals and DNA testing make capital convictions more reliable than ever).

6. Compare Phoebe C. Ellsworth & Samuel R. Gross, *Hardening of the Attitudes: Americans' Views on the Death Penalty*, 50 J. Soc. Issues, Summer 1994, at 19, 20 fig. 1, 52 (discussing poll data indicating increasing popular support for the death penalty from 1967 through 1994) with Mark Gillespie, *Public Opinion Supports the Death Penalty*, Gallup News Service, Feb. 24, 1999 <<http://www.gallup.com/poll/releases>> (noting support for the death penalty has declined about 10 percentage points over the past six years) and Newport, *supra* note 5 (noting a 4 percentage point decline in support for the death penalty in 2000) and Kathy Walt, *Death Penalty Support Plunges to 30-year Low*, Houston Chron., Mar. 15, 1998, at A1 (nationally, opposition to the death penalty grew from 7 percent in 1994 to 26 percent in 1998; in Texas, "support for the death penalty has slipped to its lowest point in more than three decades") and Editorial, *A Moratorium on Killing*, St. Louis Post Dispatch, Dec. 26, 1999, at B2, available in 1999 WO 3062342 ("Could this [rise in opposition to the penalty] be a start of a shift in public opinion . . .?").

For statewide trends in public opinion, see Kathy Barret Carter, *63% of Jerseyans Favor Death Penalty—But Support Drops 9% Since '94 Polls Show*, Star-Ledger (Newark), Oct. 10, 1999, at 25; Death Penalty Information Center, *Recent Poll Findings* (visited May 17, 2000) <<http://www.essential.org/dpic/po.html>> [hereinafter DPIC] (reporting that polls reveal drops in support for the death penalty in Illinois, Kentucky, Michigan, North Carolina, and Virginia); *Death Penalty Support Declines, New Chicago Tribune Poll*, PR Newswire, Mar. 6, 2000 (reporting that public support for death penalty in Illinois fell from 76% in August 1994, to 63% in Mar. 1999, to 58% in 2000); Greg Lucas, *Poll Takes Snapshot of Californians' Views*, S.F. Chron., Jan. 14, 2000, at A20, available in 2000 WL 6472849 ("In California, only 49 percent of those surveyed favor the death penalty compared to 56 percent nationally"); *Support for Death Penalty Slips in Minnesota*, Associated Press, Mar. 21, 2000 (reporting that the number of Minnesotans who favor the death penalty dropped from 73% in 1996 to 57% in 2000); Walt, *supra* (Texas polls; discussed above).

7. See Sussman, *supra* note 5 (in a January 2000 ABCNEWS.com poll in which 64% of Americans said they support the death penalty for murder, the number of supporters dropped to 48% when life without parole was proposed as a sentencing option). State-specific polls reveal similar trends. See, e.g., Carter, *supra* note 6 (reporting that in New Jersey, 63% approval for capital punishment drops to 44% when life without parole is a choice); DPIC, *supra* note 6 & Editorial, *supra* note 6 (noting that among Missouri residents—who, in the abstract, "overwhelmingly support" the death penalty—support for the death penalty drops to 46% when life without parole is an alternative); Lucas, *supra* note 6 (reporting on a recent California poll that asked respondents to choose between death or life without parole as the appropriate punishment for murder: 49% chose death and 47% chose life without parole); Eric Zorn, *Prosecutors Deaf to Outcry Against Death Penalty*, Chi. Trib., Mar. 7, 2000, at 1, available in 2000 WL 3623214 (showing a 15-point drop in support for the death penalty—from 58% to 43%—when life without parole is an option). Forty-two states (including most of the eleven noncapital sentencing states) offer life without parole as a sentencing option. See Editorial, *Rising Doubts on Death Penalty*, USA Today, Dec. 22, 1999, at 17A, available in 1999 WL 6861984.

8. See Jim Yardley, *Texas' Busy Death Chamber Helps Define Bush's Tenure*, N.Y. Times, Jan. 7, 2000, at A1.

9. See *Alabama Looks to Speed Up Executions*, Associated Press, Mar. 3, 2000; *Yoji Cole, Napolitano Wants to Find Ways to Speed Executions*, Ariz. Repub., Feb. 16, 2000, at B7; Sara Rimer, *Florida Passes Bill to Quicken Execution Pace*, N.Y. Times, Jan. 6, 2000, at A1; John Shiffman, *Tennessee May Limit Death Row Appeals*, Nashville Tennessean, Apr. 10, 2000; see also *Most Oklahomans Favor Death Penalty—Poll Finds Most Want Shorter Appeals Process*, The Oklahoman, Mar. 13, 2000.

Among the states mentioned, only Florida actually adopted speed-up legislation, and it was unanimously invalidated under the state constitution by the Florida Supreme Court. See David Cox, *Court Strikes Down GOP's Death Row Appeal Plan*, Florida Sun-Sentinel, Apr. 15, 2000, at 1A (“In a major blow to Gov. Jeb Bush and state Republican leaders, the Florida Supreme Court on Friday unanimously struck down the Legislature's overhaul of the appeals process for Death Row inmates.”).

10. See William Claiborne, *Ill. Governor, Citing Errors, Will Block Executions*, Wash. Post, Jan. 31, 2000, at A1, available in 2000 WL 2283005 (“Gov. George H. Ryan (R) has decided to effectively impose a moratorium on the death penalty in Illinois [by indefinitely staying all proposed executions] until an inquiry has been conducted into why more death row inmates have been exonerated than executed since capital punishment was reinstated in 1977. . . . ‘There are innumerable opportunities along the way for serious errors, and the governor wants to take a pause here,’ Ryan’s press secretary, Dennis Culloton, said today.”); Dirk Johnson, *Illinois, Citing Faulty Verdicts, Bars Executions*, N.Y. Times, Feb. 1, 2000, at A1, available in LEXIS, News File (“Citing a ‘shameful record of convicting innocent people and putting them on death row,’ Gov. George Ryan of Illinois today halted all executions in the state, the first such moratorium in the nation). See also Steve Mills & Ken Armstrong, *Gov. George Ryan Plans to Block the Execution of Any Death Row Inmate*, Chi. Trib., Jan. 30, 2000, available in 2000 WL 3631638 (citing a March 1999 poll showing that Illinois death row exonerations have prompted 54% of the state’s voters to favor and only 37% to oppose a moratorium, notwithstanding majority support for the penalty in the abstract).

11. In 1999, Nebraska’s unicameral legislature passed a death penalty moratorium bill co-sponsored by Republican Senator Kermit Brashear and Democrat Senator Ernie Chambers. Governor Mike Johanns vetoed the bill, but the legislature unanimously overrode the veto as to a section of the bill that allocated \$165,000 to study the issue. See Robynn Tysyer, *Death Penalty Study OK’d*, Omaha World-Herald, May 28, 1999, available in Westlaw, News File, ALLNEWS database.

12. See, e.g., Ken Armstrong & Steve Mills, *String of Exonerations Spurs Legislative, Judicial Panels to Study Reforms*, Chi. Trib., Nov. 16, 1999, at N8, available in 1999 WL 2932558 (noting that the Illinois General Assembly and Illinois Supreme Court have created four committees to study the death penalty); Bob Chiarito, *House Panel Set to Consider Moratorium on Executions*, Chicago Daily L. Bull. Jan. 26, 2000, at 3, available in Westlaw, News Library, ALLNEWS File; Ryan Keith, *Task Force on Capital Cases Calls for Videotaping of Suspects*, Chi. Trib., Mar. 16, 2000, at M6, available in 2000 WL 3646355; Steve Mills & Ken Armstrong, *Illinois Prosecutors Under Glare at Death Penalty Hearing*, Chi. Trib., Jan. 28, 2000, at N20, available in LEXIS, News File; Evan Osnos & David Heinzmann, *Death Penalty Still an Option*, Chi. Trib., Jan. 31, 2000; Maurice Possley & Ken Armstrong, *Revamp Urged in Handling of Capital Cases*, Chi. Trib., Nov. 4, 1999, at N1, available in 1999 WL 2928957.

13. See *Moratorium Now!* (visited May 16, 2000) <<http://www.quixote.org/ej>>. See also Benjamin Wallace-Wells, *States Follow Illinois Lead on Death Penalty*, Boston Globe, Feb. 9, 2000, at A3, available in LEXIS, News File.

[End notes 14 and 15 are omitted]

16. See John DiStaso & John Toole, *Death Penalty's Fate Still Up in the Air in Senate*, Manchester Union Leader, Mar. 13, 2000 (noting that on Mar. 9, 2000, New Hampshire's majority-Republican House of Representatives voted to abolish the death penalty); Robert Anthony Phillips, *N.H. Considers Abolishing Unused Death Penalty* <<http://www.APBnews.com>> (Mar. 10, 2000); *Rethinking the Death Penalty* (Nightline), *supra* note 1 (noting abolition bill's eventual passage by New Hampshire Legislature and veto by Governor).

17. See Brad Cain, *Two Oregon Titans Want Death Penalty Ended*, The Columbian, Apr. 7, 2000, at B5 (“[Governor John] Kitzhaber and [former Senator Mark] Hatfield—two of Oregon’s most popular political figures—have lent their names to an effort to ask voters to outlaw capital punishment in November.”).

18. See Jack Elliott Jr., *Death Row-Defense Bills Move Through Legislature*, Biloxi Sun Herald, Mar. 2, 2000, at A5, available in LEXIS, News Library, BILSUNH File (discussing proposals in the Mississippi legislature to provide state money to assist smaller Mississippi counties to bear the expense of competent trial and state post-conviction representation in capital cases); Carol Marbin Miller, *State High Court Raises Standard for Death Row Case Lawyers*, Miami Daily Bus. Rev., Nov. 5, 1999, at B1 (discussing the Florida Supreme Court’s adoption of rules setting minimum standards for defense attorneys in capital cases—including at least 9 jury trials in serious or complex matters and at least 2 capital cases—and encouraging trial judges to appoint two defense lawyers in each case). See also Possley & Armstrong, *Revamp Urged*, *supra* note 12, at N1 (reporting that at least a dozen states “have established minimum standards for defense attorneys in capital cases,” which typically “require that at least two attorneys be appointed in capital cases and that they have a certain number of years of experience in trying criminal matters”).

19. See, e.g., Mike Dorning, *Death Penalty Reforms Gain Backers in D.C.*, Chi. Trib., Mar. 31, 2000, at N1 (describing bipartisan support and sponsorship for a House bill—paralleling one proposed by Democratic Sen. Patrick Leahy and Republican Sen. Gordon Smith in the Senate—aimed at improving capital defendants’ access to DNA evidence, adequate representation and other protective procedures); Mike Dorning, *Senator to Propose Death Row Safeguards*, Chi. Trib. (Feb. 10, 2000), at N1 (describing federal legislation proposed by Senator Patrick Leahy and others that would, *inter alia*, give states incentives to “require that indigent death penalty defendants be allowed a team of at least 2 court-appointed attorneys” who “meet competency standards set by the U.S. Administrative Office of the Courts”).

20. ABC This Week (ABC television broadcast, Apr. 9, 2000) <<http://abcnews.go.com/onair/thisweek/ThisWeekIndex.html>> (roundtable discussion among Sam Donaldson, Cokie Roberts, George Stephanopolous & George Will, focusing on George Will’s column, cited *infra* note 21, and Rev. Pat Robertson’s expression of support for a death penalty moratorium, in which all four panelists agreed with Robertson, prompting Stephanopolous to discern a “really a tectonic shift in the politics of the death penalty”). See also John Harwood, *Bush May Be Hurt by Handling of Death-Penalty Issue*, Wall St. J., Mar. 21, 2000, available in 2000 WL-WSJ 3022420 (noting the “remarkable . . . absence of public protest” when Governor Ryan declared the Illinois moratorium on executions and discerning “a national shift in the politics of capital punishment”); Michael Kroll, *Executioner’s Swan Song?* (Feb. 8, 2000) <http://www.salon.com/news/feature/2000-02/08/death_penalty/index.html> (concluding that Governor Ryan’s decision to suspend the death penalty represents a “public shift”); Bruce Shapiro, *Capital Offense*, N.Y. Times Mag., Mar. 26, 2000 (“But suddenly . . . death-row innocence cases have taken hold of the public mind, and capital punishment itself seems to be approaching a political tipping point.”). See also Mark Hansen, *Death Knell for Death Row?*, ABA J., June 2000, at 40; Steven A. Holmes, *Look Who’s Questioning the Death Penalty*, N.Y. Times, Apr. 16, 2000, available in LEXIS, News Library, NYTIMES

File (noting a “conservative rethinking” of the death penalty); Johnson, *supra* note 10 (reporting that the issue of wrongful executions “is gaining resonance around the nation, after many years in which it was seen as essentially a dead letter in American politics”); Lucas, *supra* note 6 (stating that recent public opinion polls suggest “that politicians need not be so rigid in their stance and their perception of the public’s opinion on the use of the death penalty”); Clarence Page, *Close Calls on Death Row Finally Prompting Second Thoughts*, Dallas Morning News, Apr. 16, 2000.

21. In an opinion column discussing a recently published book, *see* Scheck, Neufeld & Dwyer, *supra* note 2, George Will concluded:

You could fill a book with . . . hair-curling true stories of blighted lives and justice traduced [as a result of the capital conviction of innocent defendants]. Three authors have filled one. It should change the argument about capital punishment and other aspects of the criminal justice system. Conservatives, especially, should draw this lesson from the book: Capital punishment, like the rest of the criminal justice system, is a government program, so skepticism is in order.

George F. Will, *Innocent On Death Row*, Wash. Post, Apr. 6, 2000, at A23, available in 2000 WL 2295245.

22. *See* Brooke A. Masters, *Pat Robertson Urges Moratorium On U.S. Executions*, Wash. Post, Apr. 8, 2000, at A1, available in 2000 WL 2295691 (quoting Robertson’s statement that “a moratorium would be appropriate”); *Meet the Press* (NBC television broadcast, May 7, 2000) (interviewing Rev. Pat Robertson, who explained his simultaneous support for the death penalty and for a moratorium on executions); *Robertson Backs Moratorium, Says Death Penalty Used Unfairly*, Chi. Trib. Apr. 8, 2000, at N12, available in 2000 WL 3654070.

23. *See* the views expressed by Fallwell, Frum and Methvin, *supra* note 5 and accompanying text.

24. *See* the views expressed by Robertson, Will and others, *supra* notes 20-22 and accompanying text.

25. Kroll, *supra* note 20.

26. Much of the information reported here is contained in ten data bases. The authors generated four of those data bases; the other six were generated at least in part by others.

The first (electronically stored) data base the authors generated—referred to herein as “**DADB**”—contains information on all 4,578 state capital direct appeals that were finally decided between 1993 and 1995. To be “finally decided” within that time period, the highest state court with jurisdiction to review capital judgments in the relevant state must have taken one of two actions during the study period: (1) affirmed the capital judgment, or (2) overturned the capital judgment (either the conviction or sentence) on one or more grounds. *See also infra* pp. 25-26. (Capital judgments are overturned on direct appeal only on the basis of “serious error,” as defined *infra* note 33; *infra* p.5 & nn.42, 43.) If one of those two actions occurred prior to or during 1995, and the United States Supreme Court thereafter denied certiorari review, the case is included in the study, because the Supreme Court’s action did not affect the finality of the state decision. If the Supreme Court instead *granted* certiorari in a case but did not decide the case before or during 1995, the case is omitted from the study because the Supreme Court’s action withdrew the finality of the decision. DADB contains: the sentencing state; the year; outcome; citation; and subsequent judicial history (rehearing, certiorari) of the decision finally resolving the appeal; and information about the basis for reversal of the capital judgment under review, if a reversal occurred.

The second (electronically stored) data base that the authors generated—referred to herein as

“**HCDB**”—contains information on all 599 initial (*i.e.*, nonsuccessive) capital federal habeas corpus cases that were finally decided between 1993 and 1995. To be “finally decided” within that time period, all of the following events must have occurred in the case within the study period: (1) a United States District Court must have (a) denied habeas corpus relief, thereby approving the capital judgment, or (b) granted habeas corpus relief from the capital judgment (either the conviction or sentence) on one or more grounds; (2) if an appeal was timely filed, a United State Court of Appeals must have taken or approved action (1)(a) or (1)(b); and (3) if certiorari review was timely filed, the United States Supreme Court must have either (a) denied review or (b) granted review and taken or approved action (1)(a) or (1)(b). *See also infra* p.24. (Federal habeas relief from capital judgments is granted only on the basis of “serious error,” as defined *infra* notes 33, 38; *infra* p.5 & nn.42, 43.) HCDB contains: the sentencing state; the timing of the habeas petition and its adjudication at the various stages; the outcome at the various stages; information about the petitioner, lawyers, judges, courts, victim, offense; the aggravating and mitigating circumstances found at trial; procedures used during the habeas review process; and the asserted and the judicially accepted bases for and defenses to habeas relief from the capital judgment was under review.

The third data set generated by the authors is laid out in full in **Appendix C** to this Report. It contains an *incomplete* list of the capital cases in which state post-conviction relief was granted between 1973 and April 2000, and provides available information about citations or other identifying information, the basis for the grant of relief, the outcome on retrial, and timing. A full description of that data set and of the manner in which it was gathered, and its limitations, is set out *infra* Appendix C, pp. C-1 to C-2.

Our fourth and final author-generated data base, **PolPres**, collects information about the constitutional and statutory law governing the selection and retention of judges in each of the 28 capital-sentencing states that we study. It includes information on method of selection and retention of judges, length of judicial terms, frequency of judicial elections, and types of judicial elections (*e.g.*, selection, retention and recall elections).

The first of the data bases relied upon here that was generated at least in part by others—referred to herein as “**DRCen**”—is a compilation of the information used to produce the NAACP Legal Defense Fund’s quarterly death row census, Death Row U.S.A., *supra* note 4. This data base has the name of all individuals who were on a state death row between 1973 and 1995, the state where their death sentence was imposed, and the sentencing year. Death Row U.S.A. is also our source of information about executions: when and where they occurred and whether they were consensual or non-consensual, as described *infra* notes 31, 208; *infra* p.32 & n.140.

Three additional data sources used here contain information collected by the United States Government. “**USCen**” is a compilation of information collected by the United States Census Bureau. In order to estimate the racial composition of each state and circuit (region) in our study, we used Unpublished Census data PE-19 1970-79 and three Census Bureau publications: State Estimates by Age, Sex, and Race; Estimates of the Population of States by Age, Sex, Race and Hispanic Origin: 1981 to 1989; and Estimates of the Population of State by Age, Sex, Race and Hispanic Origin: 1990 to 1998. (Figures for 1980 were estimated by averaging 1979 and 1981). “**UCRDB**” is a compilation of information reported in U.S. Dep’t of Justice, FBI Uniform Crime Reporting Program Data [United States]: County Level Arrest and Offense Data, for the years 1973 through 1996. “**PrisCen**” is a compilation of information collected by the Bureau of Justice Statistics and reported in the Sourcebook of Criminal Justice Statistics for the years 1977 through 1996.

Our penultimate data base—**CtCaLd**—has information for each state in our 28-jurisdiction cohort about the state’s average annual criminal case filings per 1,000 persons in the population for years 1985-1994. These data, and the underlying case load measure, are taken from Inter-University Consortium for Political and Social Research, State Court Statistics 1985-1994 (ICPSR 9266, 1995). Our final data base—**CtExpen**—has information for each of the same 28 states on its average annual court-related expenditures for fiscal years 1982-1992. These data, and the underlying measure, are taken from Expenditure and Employment Data for the Criminal Justice System 1992 (ICPSR 6579, 1993).

27. 408 U.S. 238 (1972).

28. Although the Justice Department collects aggregate data on capital cases by state, its data (1) have only 37 variables, (2) contain no case- or event-specific information, (3) are derived from reports by prison officials who lack information about some individuals under sentence of death who are incarcerated in local jails or for some other reason are not physically located on death row, and (4) are derived from answers to questions about outcomes that (a) do not distinguish between state and federal court reversals, and (b) provide no information on the reason for a reversal. *See, e.g.*, U.S. Dep’t of Justice Bureau of Justice Statistics, Capital Punishment 1998, at 1 <<http://www.ojp.usdoj.gov/bjs/pub/pdf/cp98.pdf>> (Dec. 1999; NCJ 179012) (supporting documentation is available on line) [hereinafter, BJS 1998 Report]. Likewise, although the NAACP Legal Defense Fund’s quarterly death row census, *see* Death Row U.S.A., *supra* note 4, lists inmates on death row, it provides very little information about each. *See infra* note 123 (discussing these and other limitations of the data in Death Row U.S.A.).

29. We are now conducting complex multivariate statistical analyses to identify potential causes of those results. We will report on those analyses later in the year.

30. Our study considers only state, not federal, death sentences.

31. DRCen; Death Row U.S.A., *supra* note 4, at 8-22. The figure in the text refers to *all* executions during the study period. For the reasons discussed *infra* pp.32, 41, it often is sensible to consider only the executions that were “non-consensual,” meaning that the prisoner availed himself of the full review process before he was executed. The number of non-consensual executions between 1973 and 1995 was 273, or 4.7% of the total number of death sentences.

32. DRCen; DADB. The state direct appellate process is described *infra* pp. 18-19.

33. DADB. In calculating error rates, we count only errors that result in reversal of a capital conviction or sentence. To do so, the error must be “serious” in three respects that render our calculation of “error” conservative. First, to be reversible, error must be *prejudicial*, either because the defendant has actually shown that it probably affected the outcome of his case or because it is the kind of error that almost always has that effect. *See generally* 2 James S. Liebman & Randy Hertz, Federal Habeas Corpus Practice and Procedure §§ 32.1, 32.3, 32.4 (3d ed. 2000) (generally discussing the harmless error doctrine). The vast majority of error that state appellate courts discover is deemed harmless and does *not* result in reversal. In Illinois, for example, in addition to reversing half of the capital judgments it has reviewed, “the Illinois Supreme Court has upheld scores of death sentences while forgiving trial errors that benefited prosecutors, dismissing the errors as harmless.” Ken Armstrong & Steve Mills, *Death Row Justice Derailed*, Chi. Trib., Nov. 14, 1999, at 1, available in 1999 WL 2932178. One such case was Anthony Porter’s case, in which the Illinois Supreme Court based its harmlessness findings on the “‘overwhelming’” evidence of Porter’s guilt; Porter was later released as innocent when another man confessed to his crime. *Id.* Another study of harmless error found that:

Between 1993 and 1997, there were 167 published opinions in which the Illinois Appellate Court or Illinois Supreme Court found that prosecutors committed some form of misconduct that could be considered harmless. In 122 of those cases—or nearly three out of four times—the reviewing court affirmed the conviction, holding that the misconduct was “harmless.”

Ken Armstrong & Maurice Possley, *Break Rules, Be Promoted*, Chi. Trib., Jan. 14, 1999, at 1, available in

1999 WL 2834609. And in Oklahoma, although at least four convicted murderers have received new trials “based upon appellate findings that [Oklahoma City’s District Attorney] broke the rules,” that same office has been criticized by courts for similar misconduct in “at least 17 other” cases in which the errors were found to be harmless. Ken Armstrong, ‘Cowboy Bob’ Ropes Wins—But at Considerable Cost, *Chi. Trib.*, Jan. 10, 1999, at N13.

Second, to be reversible, error generally must have been *properly preserved*. Most state direct appeal courts will not grant relief based on error—no matter how egregious and prejudicial—that the defendant did not properly preserve by way of (1) a timely objection at trial, (2) reiteration in a timely new trial motion at the end of trial, and (3) timely and proper assertion on appeal. See 1 Liebman & Hertz, *supra* §§ 7.1a, at 276-77 & n.29, 26.1. This is true even in cases in which the failure to preserve the error was the fault of counsel, not the defendant, and even in many instances in which the lawyer’s mistake resulted from inexperience, incompetence or sheer stupidity, and not a valid exercise of professional judgment. See Stephen B. Bright, *Death by Lottery—Procedural Bar of Constitutional Claims in Capital Cases Due to Inadequate Representation of Indigent Defendants*, 92 W. VA. L. REV. 679, 683 (1990); Randall Coyne & Lyn Entzeroth, *Report Regarding Implementation of the American Bar Association’s Recommendations and Resolutions Concerning the Death Penalty and Calling for a Moratorium on Executions*, 4 GEO. J. ON FIGHTING POVERTY 3, 28-30 (1996). Numerous prisoners have been executed despite acknowledged prejudicial errors affecting their convictions and sentences, because they failed to preserve their objections. Examples include the capital prisoners in *Gray v. Netherland*, 518 U.S. 152, 162-70 (1996); *Coleman v. Thompson*, 501 U.S. 722, 747-49 (1991); *Dugger v. Adams*, 489 U.S. 401, 408 (1989); *Smith v. Murray*, 477 U.S. 527, 533-35 (1986), each of whom had an evidently meritorious constitutional claim that he was capital convicted or sentenced in violation of the United States Constitution but nonetheless was denied relief in state (and then, as a consequence, federal) court based on his failure to assert the claim at the time or in the manner required by state law and was subsequently executed. See *Death Row U.S.A.*, *supra* note 4, at 9-22.

Finally and most obviously, error—no matter how prejudicial—only results in reversal if it is discovered. If it is not discovered, because, for example, the party responsible for it fails to disclose it, *see, e.g., infra* note 98, reversal will not occur and the error will not be deemed “serious” by our measure.

Hundreds of examples of “serious error” found in state post-conviction proceedings are collected in Appendix C *infra*. Dozens of examples of the even narrower category of “serious error” that warrants federal habeas relief are collected in Appendix D *infra*. See also cases cited *infra* notes 36, 44, 97-106.

34. The state post-conviction process is described *infra* pp.19-20.

35. Our post-conviction data are set out in Appendix C. For discussion of the incomplete nature of these data, see *infra* n.39; *infra* pp. 26-27, 33-34; *infra* Appendix C, pp. C-1 to C-2.

36. Appendix C; Florida, Georgia, Indiana, Maryland, Mississippi, North Carolina and Tennessee Capital Punishment Report Cards, *infra* Appendix A. We say “at least” in the text for the reasons set out *infra* note 39; *infra* pp.26-27 & n.132, 33-34 & n.152; Appendix C, *infra* pp. C-1 to C-2.

For the reasons stated in Appendix C, p. C-13 n.10, Georgia has used a variety of post-conviction procedures to derail many *more* death sentences than we count as post-conviction reversals (*e.g.*, by ordering hearings on mental retardation (which poses a constitutional bar to execution in Georgia)—that very often never take place, leaving the prisoner with a tacit life sentence).

The category of “serious error” that leads to state post-conviction reversal is narrower than “serious error” at the direct appeal stage, *cf. supra* note 33, because, generally, only properly preserved state and federal constitutional violations that (1) *were not*, and (2) *could not have been* raised on direct appeal can be the basis for state post-conviction reversal. As at the direct appeal stage, moreover, error—no matter how

egregious and how much it undermines the accuracy of the capital verdict—never gets corrected at the state post-conviction stage (and thus does not count as “serious error” in our analysis) unless it is discovered and litigated. *See supra* note 33. And given the failure of a number of capital-sentencing states—Virginia, prominent among them—to provide *any* lawyers or funding for them *at all* at the state post-conviction stage, the likelihood that serious error will *not* be discovered and litigated in state post-conviction proceedings is often very high. *See, e.g.,* American Civil Liberties Union of Virginia, *Unequal, Unfair and Irreversible: The Death Penalty in Virginia* (Apr. 2000) <<http://www.aclu.org/news/2000/n040700a.html>> (visited Apr. 28, 2000) [hereinafter, Virginia Report]; *infra* notes 232-33 and accompanying text.

The United States Supreme Court itself occasionally grants relief in capital cases on review of state direct review proceedings. *See, e.g.,* Yates v. Evatt, 500 U.S. 391, 411 (1991) (overturning conviction due to prejudicial jury instructions giving the defendant the burden of proof); Johnson v. Mississippi, 486 U.S. 578, 585-90 (1988) (overturning death sentence that state prejudicially based on unconstitutional and unreliable aggravating circumstance); ; Tison v. Arizona, 481 U.S. 137, 158 (1987) (overturning two death sentences that were imposed absent proof of the constitutional minimum level of criminal culpability required to impose death); Truesdale v. Aiken, 480 U.S. 527 (1987) (overturning death sentence imposed after trial court forbade defendant to inform jury of important aggravating information about his demonstrated prospects for rehabilitation). We treat these Supreme Court cases reviewing state post-conviction decisions as findings of serious (in all these cases, federal constitutional) error infecting capital sentences. For many additional examples of “serious error” that was caught and corrected during state post-conviction proceedings, see *infra* Appendix C. *See also* cases cited *infra* notes 97-106.

37. HCDB. “Final review” is defined *supra* note 26; *infra* pp.24-26.

38. HCDB. The definition of “serious error” that warrants reversal in federal habeas corpus proceedings is even narrower than the analogous definitions at the direct appeal stage (which is set out *supra* note 33 and accompanying text) and at the state post-conviction stage (*see supra* note 36). This is because error is only reversible on habeas if it meets the three criteria for “seriousness” on direct appeal—the error must be (1) prejudicial, (2) properly preserved and (3) discovered, *see* Liebman & Hertz, *supra* note 33, §§ 7.1a, 11.2b, 26.1, 32.1-32.5; *supra* note 33—and if, *in addition*, the error (4) violates the federal Constitution, *see* 28 U.S.C. §§2241(c)(3), 2254(a); (5) not arise the Fourth Amendment exclusionary rule (search and seizure violations, that is, *cannot* be the basis for federal habeas relief), *see* Stone v. Powell, 428 U.S. 465, 495 (1976); (6) in habeas cases litigated in 1989 and after, is not based on a “new rule” of federal law, *see* Teague v. Lane, 489 U.S. 288, 299 (1989), and (7) in habeas cases litigated in 1993 and after, meets an especially high standard of prejudice or “harmful error,” *see* Brecht v. Abrahamson, 507 U.S. 619 (1993). *See generally* Liebman & Hertz, *supra* note 33, §§ 9.1, 9.2, 25.1, 32.1 (discussing constraints (4)-(7) on habeas relief). Dozens of examples of “serious error” warranting federal habeas relief from capital judgments imposed by nearly all of the study states are collected in Appendix D *infra*. *See also* cases cited *infra* notes 97-106, 140.

39. The production-line/product-inspection analogy helps explain how these figures are calculated. The “overall error rate” is the proportion of capital judgments thrown out during the first (state direct appeal) inspection due to serious error, plus the proportion of the original judgments that survive the first inspection but are thrown out at the second (state post-conviction) inspection, plus the proportion of the original judgments that survive both state inspections but are thrown out at the final (federal habeas) stage. The “overall success rate” is the converse. In note 40 *infra*, we use this method to calculate the national composite “overall error rate.”

As we indicate by our use of the phrase “at least” in our narrative, and by our use of the “\$” symbol in the national, state and circuit Report Cards, *see* Appendix A, the “overall error rates” calculated here are

in fact *underestimates*. Due to incomplete data, we assume that all death sentences that survived the direct appeal inspection and are not known to have been reversed during the state post-conviction inspection passed muster during that inspection. In fact, many capital judgments affirmed on direct appeal were *pending in*, but had not yet been *finally decided* by, state post-conviction proceedings by the end of the study period. Inflating the denominator in this way—*i.e.*, using the class of cases *available* for review as a proxy for the cases that *actually underwent* final review—leads us systematically to overestimate the success rate and underestimate the error rate. See *infra* pp.26-27 & n.132, 33-34 & n.152; *infra* Appendix C, pp. C-1 to C-2.

40. DADB; Appendix C; HCDB. Because 41% of the capital judgments reviewed on state direct appeal were found to be tainted by serious error, only 59% of those judgments were available for state post-conviction review. Because at least 10% (this figure is probably higher, see *supra* note 39; *infra* Appendix C, pp. C-1 to C-2) of that 59%—meaning at least 5.9% of the original pool ($\$.10 \times .59 = \$.059$)—failed this second, state post-conviction inspection, the overall rate of error found by *state* courts is 47% (41% + 6%) of the original pool. Then, of the 53% (100%-47% = 53%) of capital judgments that were available for federal habeas review, 40%—meaning 21% of the original pool ($.40 \times .53$)—failed the federal inspection. The “overall error rate” thus is at least 68% of the overall pool (41% + 6% + 21% = 68%). In other words: *At least 68% of the capital judgments that were fully inspected were found seriously flawed at some stage.*

(We have simplified the above calculation by omitting fractions represented by numbers after the decimal points. In computing overall rates in the various report cards, we included the numbers after the decimal point until the error rate was obtained, at which point we applied the normal rounding convention.)

Our “overall error rate” is *not* the rate of error in the 5,760 death sentences imposed between 1973 and 1995. That number cannot be calculated because, at the end of 1995, many of those death sentences were pending in some court *awaiting* review, but had not yet been *finally* resolved at one of the three inspection stages. This rate instead uses the outcomes of the 4,578 cases in which state direct review occurred during the study period, and the 599 of those cases in which subsequent federal habeas review occurred, together with the 248 known state post-conviction reversals (taken as a proportion of the 2,693 capital judgments that had “cleared” state direct appeal) to calculate the error rate found in capital judgments that were finally reviewed.

41. See *supra* notes 33, 36, 38; *infra* p.5.

42. The data in this Report on the types of “serious error” that led to the reversal of capital judgments come from our study of state post-conviction reversals, set out in Appendix C. See State Post-Conviction National Composite Results, *infra* Appendix C, p. C-3. A variety of prejudicial errors in the instructions given to *jurors*—which by legal definition lead to reversal only if they probably affected the outcome of the trial, see *Boyde v. California*, 494 U.S. 370, 380 (1994)—account for another 20% of the reversals, and, together with lawyer incompetence and law enforcement misconduct, account for three-fourths of all state post-conviction reversals. When reversals due to demonstrably prejudicial judicial or juror **bias** are added, the total for the four types of claims discussed so far (ineffective assistance of counsel, prosecutorial misconduct, unconstitutional jury instructions and judge/jury bias) reaches 80% of all reversals. See State Post-Conviction National Composite Results, *infra* Appendix C, p. C-3.

43. See, e.g., *Williams v. Taylor*, 120 U.S. 1495, 1496 (2000); *Strickler v. Green*, 527 U.S. 263, 264 (1999).

44. See State Post-Conviction National Composite Results, *infra* Appendix C, p. C-3. If a capital *conviction* is overturned on appeal or post-conviction review, the defendant may be (1) released for lack of evidence of guilt (as, for example, in the *Bowen/Oklahoma*, *Brown/Florida*, *Jimerson/Illinois*, *Nelson/Georgia* and *Williamson/Oklahoma* (among many other) cases summarized in Appendix C and Appendix D); (2) permitted

to accept a plea to a lesser offense or to the same offense but a lesser penalty (as in the Carriger/Arizona, Jent & Miller/Florida cases in Appendix C); (3) retried and (a) acquitted (as in the Munson/Oklahoma case summarized in Appendix C and in the Wallace/Georgia case summarized in Appendix D), (b) released upon the jury's failure to agree on a verdict (as in the Kyles case summarized in Appendix D), (c) reconvicted of a noncapital offense (as in numerous cases in Appendix C and Appendix D), (d) reconvicted of a capital offense but awarded a lesser sentence (ditto), or (e) reconvicted and resentenced to die. If only the *death sentence* was overturned, the defendant may be (1) offered and accept a plea or other arrangement resulting in a lesser sentence; or (2) subjected to a new sentencing hearing at which the outcome is (a) a lesser sentence or (b) a death sentence. For a listing of outcomes in recent North Carolina cases, see Stephen Dear, *A Death Penalty Cease-Fire for N.C.*, News & Observer (Raleigh), Apr. 16, 2000, at A31, available in 2000 WL 3924050:

Last May, a Superior Court [state post-conviction] judge overturned the murder conviction and death sentence of Charles Munsey . . . because it was clear that he was innocent of murder, and that the district attorney who prosecuted him . . . as well as other law officials withheld exculpatory evidence. Tragically, Munsey died . . . awaiting a new trial.

Last summer, a Guilford County prosecutor told a [state post-conviction] hearing judge that he “just plain forgot” about a credible independent witness who could have provided a solid alibi for [death row inmate] Stephen Mark Bishop. Bishop is awaiting a second trial.

In November [1999], Alfred Rivera had been on North Carolina's death row for two years for a double murder . . . when, in a second trial, a jury acquitted him. The N.C. Supreme Court [on direct appeal] had ordered the new trial, ruling that the trial judge should have allowed jurors to hear testimony that Rivera had been framed by his co-defendants.

[Governor] Hunt commuted the death sentence of Wendell Flowers . . . in December over doubts about his guilt

45. As revealed by the data collected in Appendix C, the post-reversal outcomes in our state post-conviction study were as follows:

Outcomes Following State Post-Conviction Reversals, 1973-April 2000

Sentence Less than Death*	Not Guilty of Capital Crime*	Death Sentence	Total, Outcome Known	Died Awaiting Retrial	Retrial Pending as of 4/2000	Outcome Unknown	Total, All Cases
247	22	54	301	1	37	3	342

*The “Not Guilty of Capital Crime” column, a subset of the “Sentence Less than Death” column, includes individuals as to whom murder charges either were dropped by the prosecutor, dismissed by the trial judge, or rejected by the jury. Individuals who were reconvicted of murder—even noncapital degrees of murder—and were given a sentence other than the death penalty are included in the “Sentence Less than Death” column but not the “Not Guilty of Capital Crime” column.

46. See *supra* note 39; *infra* pp.26-27 & n.132, 33-34 & n.152; *infra* Appendix C, *infra* pp. C-1 to C-2 (all explaining why we say “at least”).

47. DADB; Appendix C; HCDB. See Table 10 and Figure 12, *infra* pp.68, 69. Recently, the regional press has discovered the same patterns our study demonstrates, in a variety of states: California, Florida, Illinois, Nevada, Tennessee, Utah and Washington. See *infra* note 241 (summarizing the journalists’ findings).

48. See *supra* note 10 and accompanying text.

49. See, e.g., *Governor Says He Will Not Impose Moratorium on Executions*, A.P. Newswires, Feb. 15, 2000 (quoting Florida Governor Jeb Bush as stating: “Illinois appears to have a unique problem with the administration of capital punishment. Here in Florida, there is no competent evidence that suggests an innocent person has been wrongly executed.”); Sara Rimer & Raymond Bonner, *Bush Candidacy Puts Focus on Executions*, *N.Y. Times*, May 12, 2000, at A1 (quoting Texas Governor George W. Bush explaining on *Meet the Press* that he did not consider events in Illinois relevant to Texas’s death penalty system because in Illinois, but not in Texas, ““they’ve had some problems in their courts . . . they’ve had some faulty judgments””).

50. DADB; Appendix C; HADB. See National Composite and Illinois Report Cards, *infra* Appendix A, pp. A-5, A-25; Figures 6-13 and Tables 4-10, *infra* pp.47, 50, 53, 54, 57, 58, 60, 61, 63, 64, 68, 69, 72, E-5, E-6 (state comparisons).

51. See Figure 3, Table 3, *infra* pp.38, E-4.

52. See Figure 4, Table 3, *infra* pp.39, E-4; *infra* pp.35-37.

53. Data on direct appeal and post-conviction outcomes in noncapital cases are sketchy, but suggest the following conclusions: (1) At the direct appeal stage, serious, or reversible, error is detected in about 12 to 20% of the noncapital criminal judgments that are appealed. (2) Noncapital criminal judgments that are *appealed* make up only a small subset of the criminal convictions that are *obtained*. The vast majority of criminal convictions are a result of bargained guilty pleas, and most convictions based on pleas are not appealed. (By contrast, virtually every capital conviction and sentence is appealed. See *infra* notes 87-88 and accompanying text.) (3) The best available evidence is that serious error is detected in about 3% of the noncapital federal habeas corpus petitions that are filed, and that such petitions are filed by about 3 or 4 out of every 1,000 state prisoners each year. (4) Although there are no similar data for noncapital state post-conviction proceedings, most criminal lawyers believe noncapital error is detected less often there than on federal habeas corpus, and that prisoners are no more likely to seek state post-conviction than federal habeas corpus review. (These conclusions are based on evidence presented in James S. Liebman, *The Overproduction of Death*, 100 Colum. L. Rev. (forthcoming 2000); Daniel J. Meltzer, *Habeas Corpus Jurisdiction: The Limits of Models*, 66 So. Cal. L. Rev. 2507, 2524 (1993) (“of every thousand person convicted in state prosecutions and committed to custody in any given year, only three to four actually file habeas corpus petitions challenging their custody”); Brief Amicus Curiae of Benjamin Civiletti, et al., in Support of Frank R. West in *Wright v. West*, No. 91-542, 505 U.S. 277 (1992) (filed Mar. 4, 1992), at App. A, Table I & n.1 (providing data on the rate of relief granted to state prisoners from 1963-1981).

Assume, very conservatively, that 70% of all criminal judgments are reviewed on direct appeal, among which 20% (14% of the original pool) are found to contain serious error; that 10% of the cases that were affirmed on direct appeal (*i.e.*, 6% of the original pool) go on to state post-conviction review, at which stage 5% (.3% of the original pool) are found to contain serious error; and that 10% of the cases that were

affirmed on direct appeal and were not overturned on state post-conviction (another 6% of the original pool) go on to federal habeas review, at which stage another 5% (.3% of the original pool) are found to contain serious error. Even vastly overestimating the appeal and reversal rates in this way generates only a 15% ($14\% + .3\% + .3\% = 14.6\%$) overall error rate.

54. See, e.g., 142 Cong. Rec. S3362 (daily ed. April 16, 1996) (Sen. Hatch) (“[O]ne of the biggest [Federal habeas corpus] problems [is] looney judges in the Federal courts who basically will grant a habeas corpus petition for any reason at all.”).

With two exceptions (Delaware and Maryland), all of the capital-sentencing states in the 28-state cohort on which most of our analyses focus make their judges stand for election either by the public directly (in 24 of the states) or periodically by the state legislature (in South Carolina and Virginia). See Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. Rev. 759, 776-80 (1995).

55. DADB, Appendix C; HCDB. See National Composite Capital Punishment Report Card, *infra* Appendix A, pp. A-5 to A-6. Because some post-conviction reversals are unknown, see *supra* note 39; *infra* Appendix C, pp. C-1 to C-2, while all federal court reversals are known, the ratio of state to federal reversals is actually higher. On the other hand, we count a handful of United States Supreme Court reversals on certiorari following direct appeal and state post-conviction as, respectively, direct appeal and state post-conviction findings of error. See, e.g., *supra* note 36; *infra* note 93 and accompanying text.

56. See, e.g., *Slack v. McDaniel*, 120 S. Ct. 1595, 1605 (2000); *Williams v. Taylor*, 120 S. Ct. 1495 (2000); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998); *Liebman & Hertz*, *supra* note 33, §§ 2.4, 30.2.

57. HCDB. See National Composite Capital Punishment Report Card, *infra* p.30 and *infra* Appendix A, p. A-6. Judicial review of the 120 individuals executed in the years 1989-1995 consumed a total of 1274.53 case-years, meaning 10.6 years per case. HCDB. A Justice Department study concludes that the time from death sentence to execution has increased over time to about 11 years for 1998 executions. See BJS 1998 Report, *supra* note 28, at 1.

58. The data underlying Figure 1—taken from DRCen, DADB, Appendix C and HCDB—are displayed in Tables 1, 10 and 28, *infra* p.68; *infra* Appendix E, pp. E-2, E-22.

59. Between 1984 and 1991, there were an average of 15 non-consensual executions each year; that number rose to 27 between 1992 and 1994, to 53 in the succeeding four-year period and then to 88 in 1999. See *Death Row U.S.A.* *supra* note 4, at 8-22. On the reasons for focusing on non-consensual execution, see *supra* note 31; *infra* p.32& n.140.

60. The data depicted in Figure 2—which are taken from BJS 1998 Study, *supra* note 28; *Death Row U.S.A.*, *supra* note 4, at 8-22—are displayed in Table 1, *infra* Appendix E, p. E-2.

61. See Table 2, *infra* Appendix E, at E-3.

62. The proportion of death row executed each year has moved up modestly during the 1990s—albeit at nothing like the rate at which the *number* of executions has risen, and staying mainly within the **1.5% to 2.5%** range. See Table 2, *infra* Appendix E, p. E-3. Even this increase may be the result of swelling numbers of prisoner piled up on death row—as overburdened judicial inspectors, faced with ever-expanding numbers

of cases under and awaiting their review, inadvertently miss more serious error, or become more tolerant of it and more often let it through.

63. See *infra* note 190; *infra* pp.51, 59 & n.190, 65, 106-07.

64. For this view, see the statements by Virginia officials quoted in Brooke A. Masters, *A Rush on Va.'s Death Row*, Wash. Post, Apr. 28, 2000, at A1, available in 2000 WL 19606141 (presenting the arguments of Virginia officials who attribute the pronounced discrepancy between Virginia and other states to Virginia's prosecutorial restraint and narrow sentencing statutes).

65. For a report taking this position, see Virginia Report, *supra* note 36 (discussed *infra* p.107).

66. For this purpose, 1989 was an average year. See BJS 1998 Report, *supra* note 28, at 12, tbl. 12.

67. See *id.* at 13, app. tbl. 1.

68. See *id.*

69. See *id.*

70. *Id.* at 1, 14 & app. tbl. 2; Death Row U.S.A., *supra* note 4, at 1.

71. BJS 1998 Report, *supra* note 28, at 1, 14 & app. tbl. 2; Death Row U.S.A., *supra* note 4, at 1. (The 6,700 figure used here covers the 1973-1999 period, and includes an estimate of death sentences imposed in 1999, which is not covered by the Justice Department's 1998 report.)

Returning to our 1989 example, the 13 executions by 1998 of individuals sentenced to die in 1989 represent only **1 in 20** of the 263 people condemned in 1989.

72. See BJS 1998 Report, *supra* note 28, at 13, app. tbl. 1; *id.* at 6, tbl. 5.

73. See *supra* Part II, pp.3-14.

74. The trial, incarceration and execution of sentence in capital cases cost from \$2.5 to \$5 million dollars per inmate (in current dollars), compared to less than \$1 million for each killer sentenced to life without parole. See, e.g., Aaron Chambers, *Resources a Concern in Death Penalty Reform*, Chi. Daily L. Bull., Apr. 24, 1999, at 19, available in Westlaw, News Library, CHIDLB file (estimating that a capital case costs \$5.2 million from pretrial proceedings to execution); Margot Garey, *The Cost of Taking a Life: Dollars and Sense of the Death Penalty*, 18 U.C. DAVIS L. REV. 1268, 1268-70 (1985); Samuel R. Gross, *The Romance of Revenge: Capital Punishment in America*, 13 STUDIES L., POL. & SOC. 71, 78 (1993) (reporting a \$3.2 million cost per execution in Florida, and Kansas' rejection of the death penalty because of the cost); Paul W. Keve, *The Costliest Punishment—A Corrections Administrator Contemplates the Death Penalty*, Federal Probation, Mar. 1992, at 11; Duncan Mansfield, *The Price of Death Penalty? Maybe Millions*, A.P. Newswires, Mar. 26, 2000, available in Westlaw News Library, APWIRE file (estimated \$1 to \$2 million cost per Tennessee execution); David Noonan, *Death Row Cost Is a Killer: Capital Cases Can't Be Handled Fairly and Affordably*, *Critics Claim*, N.Y. Daily News, Oct. 17, 1999, at 27, available in 1999 WL 23488045 (giving cost of prosecuting and defending New York capital cases at the trial phase, in a period during which only five capital sentences were imposed (from 1994 to 1999), as \$68 million); A. Wallace Tashima, *A Costly Ultimate Sanction*, The Los Angeles Daily J., June 20, 1991 (cost per execution to California taxpayers is \$4 to \$5 million).

75. When post-trial review costs are factored in, the cost comparison between capital and noncapital cases is something like \$24 million dollar per executed prisoner, compared to \$1 million for each inmate serving a sentence of life without possibility of parole. See S.V. Date, *The High Price of Killing Killers*, Palm Beach Post, Jan. 4, 2000, at 1A, available in 2000 WL 7592885. See also Ken Armstrong & Steve Mills, *Inept Defenses Cloud Verdicts, With Their Lives at Stake*, Chi. Trib., Nov. 15, 1999, at N1, available in 1999 WL 2932352 (“in Illinois, the resources rallied on appeal often dwarf those summoned to keep a defendant off Death Row in the first place”); Armstrong & Mills, *Justice Derailed*, *supra* note 33, at N1 (discussing the “staggering” costs of capital case reversals and exonerations in Illinois: “Taxpayers have not only had to finance multimillion-dollar settlements to wrongly convicted Death Row inmates—[Dennis] Williams alone received \$13 million from Cook County—but also have had to pay for new trials, sentencing hearings and appeals in more than 100 cases where a condemned inmate’s original trial was undermined by some fundamental error.”).

76. Cf. Maurice Possley & Ken Armstrong, *The Flip Side of a Fair Trial*, Chi. Trib., Jan. 11, 1999, at N1 and Maurice Possley & Ken Armstrong, *Prosecution on Trial in DuPage*, Chi. Trib., Jan. 12, 1999, at 1 (study of effects of prosecutorial misconduct in Illinois homicide and capital cases, concluding that “the reversals exact a toll on victims and their families who are forced to come back to court, reopening sometimes barely healed emotional wounds”).

77. See *supra* p.4; National Composite State Post-Conviction Results, *infra* Appendix C, p. C-3.

78. For example, see Armstrong & Mills, *Justice Derailed*, *supra* note 33:

Capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken, a *Tribune* investigation has found. . . .

The findings reveal a system so plagued by unprofessionalism, imprecision and bias that they have rendered the state’s ultimate form of punishment its least credible.

79. See Figure 35, *infra* p. 111; Tables 28 and 29, *infra* Appendix E, pp. E-22, E-23.

80. See *supra* Figure 2, p.13.

81. See Dan Rather, *Dead Wrong: Did the State of Texas Execute an Innocent Man?*, CBS 60 Minutes II, Apr. 12, 2000 <<http://cbsnews.cbs.com/now/story/0,1597,182812-412.shtml>> (visited May 17, 2000) (contending that there is strong evidence that Jerry Lee Hogue, whom Texas executed in 1998, was innocent). Between 1972 and the beginning of 1998, 68 people were released from death row on the grounds that their convictions were faulty, and there was too little evidence to retry the prisoner. See Samuel R. Gross, *Lost Lives: Miscarriages of Justice in Capital Cases*, 61 L. & CONTEMP. PROB. 125, 130-32 (1998); Michael L. Radelet et al., *Prisoners Released from Death Rows Since 1970 Because of Doubts About Their Guilt*, 13 COOLEY L. REV. 907, 916 (1996) . As of this writing (May 2000), the number of inmates released from death row as factually or legally innocent apparently has risen to 87, including nine released in 1999 alone. See Frank Green, *Question of Life or Death: Illinois Exonerations Spark a Debate*, *Richmond Times-Dispatch*, Apr. 2, 2000, at A1, available in 2000 WL 503442.

82. See Scheck, Neufeld & Dwyer, *supra* note 2, at 172-92 (attributing the conviction of the innocent in large part to incompetent lawyers and prosecutorial suppression of evidence—the two most common errors

detected in the reversals discussed in this study, *see supra* p. 5; National Composite State Post-Conviction Results, *infra* Appendix C, p. C-3).

83. Cf. Ken Armstrong & Steve Mills, *Flawed Murder Cases Prompt Calls for Probe*, Chi. Trib., Jan. 24, 2000, at N1, available in 2000 WL 3629579 (reporting that Illinois paid \$36 million to settle lawsuits by four men who were wrongly convicted of murder, and two of whom were sentenced to die); Sasha Abramsky, *Trial by Torture*, Mother Jones, March 3, 2000 (\$1 million paid to civil rights plaintiffs who were tortured into confessing to (and then being falsely convicted of) capital crimes); Laurie Goering, *Florida Lets Speed Govern Executions*, Chi. Trib. Feb. 28, 2000, at 1, available in 2000 WL 3640614 (noting that Florida paid \$1 million in damages for falsely incarcerating two inmates on death row for 12 years); Paul M. Valentine, *Maryland to Give Cleared Man \$300,000*, Wash. Post, June 23, 1994, at B1, available in 1994 WL 2426459.

84. See Ken Armstrong & Maurice Possley, *Trial & Error: How Prosecutors Sacrifice Justice*, Chi. Trib. Jan. 13, 1999, at N1, available in 1999 WL 2834238 (detailing how, 12 years after the “Ford Heights 4” were falsely convicted in Chicago (two capitally) of two rape-murders, and five years *before* the four were exonerated following several judicial decisions ordering a new trial, one of the actual perpetrators still at large suffocated a third woman to death in a vacant apartment near the scene of the earlier crimes); Brooke Masters, *Lucky Release from Behind Bars*, Wash. Post, Apr. 28, 2000, at A23 (discussing David Vasquez’s incarceration in Virginia for a capital murder he did not commit, and the murder spree on which the real killer embarked in the meantime).

85. See *supra* note 21 (discussing George Will’s conclusion that innocent men and women have been executed); *supra* note 33 (discussing how close the Illinois Supreme Court came to missing the miscarriage of justice in Anthony Porter’s case).

All the implications of our findings that we discuss in text are poignantly illustrated by a recent article in the *Seattle Times* about Seattle murder victim, Esther Vinikow. After prosecutors said they would consider the views of the victims’ family before deciding whether to seek the death penalty against the alleged killer, Robert Wentz, a reporter interviewed Ms. Vinikow’s children:

Like most Americans, Esther Vinikow's children support the death penalty. But they say Wentz, if found guilty, should not be executed. Not because whoever killed her doesn't deserve it, but because it takes too long and costs too much.

To Jerome Vinikow, 58, Esther Vinikow's only son, the death penalty seems to only protract the tragedy “As long as he's away permanently, I'm not sure . . .,” he trails off. “If he does get the death penalty, and it's 10 to 12 years of waiting, I don't know what good that does.”

In many ways, the family's misgivings reflect a growing national impatience and unease about capital punishment. In the aftermath of a tragedy, they have become drawn into a discussion that provides no easy answers.

Superior Court trials cost taxpayers an average of \$388,680. State and federal appeals of death-penalty cases take an average of 11 years, according to a recent study by state Supreme Court Justice Richard Guy. That's eroded public confidence in the justice system, Guy said.

But polls also suggest growing unease about capital punishment, particularly after several death-row inmates in Illinois were released when new evidence proved their innocence.

The decades it takes to execute an inmate may have saved lives, notes Jerome Vinikow That possibility should not be lost in the rush for justice. “I’m not against the death penalty. I used to wonder why it took 10 or 12 years, but it’s obvious when you see all the mistakes in Illinois, you have to be careful,” he said.

. . . .

At first, [the victim’s daughter, Dolores] Beck-Schwartz, 62, of Putnam Valley, N.Y., wanted whomever a jury convicted to be put to death. It seemed an appropriate punishment for someone who took the life of such a defenseless, gentle person, she said.

But Beck-Schwartz had second thoughts when she considered the years that pass between trial and execution—if the sentence isn’t overturned along the way. “If it happened within a year, I’m fine with that. But if it dragged on year after year, it won’t make it any easier,” she said. “It won’t bring her back. It won’t make me feel better.”

Alex Fryer, *Victim’s Family Wrestles Death-Penalty Issue*, Seattle Times, May 14, 2000, <<http://archives.seattletimes.com/cgi-bin/texis/web/vortex/display?slug=deth14m&date=20000514&query=vinikow>>.

86. See, e.g., *Zant v. Stephens*, 462 U.S. 862, 874-80 (1983); *Gregg v. Georgia*, 428 U.S. 153, 204-06 (1976); *Furman*, 408 U.S. 238.

87. *Whitmore v. Arkansas*, 495 U.S. 149, 174 & n.1 (1990) (citing statutes).

88. See *id.* at 174-75 (“since the reinstitution of capital punishment in 1976, only one person, Gary Gilmore, has been executed without any appellate review of his case”).

89. See generally Leigh B. Bienen, *The Proportionality Review of Capital Cases by State High Courts After Gregg: Only ‘The Appearance of Justice,’* 87 J. CRIM. L. & CRIMINOLOGY 130, 131-33 (1996); Penny J. White, *Can Lightning Strike Twice? Obligations of State Courts After Pulley v. Harris*, 70 U. COLO. L. REV. 813, 816-17 (1999).

90. For a brief overview of the direct appellate process with citations to other works, see Liebman & Hertz, *supra* note 33, § 3.4a, at 177-79.

91. See *supra* notes 33, 36, 38; *supra* p.5 & nn.42, 43.

92. See Liebman & Hertz, *supra* note 33, at 178 (recommending the filing of certiorari petitions, particularly in capital cases). By making certiorari the prisoner’s last opportunity to raise novel federal claims, the Supreme Court has strongly encouraged prisoners, especially ones under sentence of death, to file certiorari petitions. See *id.*, § 25.1, at 940-41.

93. See, e.g., *Lilly v. Virginia*, 527 U.S. 116, 119 S. Ct. 1887, 1898 (1999) (reversing capital conviction); *Schad v. Arizona*, 501 U.S. 624, 631-32 (1991) (affirming capital conviction); *Mu’Min v. Virginia*, 500 U.S. 415, 421 (1991) (affirming capital sentence); *Enmund v. Florida*, 458 U.S. 782 (1982) (reversing capital sentence).

94. See, e.g., *Lambrix v. Singletary*, 520 U.S. 518, 527 (1997); *Stringer v. Balck*, 503 U.S. 222, 226 (1992).

95. The Supreme Court’s certiorari jurisdiction is limited to federal questions, which in criminal cases almost always means federal constitutional questions. *See* 28 U.S.C. § 1257.
96. *See* 28 U.S.C. §§ 2254(b), 2254(c); *O’Sullivan v. Boerckel*, 119 S. Ct. 1728, 1731-33 (1999).
97. *See generally* Liebman & Hertz, *supra* note 33, § 7.1b, at 290-92, § 7.2e, at 314-17 & n.87, §§ 20.3e, 26.3b (providing examples and citing other sections of the treatise with additional examples).
98. *See, e.g.*, *Kyles v. Whitley*, 514 U.S. 419, 441-45 (1995) (overturning conviction based on prosecutorial suppression of evidence demonstrating, among other things, that the eyewitnesses who confidently identified petitioner at trial as the attacker had originally described a different perpetrator and had only focused on petitioner as a result of suggestive photo arrays).
99. *See, e.g.*, *Amadeo v. Zant*, 486 U.S. 214 (1988) (holding that prosecutor’s failure to make public his instructions to the jury commissioner to under-represent African-Americans on the jury venire provided “cause” for the habeas petitioner’s failure to make a jury challenge in a timely manner).
100. *See, e.g.*, *Williams v. Withrow*, 507 U.S. 680, 688 (1993) (violations of the right to counsel “would often go unremedied” if left to review at trial and on direct review”); other authority cited in Liebman & Hertz, *supra* note 33, § 25.4, at 969-70 n.42.
101. *See, e.g.*, Liebman & Hertz, *supra* note 33, § 26.3b, at 1093-94 & n.28.
102. *See, e.g.*, *People v. Fields*, 690 N.E.2d 999 (Ill. 1998).
103. *See, e.g.*, *Porter v. State*, 723 So.2d 191 (Fla. 1998); *Suarez v. State*, 604 So.2d 488 (Fla. 1992); *People v. Fields*, 690 N.E.2d 999 (Ill. 1998).
104. *See, e.g.*, *Williams v. Taylor*, 120 S. Ct. 1495 (2000); *State v. Freeman*, 605 So.2d 1258 (Ala. Crim. App. 1992).
105. *See, e.g.*, *Turpin v. Todd*, 519 S.E.2d 678 (Ga. 1999); *Simants v. State*, 277 N.W.2d 217 (Neb. 1979).
106. *See, e.g.*, Liebman & Hertz, *supra* note 33, § 26.3b, at 1090-92 & n.27.
107. *See* *Case v. Nebraska*, 381 U.S. 336 (1965) (granting certiorari to consider whether a constitutional right to state post-conviction review exists, but dismissing the grant after Nebraska adopted a comprehensive state post-conviction review scheme). *But cf.* *Murray v. Giarratano*, 492 U.S. 1, 10-11 (1989) (plurality opinion) (“State collateral proceedings are not constitutionally required”); *Pennsylvania v. Finley*, 481 U.S. 551, 554-55 (1989) (plurality opinion) (similar). *See generally* Liebman & Hertz, *supra* note 33, § 7.1b.
108. *See* 28 U.S.C. §§ 2254(d), 2254(e)(1) (providing a laxer standard of review for certain kinds of claims that were “adjudicated on the merits” in state court proceedings).
109. *See* Liebman & Hertz, *supra* note 33, § 3.5a, at 179-80, § 6.1 & n.1 (citing authority).
110. *See* *McFarland v. Scott*, 512 U.S. 1256, 1261 (1994) (Blackmun, J., dissenting from the denial of certiorari) (“State habeas corpus proceedings are a vital link in the capital review process, not the least because all federal habeas claims first must be adequately raised in the state court ... [to avoid being denied

in federal court] as procedurally defaulted or waived”); *Coleman v. Balkcom*, 451 U.S. 949, 956-57 (1981) (Rehnquist, J., dissenting from denial of certiorari) (describing typical post-trial course of proceedings in capital cases, which includes a state post-conviction petition); Liebman & Hertz, *supra* note 33, §§ 6.4c, 7.1a, 7.1b, 7.2f (describing counsel’s legal and ethical obligations in regard to pursuing state post-conviction remedies in capital cases).

111. *See generally* Liebman & Hertz, *supra* note 33, §§ 3.5a(6), 6.1, 6.2, 7.1.

112. *See, e.g.,* Rimer, *supra* note 9, at A1, A9 (describing new state post-conviction procedures recently adopted in Florida but then invalidated, *see supra* note 9, that, *inter alia*, gave capital prisoners 180 days after the filing of their direct appeal brief to file a state post-conviction petition; barred all claims that were or could have been raised at trial or on direct appeal; forbade extensions of time, even if delays were the result of the state’s illegal withholding of exculpatory evidence or a court’s failure to compel legally required disclosure of public records; barred successive petitions unless they were based on previously undiscoverable evidence establishing a constitutional violation and the prisoner’s factual innocence; and imposed strict time limits on the adjudication of state post-conviction and public records act petitions). *See generally* Liebman & Hertz, *supra* note 33, § 3.3b nn.9-12 (discussing “unitary review” procedures).

113. *See* Liebman & Hertz, *supra* note 33, § 3.5a(6).

114. *See id.*, § 6.4 & n.13.

115. *See supra* note 36.

116. *See* 28 U.S.C. §§ 2241-2254.

117. *See id.* § 2243; Rules 2, 3 of the Rules Governing § 2254 Cases.

118. *See* 28 U.S.C. § 2253; *Barefoot v. Estelle*, 463 U.S. 880, 892-93 (1983); Liebman & Hertz, *supra* note 33, § 34.4.

119. *See* Liebman & Hertz, *supra* note 33, §§ 39.1, 39.3c.

120. *See* 28 U.S.C. § 2251; Liebman & Hertz, *supra* note 33, §§ 13.1, 13.2.

121. *See supra* note 33. Some state capital prisoners file, and in rare instances secure the stay of execution needed to allow them to litigate, a second or “successive” federal habeas petition after their first petitions are denied. *See* 28 U.S.C. § 2244; Liebman & Hertz, *supra* note 33, §§ 28.1-28.4. For the reasons given *infra* note 126, this study only considers error detected during initial federal habeas proceedings.

122. An early and very preliminary count of cases is reported in Memorandum to Senator Joseph F. Biden, Chairman, Senate Judiciary Committee from James S. Liebman (July 15, 1991), reprinted in Statement of John J. Curtin, Jr., President of the American Bar Association, and of James S. Liebman, Professor of Law, Columbia University School of Law and Member, ABA Task Force on Death Penalty Habeas Corpus, on behalf of the American Bar Association, Hearings before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary of the U.S. House or Rep. Concerning Fairness and Efficiency in Habeas Corpus Adjudication, 102d Cong., 1st Sess (July 17, 1991).

123. See *Death Row U.S.A.*, *supra* note 4. By combining the data on LDF reports produced periodically over the period from 1973 to 1995, one can collect the name of and a small amount of information (*e.g.*, race of defendant and race and number of victims) about all individuals who have been incarcerated on death row for at least some period of time between those dates. Although helpful, the LDF census did not narrow our case-gathering task very much, because it contains nearly 6000 individuals who were on death row at some point during the period, the vast majority of whom have never had their cases reviewed on federal habeas corpus (many having received relief or still being in the process of seeking relief in the state courts), and because the information—a name and a state, *e.g.*, Charles Williams of Georgia—often leads to many false positives in follow-up computer research. See also *supra* note 28.

124. See *supra* p.3 & nn.28-29.

125. HCDB. Habeas corpus cases typically become final upon the Supreme Court's denial of a petition for certiorari either by the prisoner or by the state challenging an adverse decision of a U.S. Court of Appeals. Many more such denials are announced by the Court on the first Monday in October than on any other day, because that is when the Court generally rules on cases that have accumulated over the summer months when the Court is not in session. We accordingly chose the first Monday in October, 1995, as our termination point.

126. Although we collected data on the published outcomes of capital *successive* habeas litigation during our study period, in addition to the outcomes of all *initial* federal habeas corpus petitions that were finally adjudicated during the study period, our data on successive petitions are incomplete. (Many successive-petition cases are never published, and they are difficult to find.) Our data indicate, however, that grants of habeas review and relied based on successive petitions are rare, but not nonexistent. Grants of successive petitions include *Smith v. Singletary*, 61 F.3d 815 (11th Cir. 1995); *Aldridge v. Dugger*, 925 F.2d 1320 (11th Cir. 1991); *Booker v. Dugger*, 922 F.2d 633 (11th Cir. 1991); *Songer v. Wainwright*, 769 F.2d 1488 (11th Cir. 1985); *Schlup v. Bowersox*, No. 4:92CV443 JCH (E.D. Mo. 1997). For these reasons, we only report here the results of *initial* habeas corpus proceedings. In this respect, as well as others noted elsewhere, see *supra* notes 33, 36, 39; *infra* pp.26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2, C-13 n.10, our calculation of rates of serious error is conservative and omits some judicial findings of even egregious error. (Because the standards for successive habeas litigation have always been very stringent, see *Liebman & Hertz*, *supra* note 33, ch.28, it is *only* in the case of egregious error that relief is granted at this stage.)

127. See Table 8 and Figure 8, *infra* pp.60, 61.

128. See *infra* note 190; *infra* pp.62-66 & n.198 (presenting some data on this question).

129. See *supra* note 26.

130. DADB. See *supra* notes 33, 36, 38; *supra* p.5 & nn.42, 43 (defining “serious error”).

131. See cases collected in Appendix C *infra*. In some states, even appellate post-conviction decisions are not generally published or available on line, as in Tennessee prior to 1985 and Nevada and Texas to this day.

132. It is possible to get a rough sense of how *much* we have overestimated the denominator (by treating all cases *available* for review as if they actually *were* finally reviewed), by considering three facts. First, one out of five cases available for state *direct review* during the study period was not finally decided at that stage during that period. See *infra* pp. 32-33; National Composite Capital Punishment Report Card, *infra* pp.29 & Appendix A, p. A-5. Second, cases often are pending for longer periods on state post-conviction review than

on state direct appeal, because the former, but not the latter, include evidentiary and multi-court proceedings. Third, only 22% (599) of the 2,693 cases that cleared state direct appeal during the study period also cleared state post-conviction and completed federal habeas review during the study period. *See* National Composite Capital Punishment Report Card, *infra* pp.29 & *infra* Appendix A, p. A-5.

If, say, 30% (*i.e.*, 809) of the 2,693 cases *available* for state post-conviction review were not decided during that period, which would leave a balance of 1,884 cases decided during the period, the state post-conviction reversal rate, which we very conservatively estimate as 10%, would rise to 13% (still fairly conservatively estimated), and the national overall rate of error would rise to 70%.

133. The state report cards themselves are collected in Appendix A, *infra*.

134. The federal judicial circuit/regional report cards are collected in Appendix B, *infra*.

135. DRCen. *See supra* p.3.

136. DADB. Georgia imposed the nation's first post-*Furman* death sentence on Chester Thomas Akins in early May 1973, about six weeks after Governor Jimmy Carter signed the state's post-*Furman* death-penalty statute into law. Six months later, the state supreme court overturned Akins' death sentence. *See Akins v. State*, 202 S.E.2d 62 (Ga. 1973).

137. *See Akins v. State*, 202 S.E.2d 62 (Ga. 1973) (discussed *supra* note 136).

138. *Death Row U.S.A.*, *supra* note 4, at 10.

139. *See Ramsey Clark, Spenkelink's Last Appeal*, 229 *Nation* 385 (1979).

140. *See supra* notes 33, 36, 38; *supra* p.5 & nn.42, 43. Of the 313 executions between 1973 and 1995, 273 (87.2%) were non-consensual and 40 (12.8%) were consensual. *See Death Row U.S.A.*, *supra* note 4, at 8-22. One might hypothesize that individuals who contemplate ending their appeals and being executed do so in large part because of a belief that their capital judgments are error free, hence that their appeals are fruitless. If that were the actual motivation for consented-to executions, and if, in addition, death row inmates' evaluations of their chances on appeal were accurate, it would make sense to treat non-consensual executions the same as others. The available evidence is inconsistent with these conjectures, however. Numerous examples exist of men who nearly were executed after they initially gave up their appeals, then changed their minds and had their death sentences—in some cases, *multiple* death sentences—overturned. *See, e.g.*, *Potts v. Kemp*, 814 F.2d 1512 (11th Cir. 1987) (reinstating, in pertinent part, *Potts v. Zant*, 734 F.2d 526, 529-30, 535-35 (11th Cir. 1984) (overturning multiple capital convictions of prisoner who previously came within days of being voluntarily executed, then decided at the last minute to pursue his appeals, based on trial court's failure to instruct the jury on essential elements of capital murder, and based on the prosecutor's inaccurate statements in closing argument that "prior decisions of the state supreme court mandated the imposition of the death penalty in this case")); *Vickers v. Ricketts*, 798 F.2d 369, 373 (9th Cir. 1986), *cert. denied*, 479 U.S. 1054 (1987) (overturning conviction of prisoner who came within days of being voluntarily executed, then changed his mind, because the jury instructions at his trial kept the jurors from considering a lesser included offense supported by evidence); *Clark v. Louisiana State Penitentiary*, 694 F.2d 75 (5th Cir. 1982) (overturning capital conviction of prisoner who originally attempted to end his appeals, then changed his mind, because the jury at his trial was instructed that he had the burden of proving a critical element of capital murder). *See generally Liebman & Hertz, supra* note 33, § 4.2 (discussing factors other than likelihood of success on appeal that lead condemned inmates to give up their appeals and ask to be executed).

141. DRCen. All of these death sentences were imposed by state courts.
142. *See* Death Row U.S.A., *supra* note 4, at 8-22.
143. The three levels of judicial inspection are described *supra* pp. Part V, pp.18-22.
144. *See supra* pp.4-5 & nn.39, 40.
145. DADB. *See supra* note 26; *supra* pp.25-26 (defining “final review”).
146. DRCen; DADB. Death sentences imposed (5760) - death sentences finally reviewed on direct appeal (4578) = death sentences awaiting direct review (1182).
 Death sentences awaiting direct review (1182) ÷ death sentences imposed (5760) = percentage awaiting direct appeal (21%).
147. DADB. *See supra* note 33 (defining “serious error,” meaning in this context, only error that was discovered, preserved and prejudicial).
 Additional information on most of the direct appeal decisions discussed here is contained in the state report cards in Appendix A *infra*. Appendix A contains state report cards for the 28 states with at least one federal habeas corpus decision. Direct appeal information for the remaining 6 capital-sentencing states is as follows:

**Direct Appeal Reversal Rates in States in Which No Capital Judgments
Had Completed Federal Habeas Review by End of Study Period**

State	Number of Death Sentences	Number Reversed/ Number Reviewed On Direct Appeal	Percent Reversed on Direct Appeal
Colorado	16	7/8	88
Connecticut	4	3/3	100
New Jersey	43	33/38	87
New Mexico	9	2/8	25
Ohio	183	30/125	24
Oregon	32	28/32	88
Total	287	103/214	48

148. DADB. Number reviewed (4578) - number reversed (1885) = number carried forward to next inspection stage (2693).
149. DADB. The vast majority of capital prisoners who remain alive seek state post-conviction review. *See supra* note 100 and accompanying text. Some number of prisoners die of natural causes or foul play, *see, e.g.,* BJS 1998 Report, *supra* note 28, or forgo state post-conviction review and volunteer to be executed,

see supra notes 31; *supra* p.32 & n.140 and accompanying text.

150. DADB. Number reviewed (4364) - number reversed (1782) = number carried forward to next inspection stage (2582).

151. *See supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2.

152. The number of known reversals is set out in the “Number Reversed on Post-Conviction” row within the “**Error Rates/State Post-Conviction**” section of each report card. Because it is not possible to obtain information on all state post-conviction reversals, *see supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2, these figures are reported with the “\$” symbol.

153. The number of capital judgments moving forward from state direct appeal to state post-conviction is listed in the last row of the “**Error Rates/State Direct Appeal**” section of each report card.

154. *See supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2.

155. Appendix C; DRCen; DADB. *See supra* note 132.

156. Appendix C; DRCen; DADB. Following the same procedure used to (*under*)estimate the state post-conviction reversal rate (in which we use the number of capital judgments *available* for state post-conviction review as a rough proxy for the number of capital judgments *actually* reviewed at that stage), *see supra* note 39; *supra* pp. 26-27 & n.132, 33-34 & n.152; *infra* Appendix C, pp. C-1 to C-2, we calculate this figure by taking the sum of the reversals at the state direct appeal and state post-conviction stages as a proportion of the total number of capital judgments reviewed on direct appeal. In the national composite report card, we use the figures for the 28-state cohort of states with cases furthest along in the review process: $(1782 + 248) \div 4364 = .47$.

157. Actually, the first Monday in October 1995. *See supra* note 125.

158. *See supra* note 26 and *supra* p.24 (defining “finally review”).

159. HCDB. *See supra* notes 33, 38 (defining “serious error,” meaning, in this context, that the error was: discovered, preserved, prejudicial, not based on an invalid search and seizure, violated the U.S. Constitution, and (in the post-1988 cases) not based on “new law”).

160. *See supra* pp. 4-5 & nn.39, 40 (discussing the calculation of these rates, and showing how the 68% overall error rate for the nation was calculated). The error and success rates in brackets are for only the state direct appeal and federal habeas stages; the nonbracketed numbers include state post-conviction reversals, as well.

161. DADB; DRCen; Appendix C; HCDB. As is shown in brackets on the national report card, if only the (first) state direct appeal and the (third) federal habeas stages are considered, the combined national error rate was 64% and the combined success rate was 36%. Although our information on cases at those two stages is more accurate than our information about the state post-conviction stage, the information that *is* available on the intermediate stage provides a reliably conservative estimate of what took place there. *See supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2. For this reason, we usually focus on the more comprehensive, three-stage “overall” rates.

162. The data in Figure 3—drawn from DADB, HCDB—are presented in Table 3, *infra* Appendix E, p. E-4.
163. *See supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2.
164. The data in Figure 4, which are compiled from Appendix C, are also displayed in Table 3, *infra* Appendix E, p. E-4.
165. This figure is likely to be more meaningful when only cases from a single state are considered.
166. DRCen; DADB; National Composite Capital Punishment Report Card, *supra* p.29 & *infra* Appendix A, p. A-5.
167. *See* Table 2, *infra* Appendix E, p. E-3.
168. HCDB; Death Row U.S.A., *supra* note 4, at 8-22.
169. HCDB.
170. *See supra* note 31; *supra* p.32.
171. *See infra* notes pp. 78-87.
172. DRCen; UCRDB; USCen.
173. Death Row U.S.A., *supra* note 4, at 8-22; UCRDB; USCen.
174. DRCen; Death Row U.S.A., *supra* note 4, at 8-22; UCRDB; USCen.
175. USCen.
176. UCRDB.
177. UCRDB; USCen.
178. PrisCen. This category of information and the next are omitted from the national, but presented in the state and regional, report cards.
179. PrisCen.
180. USCen.
181. *See, e.g.*, James Eisenstein & Herbert Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (1977); Martha Myers and Suzette Talarico, *The Social Contexts of Sentencing* (1987).
182. *See* PolPres. *See also* Bright & Keenan, *supra* note 54, at 76-80 (describing types of judicial elections); *supra* note 54 (listing study states with judicial elections); *infra* note 221 (political pressure on judges).
183. This measure is from Stanley & Niemi, *Vital Statistics on American Politics 1997-1998* (1999).

184. CtCaLd.

185. CtExpen.

186. See Virginia Report, *supra* note 36 (taking this position in regard to Virginia).

187. See *supra* note 64 (newspaper article quoting Virginia law enforcement officials taking this view).

188. See *supra* note 39; *supra* pp. 26-27 & n.132; *infra* Appendix C, pp. C-1 to C-2. Data on the number of cases available for state post-conviction review in each state is found in the “Number Forward to State Post-Conviction” category of each state’s report card, *infra* Appendix A. We derive that number from DRCen and DADB. The number of state post-conviction reversals, also provided on each report card, is computed from the data in Appendix C.

189. The narrow category of error sufficiently egregious to qualify as “serious” and “reversible” at the federal habeas stage is described *supra* note 38.

190. On one interpretation, there are actually *four* anomalies among the non-asterisked states on Figure 7. Although 16 of the 20 non-asterisked states fall in the range of two-thirds to 1.5 times the national 40% rate of error, four states—North Carolina, Missouri, South Carolina and Virginia—are below half the national average. (As we noted, however, even compared to other anomalies, Virginia is an anomaly, at 15% of the national average.)

The status of Virginia and Missouri here may seem to support the hypothesis (*see supra* note 64 and accompanying text) that both states have lower rates of serious capital error than other states, because low error rates are detected at successive state and federal inspection points. Although possibly valid for Missouri, this hypothesis is confounded as to Virginia by a striking fact about that state and the other federal habeas outlying states besides Missouri: All are states in which the availability of federal habeas relief is largely controlled by the United States Court of Appeals for the Fourth Circuit, which, as we show elsewhere, has markedly lower error detection rates than the other federal circuit courts. See Figures 8 and 33, *infra* pp.61, 104; Table 25, *infra* p.103; *infra* p.106. (By contrast, the Eighth Circuit Court of Appeals, which presides over Missouri habeas cases, does not consistently detect low rates of serious capital error. Contrasting with the 15% rate of serious error it finds in Missouri capital judgments is the 48% rate of serious error it finds in Arkansas judgments.) Given the Fourth Circuit’s consistent and pronounced inclination to find low error rates in *all* capital judgments it reviews—including capital judgments from states (Maryland, North Carolina, and South Carolina) whose own courts find exceptionally *high* rates of serious error in those states’ capital judgments, *see* Table 6, Figure 6, *supra* pp.53, 54; *supra* p.55; *infra* pp.66 & n.198, 106-07—the Fourth Circuit’s discovery of low rates of serious error in Virginia cases provides little confirmation of the low-error-rate hypothesis, and little disproof of the lax-error-detection hypothesis.

191. See *supra* note 54.

192. See Carol S. Steiker, *Counter-Revolution in Constitutional Criminal Procedure? Two Audiences, Two Answers*, 94 Mich. L. Rev. 2466, 2470 (1996).

193. The data underlying Figure 9—compiled from DADB and HCDB—are displayed in Tables 4 and 7, *supra* pp. 47, 57.

194. The data underlying Figure 10—compiled from DRCen, Appendix C and HCDB—are displayed in Tables 6 and 7, *supra* pp.53, 57.

195. Figure 10 is the more informative of the two charts because it permits us to compare *all* relevant state judicial behavior to all relevant federal judicial behavior. *See supra* note 161.

196. The two measures, again, are (1) how much error judges (here, state vs. federal judges) detect when reviewing capital judgments from the same state; and (2) how much error judges (state vs. federal) find *relative to the amount of error found in capital judgments from other states*.

197. *See supra* notes 161, 195.

198. *See also supra* p.51. The Fourth Circuit's low rates of error detection in capital (and, especially, Virginia capital) cases are well known. *See, e.g., Green, Virginia Bucks Death Row Flow, supra* note 4; Masters, *A Rush on Va.'s Death Row, supra* note 64.

The courts of another state in the Fourth Circuit, Maryland, also have very high capital error-detection rates. *See* Table 6, *supra* p.53; Figure 6, *supra* pp.51, 54. Although Maryland's federal habeas reversal rate appears to be high as well, the state had only a small number of habeas cases reviewed during the study period, and all were decided at the federal *district court* level, with the Fourth Circuit court of appeals never becoming involved. *See* HCDB.

In contrast to the courts of Maryland, North Carolina and South Carolina, it is less likely that the Louisiana, Florida and Alabama courts have ratcheted up their error detection to compensate for predictably low error detection by the Fifth Circuit (in reviewing Louisiana capital judgments) and the Eleventh Circuit (in reviewing Florida and Alabama capital judgments). Unlike the Fourth Circuit's *uniformly* low error-detection, the Fifth Circuit and Eleventh Circuits error-detection rates vary state to state, and are quite high for some states (respectively, Mississippi and Georgia). *See* Table 8, *supra* p.60; Figure 8, *supra* p.6. This variance suggests that the Fifth and Eleventh Circuit courts are sensitive to differences in the amounts of error infecting the cases they review, *see supra* pp.59-60, and thus that it is those two *federal* courts (and not the *state* courts) that are doing the compensating, based on how relatively error-prone or error-free they find capital judgments from each of the states within their jurisdiction.

199. *See supra* pp.4-5 & nn.39, 40.

200. *See supra* note 161, explaining why we sometimes report reversal rates for state direct appeal and federal habeas corpus, excluding state post-conviction, and on other occasions report the overall rates for all three stages.

201. Two states from our cohort of 28, Delaware and Washington, are omitted from this analysis because state post-conviction information is not available for them. Both in any event have less than three federal habeas cases, making them relatively unreliable targets of comparison.

202. Kentucky, Maryland and Tennessee have 100% error rates, but only small numbers of final federal habeas cases (2, 3 and 1 respectively).

203. *See* sources cited *supra* note 10.

204. *See supra* note 49.

205. The data underlying Figure 13 are displayed in Tables 6, 7 and 10, *supra* pp.53, 57, 68.

206. See *supra* note pp.40-41; National Composite Capital Punishment Report Card, *supra* p.30 & *infra* Appendix A, p. A-6.

207. The same information—taken from DRCen; Death Row U.S.A., *supra* note 4, at 8-22—is in Table 11, *infra* Appendix E, p. E-7.

208. By non-consensual executions, we mean ones occurring after the prisoner insisted upon and received full judicial review. For further explanation of the difference between consensual and non-consensual executions and the reasons for looking at the latter, and for some data about the relative frequency of each type of execution, see *supra* note 31; *supra* Op.32 & n.140, 41.

209. Two of the study states (Idaho and Pennsylvania) have yet to have a post-1973 non-consensual execution.

210. The same information—from DRCen and Death Row U.S.A., *supra* note 4, at 8-22—is in Table 12, *infra* Appendix E, p. E-8.

211. See *supra* notes 31, 140, 208.

212. The same information—from DRCen and DADB—is in Table 13, *infra* Appendix E, p. E-9.

213. See *supra* pp.40-41.

214. The data underlying all the comparisons in this section—which come from DRCen, Death Row U.S.A., *supra* note 4, UCRDB, USCen, PrisCen—are displayed in Tables 14-19, *infra* Appendix E, pp. E-10 to E-15. Tables 14, 15, and 16 compare states' *death sentencing* rates, respectively, per homicides, population and prison population. Tables 17, 18, and 19 then make the same comparisons of the respective states' non-consensual *execution* rates.

215. Variations are not quite as great per prison population, suggesting that some part of the variation in death-sentencing and execution rates per homicides and population is due to variable punitiveness among the states.

216. Similarly, Nevada and Idaho are among the top three states when it comes to the proportion of homicides that result in death sentences, but both states are in the very bottom cohort of states when it comes to the proportion of their death sentences that are validated on judicial review and result in executions. See also *infra* note 238. (Nevada and Idaho are also among the top four states when it comes to the proportion of their prison population under sentence of death, but they are in the very bottom category of states when it comes to executions.) Conversely, Virginia and Louisiana are in the top four states when it comes to the proportion of their prison population that they execute but in the bottom cohort of states when it comes to the proportion of their prison population that is under sentence of death.

217. See Jason DeParle, *Abstract Death Penalty Meets Real Execution*, N.Y. Times, Sept. 28, 1991, § 4, at 2 (discussing a period in 1987 when Louisiana executed eight men in 11 weeks and was “so enthusiastic about capital punishment that a legal newspaper dubbed it ‘Death Mill, U.S.A.’”).

(Notes continue on the next page)

218. During the 1990s, Texas and Virginia have consistently executed about as many individuals as all the other states combined:

**Total Number of Executions Compared to
Executions by Texas and Virginia**

Year	Total Executions	TX, VA Executions
1991	14	7
1992	31	16
1993	38	22
1994	31	16
1995	56	26
1996	45	11
1997	74	45
1998	68	34
1999	98	49
Total	455	226 (49.7%)

Death Row U.S.A., *supra* note 4, at 11-19. *See* Green, *Virginia Bucks Death Row Flow*, *supra* note 4; Masters, *A Rush on Va. 's Death Row*, *supra* note 64; *supra* note 4.

219. The relevant states' average homicides rate per 100,000 population during the 23-year study period—taken from UCRDB, USCen—are in Table 20, *infra* Appendix E, p. E-16. *See supra* pp.43 (explaining how average homicide rates are calculated). As Table 20 demonstrates, average homicide rates varied greatly among death-sentencing states during the study period, ranging from 3.28 per 100,000 population in Utah to 15.19 per 100,000 population in Louisiana.

220. Average percent nonwhite populations for our 28-state cohort during the 23-year study period—taken from USCen—are set out in tabular form in Table 21, *infra* Appendix E, p. E-17.

221. A number of authorities (1) have noted instances in which elected judges' careers were positively or negatively affected by whether their prior actions on the bench had seemed (respectively) sympathetic to, or skeptical about, capital punishment, and (2) have concluded that political pressure is likely to skew capital decision making by state court judges. *See, e.g.,* Harris v. Alabama, 513 U.S. 504, 519-20 & n.5 (1995) (Stevens, J., dissenting) (“The ‘higher authority’ to whom present-day capital judges may be ‘too responsive’ is a political climate in which judges who covet higher office—or who merely wish to remain judges—must constantly profess fealty to the death penalty. . . . The danger [is] that they will bend to political pressures when pronouncing sentence in highly publicized capital cases.”); Bright & Keenan, *supra* note 54, at 760 (“Decisions in capital cases have increasingly become campaign fodder in both judicial and nonjudicial elections. The focus in these campaigns has been almost entirely on the gruesome facts of particular

murders, not the reason for the judicial decisions. Judges have come under attack and have been removed from the bench for their decisions in capital cases—with perhaps the most notable examples in states with some of the largest death rows and where the death penalty has been a dominant political issue. Recent challenges to state court judges in both direct and retention elections have made it clear that unpopular decisions in capital cases, even when clearly compelled by law, may cost a judge her seat on the bench, or promotion to a higher court.”); Coyne & Entzroth, *supra* note 33, at 13 (“The death penalty and politics . . . are inseparable,” particularly because “the vast majority of judges who preside over capital cases must answer to the electorate” and because “judges are far less likely to . . . take . . . tough action if they must run for reelection or retention every few years” (quoting ABA, Report of the Comm’n on Professionalism, 112 F.R.D. 243, 293 (1986)); Symposium, *Politics and the Death Penalty: Can Rational Discourse and Due Process Survive the Perceived Political Pressure?*, 21 Fordham Urb. L.J. 239 (1994).

222. Tables 22, 23 and 24—set out *infra* Appendix E, pp. E-18 to E-20—compare the 28 study states in regard to, respectively, electoral pressure on judges, court expenditures per capita, and court caseloads per capita.

223. We developed the political pressure measurement ourselves, using statutory information about how judges are elected and retained in the various states. *See supra* note 26. We are fairly confident about the quality of the underlying data. The other measures come from state-self-reported data, *see id.*, the accuracy and computational-comparability of which we are less sure of.

224. *See* sources cited *supra* note 221.

225. This proposal (were it supported by the data) would *not* call for spending less on *each* death sentence obtained. Rather, it would call for spending less *overall*, by seeking and securing fewer death sentences *overall*. The spending on each death sentence that *is* obtained might actually *increase*.

226. Included are report cards on the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits.

227. *See supra* note 190; *supra* pp.14, 51, 59 & n.190, 65-66 & n.198.

228. Not counting the Fourth Circuit, federal courts found serious error in 229 (42%) of 547 death sentences reviewed.

229. *See supra* Table 6 and Figure 6, *supra* pp.53, 54; *supra* pp. 51, 65-66 & nn.190, 198.

230. Outside the Fourth Circuit, the only other state where there are relatively low state and federal error detection rates—although not nearly as low (in either case) as in Virginia—is Missouri, which falls within the jurisdiction of the U.S. Court of Appeals for the Eighth Circuit. *Cf. supra* note 190.

231. Without changing this analysis, one could expand it to the two other death-sentencing states that border Virginia, but are not in the same federal judicial circuit: Kentucky and Tennessee. (West Virginia and the District of Columbia do not have the death penalty.)

232. *See Williams v. Taylor*, 120 S. Ct. 1495 (2000).

233. *See Virginia Report, supra* note 36, at 11-37; Green, *Virginia Bucks Death Row Flow*, *supra* note 4; Masters, *A Rush on Va.’s Death Row*, *supra* note 64.

234. See *supra* note 31; *supra* p.32 & n.140; *supra* note 208 (explaining the reasons for focusing on non-consensual executions).

235. Tables 26 and 27—derived from DRCen and Death Row U.S.A., *supra* note 4, and set out *infra* Appendix E, p. E-27—compare the federal circuit courts based on, respectively, their component states’ death-sentencing and execution rates per 100,000 population.

236. See Figures 19-22, *supra* pp.82-84, 86.

237. Figure 35 is based on the information—taken from DRCen and Death Row U.S.A., *supra* note 4—in Table 28, *infra* Appendix E, p. E-22. Figure 35 and Table 28 look at *all* executions, both consensual and non-consensual. For the reasons discussed *supra* note 31; *supra* pp.32 & n.140, 41, a better measure of success might be the proportion of death sentences carried out *non-consensually*. For that information, in tabular and graphic form, see Table 29 and Figure 36, *infra* Appendix E, pp. E-23 to E-24.

(Notes continue on the next page)

238. *See supra* pp.14, 51, 59 & n.190, 65-66 & n.198, 105-07.

Comparing Figure 35 to Figure 19, *supra* p. 82, helps confirm a point made above—that the path to more executions is *not*, as one might expect, more death sentences. *See supra* pp.82-87. A comparison of Figures 35 and 19 reveals that:

- Six of the top 11 (of 28) states when it comes to death sentences per 1,000 homicides, including the top 4 states, are in the *bottom* half of the states when it comes to percent of death sentences carried out after full review:

State	Rank in Death Sentences per 1,000 Homicides	Rank in Percent Death Sentences Carried Out Following Full Review
Wyoming	1 (of 28)	16 (of 28)
Idaho	2	23
Nevada	3	26
Arizona	4	20
Oklahoma	6	19
Mississippi	11	18

- On the other hand, of the top 5 states when it comes to percent of death sentences carried out after full review are in the bottom 11 states in regard to death sentences per 1,000 homicides:

State	Rank in Percent Death Sentences Carried Out	Rank in Death Sentences per 1,000 Homicides Following Full Review
Virginia	1 (of 28)	22 (of 28)
Louisiana	2	25
Texas	3	18
Missouri	5	20

239. *See supra* pp.12-13 & Figure 2, 35-37.

240. *See* Table 1, *infra* Appendix E, p. E-2.

241. States in which recent press accounts have linked high capital error rates and the state's incapacity to make its death penalty work in a rational fashion include:

California: *See* Paul Elias & Rinat Fried, *A Failure to Execute*, The Recorder, Dec. 15, 1999, at 1 (“Since 1978, when . . . California . . . reinstitut[ed] the death penalty, 647 men and women have been sentenced to death. Only [seven] have been executed. [Over] four times as many California death row inmates have died in San Quentin of causes other than execution. Fifty-seven sentences have been overturned.”); Howard Mintz, *Slow Death: The Capital Punishment Gridlock in California*, San Jose Mercury News, Mar. 12,

2000, at A1, available in Westlaw, News Library, SJMERCURY file (reporting that between 1992 and 2000, California's death row grew from 350 to about 550 inmates, but it only executed 7 men; in the same period, state courts overturned approximately 10 death sentence, and federal courts overturned 13).

Florida: Rene Stutzman, *High Court Puts Death Cases Back into Play: Errors Were Found in 10 of 12 Capital Punishment Cases Reviewed this Year*, Orlando Sentinel, Aug. 24, 1999, at D1, available in 1999 WL 2829798 (in the first eight months of 1999, the Florida Supreme Court found trial errors requiring retrial, resentencing, or imposition of a life sentence in 83% of the first-time death penalty appeals it has reviewed; the figure for all of 1998 was 77% (20/26)).

Illinois:

An Illinois Supreme Court ruling on Friday pushed the number of death-penalty cases in Illinois that have been reversed for a new trial or sentencing hearing to 130—exactly half the total of those capital cases that have completed at least one round of [state] appeals, according to a *Tribune* analysis.

Ken Armstrong & Christi Parsons, *Half of State's Death-Penalty Cases Reversed*, Chi. Trib., Jan. 22, 2000, at 1, available in 2000 WL 3629108.

Nevada: See Sean Whaley, *Nevada's Death Row History Criticized*, Las Vegas Rev.-J., Feb. 7, 2000, at 1B, available in Westlaw, News Library, LV-RJ-C file (finding that since 1979, 8 Nevada Death Row inmates have been executed (all but one consensually, *i.e.*, in advance of full judicial review, see Death Row U.S.A., *supra* note 4, at 8-22); since 1993, the same number, 8, have had their capital judgments reversed by the state and federal courts, among whom 3 (as of this writing, 4, see Brendan Riley, *Emotional Mazzan Released*, Las Vegas Rev.-J., May 7, 2000, at 1) were thereupon released from prison).

Tennessee: Duncan Mansfield, *The Price of Death Penalty? Maybe Millions*, AP Newswires, Mar. 26, 2000, available in Westlaw, News Library, APWIRES file ("Tennessee, with 97 people on death row [who have accumulated over at least 23 years] is [still awaiting] its first execution since 1960.").

Utah: See Lee Davidson, *Death Row the End?: Most Get Out Alive*, Deseret News (Salt Lake City), Dec. 13, 1999, at B1, available in 1999 WL 26543645 (noting that since Utah reinstated the death penalty in 1973, 16 prisoners have left the state's death row, 6 by execution and 10 (63%) because their convictions or sentences were overturned by the courts).

Washington: See, *e.g.*, Mike Carter, *Court Orders Retrial in 1986 Kitsap Rape-Murder Case*, Seattle Times, July 15, 1999, at B1, available in 1999 WL 6282738 (noting that 7 Washington State capital sentences were overturned in 8 years, at a time when there were a total of only 14 men on Washington's death row, see BJS 1998 Report, *supra* note 28, app. tbl. 2).

242. See *supra* pp. 36-38 & Figure 3.

243. See *supra* p.5; State Post-Conviction National Composite Results, *infra* Appendix C, p.C-3..

A Broken System: Error Rates in Capital Cases, 1973-1995

APPENDICES

James S. Liebman
Simon H. Rifkind Professor of Law
Columbia University School of Law

Jeffrey Fagan
Professor, Joseph Mailman
School of Public Health
Visiting Professor, Columbia
University School of Law

Valerie West
Doctoral Candidate
Department of Sociology
New York University

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Appendix A: State Capital Punishment Report Cards

This Appendix contains two-page capital punishment report cards on all 28 capital-sentencing states that reviewed at least one death sentence on direct appeal and federal habeas corpus during the 1973-1995 study period. For comparison purposes, this collection of report cards begins with the national composite capital punishment report card (discussed in the main Report (hereinafter, “*Report*”) pp. 28-45) and then Table 30, which compares the rates of capital-sentencing error that were discovered for each state on state direct appeal, state post-conviction review, and federal habeas corpus, and the total error and success rates for each state. (For a description of how those rates are calculated, *see Report*, pp. 4-5 & notes 39, 40).

Description of Information in State Capital Punishment Report Cards

The state capital punishment report cards collected in this Appendix contain seven categories of information:

1. Capital-sentencing history.

In the “History” section has information about the years in which four important capital-sentencing events occurred in each state following the Supreme Court’s invalidation of all preexisting capital statutes and sentences in *Furman v. Georgia*¹—the state’s first death sentence, first direct appeal, first consensual execution and first non-consensual execution.²

2. Sentences and executions.

This section of each state capital punishment report card provides information about how many death sentences were imposed in each state and how many, and what proportion, of those death sentences

¹*See Report*, p.3.

² On the difference between consensual and non-consensual executions, *see Report*, note 31; pp. 32 & note 140, 41; note 208.

were carried out, during the study period.

3. Error and success rates.

The third section of the report cards identifies for each state (a) the rates of serious error discovered at each level of judicial inspection,³ (b) the overall error rate, meaning the proportion of capital judgments undergoing judicial inspection that were thrown out before reaching the end of the inspection process,⁴ and, conversely, (c) the overall success rate, meaning the proportion of capital judgments found after a full complement of inspections to be *free* of serious error.

4. Length of time of review.

This section reports information for each state on (a) the number of years that elapsed between the state's first death sentence and its first non-consensual execution (not necessarily in the same case); (b) the average number of years it took death sentences to proceed through the three-stage inspection process to execution in the small proportion of cases in which an execution took place, and (c) the average time from death sentence to federal habeas corpus reversal in the minority of cases in which reversal occurred at the third (federal habeas corpus) checkpoint, as opposed to taking place at one of the first two (state court) checkpoints.

5. Capital-sentencing and execution rates.

This part of each report card answers two questions. First, how often did the state impose death sentences? To answer this question, we consider death sentences per 1,000 homicides, per 100,000 population, and per 1,000 incarcerated inmates in the jurisdiction. Second, how often (relative to

³There are three levels of judicial inspection—state direct appeal, state post-conviction and federal habeas corpus. *See Report*, Part V, pp.18-22.

⁴*See Report*, pp. 4-5 & notes 39, 40.

homicides, population and prison population) did the state execute offenders? Because we are interested in success and error rates, we consider here only “non-consensual” executions, *i.e.*, ones that were subjected to full review and found to be free of serious error.

6. Demographic information.

The demographic information reported in this sixth report card category reveals the population pools against which each state’s number of death sentences and executions are compared to determine the sentencing and execution rates. This part of the report card also provides bases for distinguishing among states—and thus, potentially, for explaining variations among states—in terms of the capital-sentence error rates detected on direct appeal and habeas corpus inspection.

“Average population” is the state’s yearly average population from 1973-1995.

“Average homicides” are the total number of homicides in each state from 1973-1995 divided by 23, the number of years in our study .

Homicides per population establishes a state’s homicide rate. By “average homicides/average population,” we mean the average number of homicides per year during the study period for every 100,000 persons in the jurisdiction, averaged over the state’s population during the study period.

“Average prison admissions” means the average number of persons admitted each year to the state’s prisons during the study period.

“Average prison population” means the jurisdiction’s average population over study period.

We also report here the percentage of each state’s population that was nonwhite during the study period.

7. Court factors: the context of state court decision making.

In the state capital punishment report cards, we report four pieces of information about state courts and judges that may help explain state variations in capital-sentencing success/error rates, capital-sentencing rates themselves and execution rates. These figures are most informative when used for comparative purposes.

The “political pressure” index measures the extent to which state judges are subject to electoral scrutiny and discipline. Although nearly all the state judges in our study are subject to voter scrutiny at some point if they wish to remain in office, the forms and frequency of elections differ in ways that are likely to increase or decrease the extent to which judges are politically at risk as a result of capital outcomes produced in their courts (meaning, at the trial level, whether the verdict was death or life and, at the appellate level, whether a death sentence under review was affirmed or reversed). More specifically, our index considers whether judges initially are elected or appointed, whether judicial elections are partisan, the length of judges’ terms of office, and whether judges’ continuation in office is determined by contested or retention elections. (*See Report*, notes 54, 221)

The “party competition index” is a composite of the vote share of each party in state gubernatorial and legislative elections from 1968-1996.

Our penultimate (“state court criminal caseload”) category reports the yearly average number of criminal case filings in each jurisdiction from 1985-1994 per 1,000 people in the population.

Finally, we report each state’s average annual court-related expenditures during the fiscal years 1982-1992.

National Composite Capital Punishment Report Card

History (34 States)

First Death Sentence	1973
First Direct Appeal	1973
First Consensual Execution	1977
First Non-Consensual Execution	1979

Sentences and Executions (34 States)

Total Number of Death Sentences	5,760
Total Number of Executions	313
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal (34 States)

Number Reviewed on Direct Appeal	4,578
Number Reversed on Direct Appeal	1,885
Percentage Reversed on Direct Appeal	41%
Number Awaiting Direct Appeal	1,182
Percentage Awaiting Direct Appeal	21%
Number Forward to State Post-Conviction	2,693

State Direct Appeal (28 States)

Number Reviewed on Direct Appeal	4,364
Number Reversed on Direct Appeal	1,782
Percentage Reversed on Direct Appeal	41%
Number Forward to State Post-Conviction	2582

State Post-Conviction (28 States)

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$248
Percentage Reversed on Post-Conviction	\$10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined (28 States)

Overall Rate of Error Found by State Courts	\$47%
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Error Rates (Continued)

Federal Habeas Corpus (28 States)

Number Reviewed on Habeas	599
Number Reversed on Habeas	237
Percentage Reversed on Habeas	40%

Overall Rates Including [and Excluding] State Post-Conviction (28 States)

Overall Error Rate	68% [64%]
Overall Success Rate	32% [36%]

Time (28 States)

Time From First Death Sentence to First Non-Consensual Execution	6
Average Time from Sentence to Execution	9
Average Time from Sentence to Final Federal Relief	7.6

Sentencing and Execution Rates (34 States)

	Death States	Whole Nation
Death Sentences per 1000 homicides	14.90	12
Death Sentences per 100,000 pop.	3.9	2.46
NC Executions per 1000 homicides	.68	.54

Demographic Information (34 States)

	Death States Nation	Whole Nation
Average Population	181,374,347	237,905,964
Average Homicides	16,860	21,197
Average Homicides Rate per 100,000 Population	9.3	9
Percentage Population Non-White	19%	20%

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen

**Table 30: State-by-State Comparisons of Direct Appeal,
State Post-Conviction, and Federal Habeas Corpus
Reversal Rates and Overall Error Rates**

State	% Reversed on State Direct Appeal	% Reversed on State Post- Conviction*	% Reversed in State Courts, Overall*	Percent Reversed on Federal Habeas Corpus	Overall Error Rate, Excluding State PC	Overall Error Rate, Including State PC*
Alabama	55	9	59	45	75	77
Arizona	42	10	47	60	77	79
Arkansas	40	4	43	48	69	70
California	31	3	33	80	86	87
Delaware	26	unknown	unknown	0	26	unknown
Florida	49	17	58	37	68	73
Georgia	35	12	43	65	77	80
Idaho	42	5	44	67	81	82
Illinois	39	7	43	40	63	66
Indiana	32	25	49	50	66	75
Kentucky	50	0	50	100	100	100
Louisiana	46	7	50	27	61	64
Maryland	53	52	77	100	100	100
Mississippi	61	20	69	71	89	91
Missouri	17	4	20	15	29	32
Montana	42	9	47	75	86	87
Nebraska	29	13	38	43	60	65
Nevada	30	8	35	50	65	68
No. Carolina	61	10	65	18	68	71
Oklahoma	48	2	50	50	74	75
Pennsylvania	28	1	29	40	57	57
So. Carolina	54	18	62	14	60	67
Tennessee	29	12	38	100	100	100
Texas	31	6	35	26	49	52
Utah	35	23	50	33	56	67
Virginia	10	3	13	6	15	18
Washington	45	unknown	unknown	33	63	unknown
Wyoming	67	33	78	50	84	89

* Because state post-conviction data are incomplete, the figures in these columns are in most cases lower than the actual figure. *See Report*, note 39; pp. 26-27, 33-34; *infra Appendix C*, pp. C-1 to C-2.

Sources: DADB, DRCen, Appendix C, HCDB

State Report Cards

Alabama, 1975-1995

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	NONE
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	308
Total Number of Executions	12
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	264
Number Reversed on Direct Appeal	145
Percentage Reversed on Direct Appeal	55%
Number Awaiting Direct Appeal	44
Percentage Awaiting Direct Appeal	14%
Number Forward to State Post-Conviction	119

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$11
Percentage Reversed on Post-Conviction	\$9%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$59%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	22
Number Reversed on Habeas Corpus	10
Percentage Reversed on Habeas Corpus	45%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	77% [75%]
Overall Success Rate	23% [25%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	8.00
Average Time from Sentence to Execution	9.44
Average Time from Sentence to Final Federal Relief	8.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	28.93
Death Sentences per 100,000 Population	7.75
Death Sentences per 1000 Prison Population	27.31
Non-Consensual Executions per 1000 Homicides	1.13
Non-Consensual Executions per 100,000 Population	0.30
Non-Consensual Executions per 1000 Prison Population	1.06

Demographic Information

Average Population	3,938,785
Average Homicides	463
Average Homicides/Average Population	11.75
Average Prison Admissions	4,023
Average Prison Population	11,278
Percentage Population Non-White	27%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	30.56
Expenditures per Capita on Courts	30.64

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Arizona, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1993
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	247
Total Number of Executions	4
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	197
Number Reversed on Direct Appeal	82
Percentage Reversed on Direct Appeal	42%
Number Awaiting Direct Appeal	50
Percentage Awaiting Direct Appeal	20%
Number Forward to State Post-Conviction	115

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$12
Percentage Reversed on Post-Conviction	\$10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$48%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	15
Number Reversed on Habeas Corpus	9
Percentage Reversed on Habeas Corpus	60%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	79% [77%]
Overall Success Rate	21% [23%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	18.00
Average Time from Sentence to Execution	16.00
Average Time from Sentence to Final Federal Relief	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	40.98
Death Sentences per 100,000 Population	7.82
Death Sentences per 1000 Prison Population	25.29
Non-Consensual Executions per 1000 Homicides	0.50
Non-Consensual Executions per 100,000 Population	0.09
Non-Consensual Executions per 1000 Prison Population	0.31

Demographic Information

Average Population	3,068,591
Average Homicides	262
Average Homicides/ Average Population	8.54
Average Prison Admissions	3,540
Average Prison Population	9,769
Percentage Population Non-White	17%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	36.69
Expenditures per Capita on Courts	57.76

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Arkansas, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1990
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	89
Total Number of Executions	11
Percentage of Death Sentences Carried Out	12%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	82
Number Reversed on Direct Appeal	33
Percentage Reversed on Direct Appeal	40%
Number Awaiting Direct Appeal	7
Percentage Awaiting Direct Appeal	8%
Number Forward to State Post-Conviction	49

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$2
Percentage Reversed on Post-Conviction	\$4%
Number Forward to Federal Habeas Corpus	Unknown

Overall Rate of Error Found by State Courts

Overall Rate of Error Found by State Courts	\$43%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	25
Number Reversed on Habeas Corpus	12
Percentage Reversed on Habeas Corpus	48%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	70% [69%]
Overall Success Rate	30% [31%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	16.00
Average Time from Sentence to Execution	10.00
Average Time from Sentence to Final Federal Relief	14.33

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	18.09
Death Sentences per 100,000 Population	3.84
Death Sentences per 1000 Prison Population	17.21
Non-Consensual Executions per 1000 Homicides	2.03
Non-Consensual Executions per 100,000 Population	0.43
Non-Consensual Executions per 1000 Prison Population	1.93

Demographic Information

Average Population	2,296,077
Average Homicides	214
Average Homicides/ Average Population	9.32
Average Prison Admissions	2,157
Average Prison Population	5,173
Percentage Population Non-White	18%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	41.70
Expenditures per Capita on Courts	19.13

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

California, 1976-1995

History

First Death Sentence	1976
First Direct Appeal	1979
First Consensual Execution	1993
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	531
Total Number of Executions	2
Percentage of Death Sentences Carried Out	0.4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	281
Number Reversed on Direct Appeal	87
Percentage Reversed on Direct Appeal	31%
Number Awaiting Direct Appeal	250
Percentage Awaiting Direct Appeal	47%
Number Forward to State Post-Conviction	194

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$7
Percentage Reversed on Post-Conviction	\$4%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$33%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	5
Number Reversed on Habeas Corpus	4
Percentage Reversed on Habeas Corpus	80%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	87% [86%]
Overall Success Rate	13% [14%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	16.00
Average Time from Sentence to Execution	9.00
Average Time from Sentence to Final Federal Relief	12.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	7.75
Death Sentences per 100,000 Population	2.00
Death Sentences per 1000 Prison Population	8.59
Non-Consensual Executions per 1000 Homicides	0.01
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.02

Demographic Information

Average Population	25,990,813
Average Homicides	2,980
Average Homicides/ Average Population	11.46
Average Prison Admissions	22,864
Average Prison Population	61,818
Percentage Population Non-White	25%

Court Factors

Political Pressure (judicial elections)	5
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	15.43
Expenditures per Capita on Courts	67.85

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Delaware, 1978-1995

History

First Death Sentence	1978
First Direct Appeal	1981
First Consensual Execution	1992
First Non-Consensual Execution	1993

Sentences and Executions

Total Number of Death Sentences	24
Total Number of Executions	5
Percentage of Death Sentences Carried Out	21%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	23
Number Reversed on Direct Appeal	6
Percentage Reversed on Direct Appeal	26%
Number Awaiting Direct Appeal	1
Percentage Awaiting Direct Appeal	4%
Number Forward to State Post-Conviction	17

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	Unknown
Percentage Reversed on Post-Conviction	Unknown
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	Unknown
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	2
Number Reversed on Habeas Corpus	0
Percentage Reversed on Habeas Corpus	0%

Overall Rates [Excluding State Post-Conviction]

Overall Error Rate	[26%]
Overall Success Rate	[74%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	15.00
Average Time from Sentence to Execution	7.00
Average Time from Sentence to Final Federal Relief	NA

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	32.48
Death Sentences per 100,000 Population	3.79
Death Sentences per 1000 Prison Population	9.32
Non-Consensual Executions per 1000 Homicides	2.71
Non-Consensual Executions per 100,000 Population	0.32
Non-Consensual Executions per 1000 Prison Population	0.78

Demographic Information

Average Population	638,374
Average Homicides	35
Average Homicides/ Average Population	5.52
Average Prison Admissions	617
Average Prison Population	2,576
Percentage Population Non-White	20%

Court Factors

Political Pressure (judicial elections)	3
Party Competition (gubernatorial elections)	2
State Court Criminal Caseload per 1000 Population	32.89
Expenditures per Capita on Courts	58.37

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Florida, 1973-1995

History

First Death Sentence	1973
First Direct Appeal	1974
First Consensual Execution	1993
First Non-Consensual Execution	1979

Sentences and Executions

Total Number of Death Sentences	870
Total Number of Executions	36
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	760
Number Reversed on Direct Appeal	376
Percentage Reversed on Direct Appeal	49%
Number Awaiting Direct Appeal	110
Percentage Awaiting Direct Appeal	13%
Number Forward to State Post-Conviction	384

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$67
Percentage Reversed on Post-Conviction	\$17%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$58%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	97
Number Reversed on Habeas Corpus	36
Percentage Reversed on Habeas Corpus	37%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	73% [68%]
Overall Success Rate	27% [32%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	6.00
Average Time from Sentence to Execution	9.39
Average Time from Sentence to Final Federal Relief	10.42

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	30.85
Death Sentences per 100,000 Population	7.74
Death Sentences per 1000 Prison Population	26.09
Non-Consensual Executions per 1000 Homicides	1.24
Non-Consensual Executions per 100,000 Population	0.31
Non-Consensual Executions per 1000 Prison Population	1.05

Demographic Information

Average Population	10,950,871
Average Homicides	1,226
Average Homicides/ Average Population	11.20
Average Prison Admissions	18,243
Average Prison Population	33,348
Percentage Population Non-White	19%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	26.61
Expenditures per Capita on Courts	48.84

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Georgia, 1973-1995

History

First Death Sentence	1973
First Direct Appeal	1973
First Consensual Execution	NONE
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	325
Total Number of Executions	20
Percentage of Death Sentences Carried Out	6%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	303
Number Reversed on Direct Appeal	106
Percentage Reversed on Direct Appeal	35%
Number Awaiting Direct Appeal	22
Percentage Awaiting Direct Appeal	7%
Number Forward to State Post-Conviction	197

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$24
Percentage Reversed on Post-Conviction	\$12%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$43%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	96
Number Reversed on Habeas Corpus	62
Percentage Reversed on Habeas Corpus	65%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	80% [77%]
Overall Success Rate	20% [23%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	10.00
Average Time from Sentence to Execution	9.81
Average Time from Sentence to Final Federal Relief	9.23

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	19.24
Death Sentences per 100,000 Population	5.44
Death Sentences per 1000 Prison Population	17.74
Non-Consensual Executions per 1000 Homicides	1.18
Non-Consensual Executions per 100,000 Population	0.33
Non-Consensual Executions per 1000 Prison Population	1.09

Demographic Information

Average Population	5,876,351
Average Homicides	734
Average Homicides/ Average Population	12.50
Average Prison Admissions	8,459
Average Prison Population	18,322
Percentage Population Non-White	29%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	14.71
Expenditures per Capita on Courts	29.77

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Idaho, 1976-1995

History

First Death Sentence	1976
First Direct Appeal	1977
First Consensual Execution	1994
First Non-Consensual Execution	NONE

Sentences and Executions

Total Number of Death Sentences	41
Total Number of Executions	1
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	36
Number Reversed on Direct Appeal	15
Percentage Reversed on Direct Appeal	42%
Number Awaiting Direct Appeal	5
Percentage Awaiting Direct Appeal	12%
Number Forward to State Post-Conviction	21

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$1
Percentage Reversed on Post-Conviction	\$5%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$44%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	3
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	67%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	82% [81%]
Overall Success Rate	18% [19%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	N/A
Average Time from Sentence to Execution	missing
Average Time from Sentence to Final Federal Relief	11.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	55.03
Death Sentences per 100,000 Population	4.16
Death Sentences per 1000 Prison Population	27.15
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	967,147
Average Homicides	35
Average Homicides/ Average Population	3.64
Average Prison Admissions	771
Average Prison Population	1,510
Percentage Population Non-White	5%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	76.97
Expenditures per Capita on Courts	30.63

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Illinois, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1980
First Consensual Execution	1990
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	262
Total Number of Executions	7
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	221
Number Reversed on Direct Appeal	86
Percentage Reversed on Direct Appeal	39%
Number Awaiting Direct Appeal	41
Percentage Awaiting Direct Appeal	16%
Number Forward to State Post-Conviction	135

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$10
Percentage Reversed on Post-Conviction	\$7%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$43%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	10
Number Reversed on Habeas Corpus	4
Percentage Reversed on Habeas Corpus	40%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	66% [63%]
Overall Success Rate	34% [37%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	17.00
Average Time from Sentence to Execution	13.38
Average Time from Sentence to Final Federal Relief	8.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.89
Death Sentences per 100,000 Population	2.29
Death Sentences per 1000 Prison Population	12.99
Non-Consensual Executions per 1000 Homicides	0.23
Non-Consensual Executions per 100,000 Population	0.05
Non-Consensual Executions per 1000 Prison Population	0.30

Demographic Information

Average Population	11,454,333
Average Homicides	1,152
Average Homicides/ Average Population	10.06
Average Prison Admissions	9,200
Average Prison Population	20,172
Percentage Population Non-White	19%

Court Factors

Political Pressure (judicial elections)	5
Party Competition (gubernatorial elections)	2
State Court Criminal Caseload per 1000 Population	54.39
Expenditures per Capita on Courts	36.91

Sources : DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Indiana, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1977
First Consensual Execution	1981
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	90
Total Number of Executions	3
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	76
Number Reversed on Direct Appeal	24
Percentage Reversed on Direct Appeal	32%
Number Awaiting Direct Appeal	14
Percentage Awaiting Direct Appeal	16%
Number Forward to State Post-Conviction	52

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$13
Percentage Reversed on Post-Conviction	\$25%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$49%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	4
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	50%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	75% [66%]
Overall Success Rate	25% [34%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	20.00
Average Time from Sentence to Execution	5
Average Time from Sentence to Final Federal Relief	6.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	10.15
Death Sentences per 100,000 Population	1.63
Death Sentences per 1000 Prison Population	9.18
Non-Consensual Executions per 1000 Homicides	0.11
Non-Consensual Executions per 100,000 Population	0.02
Non-Consensual Executions per 1000 Prison Population	0.10

Demographic Information

Average Population	5,501,055
Average Homicides	381
Average Homicides/ Average Population	7.01
Average Prison Admissions	4,288
Average Prison Population	9,807
Percentage Population Non-White	9%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	14.14
Expenditures per Capita on Courts	24.29

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Kentucky, 1978-1995

History

First Death Sentence	1978
First Direct Appeal	1980
First Consensual Execution	NONE
First Non-Consensual Execution	1997

Sentences and Executions

Total Number of Death Sentences	61
Total Number of Executions	0
Percentage of Death Sentences Carried Out	0%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	50
Number Reversed on Direct Appeal	25
Percentage Reversed on Direct Appeal	50%
Number Awaiting Direct Appeal	11
Percentage Awaiting Direct Appeal	18%
Number Forward to State Post-Conviction	25

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	0
Percentage Reversed on Post-Conviction	0%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	50%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	1
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	100%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	[100%]
Overall Success Rate	[0%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	19
Average Time from Sentence to Execution	N/A
Average Time from Sentence to Final Federal Relief	N/A

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.32
Death Sentences per 100,000 Population	1.67
Death Sentences per 1000 Prison Population	9.52
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	3,637,860
Average Homicides	295
Average Homicides/ Average Population	8.10
Average Prison Admissions	2,781
Average Prison Population	6,410
Percentage Population Non-White	8%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	31.64
Expenditures per Capita on Courts	30.62

Sources: DRCen; DeathRow U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Louisiana, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1978
First Consensual Execution	NONE
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	131
Total Number of Executions	22
Percentage of Death Sentences Carried Out	17%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	112
Number Reversed on Direct Appeal	52
Percentage Reversed on Direct Appeal	46%
Number Awaiting Direct Appeal	19
Percentage Awaiting Direct Appeal	15%
Number Forward to State Post-Conviction	60

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$4
Percentage Reversed on Post-Conviction	\$7%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$50%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	37
Number Reversed on Habeas Corpus	10
Percentage Reversed on Habeas Corpus	27%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	64% [61%]
Overall Success Rate	36% [39%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	6.00
Average Time from Sentence to Execution	5.60
Average Time from Sentence to Final Federal Relief	6.67

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.29
Death Sentences per 100,000 Population	3.08
Death Sentences per 1000 Prison Population	9.33
Non-Consensual Executions per 1000 Homicides	1.56
Non-Consensual Executions per 100,000 Population	0.52
Non-Consensual Executions per 1000 Prison Population	1.57

Demographic Information

Average Population	4,208,501
Average Homicides	636
Average Homicides/ Average Population	15.19
Average Prison Admissions	4,029
Average Prison Population	14,043
Percentage Population Non-White	32%

Court Factors

Political Pressure (judicial elections)	4
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	41.85
Expenditures per Capita on Courts	35.72

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Maryland, 1979-1995

History

First Death Sentence	1979
First Direct Appeal	1980
First Consensual Execution	1994
First Non-Consensual Execution	1997

Sentences and Executions

Total Number of Death Sentences	60
Total Number of Executions	1
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	57
Number Reversed on Direct Appeal	30
Percentage Reversed on Direct Appeal	53%
Number Awaiting Direct Appeal	3
Percentage Awaiting Direct Appeal	5%
Number Forward to State Post-Conviction	27

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$14
Percentage Reversed on Post-Conviction	\$52%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$77%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	3
Number Reversed on Habeas Corpus	3
Percentage Reversed on Habeas Corpus	100%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	[100%] [100%]
Overall Success	[0%] [0%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	18
Average Time from Sentence to Execution	2.00
Average Time from Sentence to Final Federal Relief	missing

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	5.72
Death Sentences per 100,000 Population	1.34
Death Sentences per 1000 Prison Population	4.45
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	4,456,464
Average Homicides	456
Average Homicides/ Average Population	10.23
Average Prison Admissions	5,224
Average Prison Population	13,480
Percentage Population Non-White	27%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	31.62
Expenditures per Capita on Courts	46.24

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Mississippi, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	NONE
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	165
Total Number of Executions	4
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	137
Number Reversed on Direct Appeal	83
Percentage Reversed on Direct Appeal	61%
Number Awaiting Direct Appeal	28
Percentage Awaiting Direct Appeal	17%
Number Forward to State Post-Conviction	54

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$11
Percentage Reversed on Post-Conviction	\$20%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$69%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	24
Number Reversed on Habeas Corpus	17
Percentage Reversed on Habeas Corpus	71%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	91% [89%]
Overall Success Rate	9% [11%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	9.00
Average Time from Sentence to Execution	7.00
Average Time from Sentence to Final Federal Relief	8.71

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	24.10
Death Sentences per 100,000 Population	6.47
Death Sentences per 1000 Prison Population	26.05
Non-Consensual Executions per 1000 Homicides	0.58
Non-Consensual Executions per 100,000 Population	0.16
Non-Consensual Executions per 1000 Prison Population	0.63

Demographic Information

Average Population	2,529,596
Average Homicides	314
Average Homicides/ Average Population	12.40
Average Prison Admissions	2,422
Average Prison Population	6,335
Percentage Population Non-White	37%

Court Factors

Political Pressure (judicial elections)	5
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	13.49
Expenditures per Capita on Courts	18.43

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Missouri, 1979-1995

History

First Death Sentence	1979
First Direct Appeal	1981
First Consensual Execution	1990
First Non-Consensual Execution	1989

Sentences and Executions

Total Number of Death Sentences	133
Total Number of Executions	17
Percentage of Death Sentences Carried Out	13%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	98
Number Reversed on Direct Appeal	17
Percentage Reversed on Direct Appeal	17%
Number Awaiting Direct Appeal	35
Percentage Awaiting Direct Appeal	26%
Number Forward to State Post-Conviction	81

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$3
Percentage Reversed on Post-Conviction	\$4%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$20%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	26
Number Reversed on Habeas Corpus	4
Percentage Reversed on Habeas Corpus	15%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	32% [29%]
Overall Success Rate	68% [71%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	10.00
Average Time from Sentence to Execution	9.85
Average Time from Sentence to Final Federal Relief	10.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	12.18
Death Sentences per 100,000 Population	2.64
Death Sentences per 1000 Prison Population	12.70
Non-Consensual Executions per 1000 Homicides	1.37
Non-Consensual Executions per 100,000 Population	0.30
Non-Consensual Executions per 1000 Prison Population	1.43

Demographic Information

Average Population	5,007,494
Average Homicides	475
Average Homicides/ Average Population	9.48
Average Prison Admissions	4,142
Average Prison Population	10,476
Percentage Population Non-White	12%

Court Factors

Political Pressure (judicial elections)	5
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	33.69
Expenditures per Capita on Courts	27.49

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Montana, 1973-1995

History

First Death Sentence	1973
First Direct Appeal	1974
First Consensual Execution	NONE
First Non-Consensual Execution	1995

Sentences and Executions

Total Number of Death Sentences	20
Total Number of Executions	1
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	19
Number Reversed on Direct Appeal	8
Percentage Reversed on Direct Appeal	42%
Number Awaiting Direct Appeal	1
Percentage Awaiting Direct Appeal	5%
Number Forward to State Post-Conviction	11

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$1
Percentage Reversed on Post-Conviction	\$9%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$47%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	4
Number Reversed on Habeas Corpus	3
Percentage Reversed on Habeas Corpus	75%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	87% [86%]
Overall Success Rate	13% [14%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	22.00
Average Time from Sentence to Execution	17.33
Average Time from Sentence to Final Federal Relief	10.67

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	28.25
Death Sentences per 100,000 Population	2.50
Death Sentences per 1000 Prison Population	18.14
Non-Consensual Executions per 1000 Homicides	1.41
Non-Consensual Executions per 100,000 Population	0.13
Non-Consensual Executions per 1000 Prison Population	0.91

Demographic Information

Average Population	798,634
Average Homicides	32
Average Homicides/ Average Population	4.02
Average Prison Admissions	370
Average Prison Population	1,102
Percentage Population Non-White	8%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	2
State Court Criminal Caseload per 1000 Population	38.42
Expenditures per Capita on Courts	37.43

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Nebraska, 1975-1995

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	NONE
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	24
Total Number of Executions	1
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	21
Number Reversed on Direct Appeal	6
Percentage Reversed on Direct Appeal	29%
Number Awaiting Direct Appeal	3
Percentage Awaiting Direct Appeal	13%
Number Forward to State Post-Conviction	15

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$2
Percentage Reversed on Post-Conviction	\$13%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$38%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	7
Number Reversed on Habeas Corpus	3
Percentage Reversed on Habeas Corpus	43%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	65% [60%]
Overall Success Rate	35% [40%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	19.00
Average Time from Sentence to Execution	16
Average Time from Sentence to Final Federal Relief	14.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	21.74
Death Sentences per 100,000 Population	1.51
Death Sentences per 1000 Prison Population	12.35
Non-Consensual Executions per 1000 Homicides	0.91
Non-Consensual Executions per 100,000 Population	0.06
Non-Consensual Executions per 1000 Prison Population	0.51

Demographic Information

Average Population	1,585,535
Average Homicides	53
Average Homicides/ Average Population	3.36
Average Prison Admissions	776
Average Prison Population	1,944
Percentage Population Non-White	7%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	32.67
Expenditures per Capita on Courts	28.46

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Nevada, 1975-1995

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	1979
First Non-Consensual Execution	1996

Sentences and Executions

Total Number of Death Sentences	108
Total Number of Executions	5
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	96
Number Reversed on Direct Appeal	29
Percentage Reversed on Direct Appeal	30%
Number Awaiting Direct Appeal	12
Percentage Awaiting Direct Appeal	11%
Number Forward to State Post-Conviction	67

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$5
Percentage Reversed on Post-Conviction	\$8%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$35%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	4
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	50%

Overall Rate Including [and Excluding] State Post-Conviction

Overall Error Rate	68% [65%]
Overall Success Rate	32% [35%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	21
Average Time from Sentence to Execution	2.25
Average Time from Sentence to Final Federal Relief	14.5

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	43.10
Death Sentences per 100,000 Population	10.91
Death Sentences per 1000 Prison Population	28.23
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	952,702
Average Homicides	116
Average Homicides/ Average Population	12.13
Average Prison Admissions	1,564
Average Prison Population	3,826
Percentage Population Non-White	15%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	7.81
Expenditures per Capita on Courts	68.66

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

North Carolina, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1979
First Consensual Execution	1984
First Non-Consensual Execution	1984

Sentences and Executions

Total Number of Death Sentences	271
Total Number of Executions	8
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	218
Number Reversed on Direct Appeal	132
Percentage Reversed on Direct Appeal	61%
Number Awaiting Direct Appeal	53
Percentage Awaiting Direct Appeal	20%
Number Forward to State Post-Conviction	86

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$9
Percentage Reversed on Post-Conviction	\$10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$65%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	11
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	18%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	71% [68%]
Overall Success Rate	29% [32%]

Time

Time From First Death Sentence to First Non-Consensual Execution	7.00
Average Time from Sentence to Execution	9.40
Average Time from Sentence to Final Federal Relief	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	19.08
Death Sentences per 100,000 Population	4.34
Death Sentences per 1000 Prison Population	15.73
Non-Consensual Executions per 1000 Homicides	0.49
Non-Consensual Executions per 100,000 Population	0.11
Non-Consensual Executions per 1000 Prison Population	0.41

Demographic Information

Average Population	6,330,700
Average Homicides	617
Average Homicide Rate per 100,000 Population	10.01
Average Prison Admissions	10,342
Average Prison Population	17,225
Percentage Population Non-White	24%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	55.62
Expenditures per Capita on Courts	25.50

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Oklahoma, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1980
First Consensual Execution	1995
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	220
Total Number of Executions	6
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	192
Number Reversed on Direct Appeal	93
Percentage Reversed on Direct Appeal	48%
Number Awaiting Direct Appeal	28
Percentage Awaiting Direct Appeal	13%
Number Forward to State Post-Conviction	99

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$2
Percentage Reversed on Post-Conviction	\$2%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$50%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	12
Number Reversed on Habeas Corpus	6
Percentage Reversed on Habeas Corpus	50%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	75% [74%]
Overall Success Rate	25% [26%]

Time

Time From First Death Sentence to First Non-Consensual Execution	13.00
Average Time from Sentence to Execution	14.67
Average Time from Sentence to Final Federal Relief	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	39.16
Death Sentences per 100,000 Population	7.06
Death Sentences per 1000 Prison Population	24.07
Non-Consensual Executions per 1000 Homicides	0.89
Non-Consensual Executions per 100,000 Population	0.16
Non-Consensual Executions per 1000 Prison Population	0.55

Demographic Information

Average Population	3,085,645
Average Homicides	264
Average Homicide Rate per 100,000 Population	8.33
Average Prison Admissions	4,213
Average Prison Population	9,138
Percentage Population Non-White	16%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	37.77
Expenditures per Capita on Courts	24.55

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Pennsylvania, 1979-1995

History

First Death Sentence	1979
First Direct Appeal	1981
First Consensual Execution	1995
First Non-Consensual Execution	NONE

Sentences and Executions

Total Number of Death Sentences	274
Total Number of Executions	2
Percentage of Death Sentences Carried Out	1%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	200
Number Reversed on Direct Appeal	56
Percentage Reversed on Direct Appeal	28%
Number Awaiting Direct Appeal	74
Percentage Awaiting Direct Appeal	27%
Number Forward to State Post-Conviction	144

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$1
Percentage Reversed on Post-Conviction	\$1%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$29%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	5
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	40%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	57% [57%]
Overall Success Rate	43% [43%]

Time

Time From First Death Sentence to First Non-Consensual Execution	N/A
Average Time from Sentence to Execution	11.50
Average Time from Sentence to Final Federal Relief	10.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	16.73
Death Sentences per 100,000 Population	2.30
Death Sentences per 1000 Prison Population	17.47
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	11,904,777
Average Homicides	712
Average Homicide Rate per 100,000 Population	5.98
Average Prison Admissions	4,306
Average Prison Population	15,684
Percentage Population Non-White	11%

Court Factors

Political Pressure (judicial elections)	6
Party Competition (gubernatorial elections)	2
State Court Criminal Caseload per 1000 Population	13.40
Expenditures per Capita on Courts	40.17

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

South Carolina, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1979
First Consensual Execution	NONE
First Non-Consensual Execution	1985

Sentences and Executions

Total Number of Death Sentences	138
Total Number of Executions	5
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	119
Number Reversed on Direct Appeal	64
Percentage Reversed on Direct Appeal	54%
Number Awaiting Direct Appeal	19
Percentage Awaiting Direct Appeal	14%
Number Forward to State Post-Conviction	55

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$10
Percentage Reversed on Post-Conviction	\$18%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$62%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	7
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	14%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	67% [60%]
Overall Success Rate	33% [40%]

Time

Time From First Death Sentence to First Non-Consensual Execution	8.00
Average Time from Sentence to Execution	9.40
Average Time from Sentence to Final Federal Relief	8

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	18.20
Death Sentences per 100,000 Population	4.19
Death Sentences per 1000 Prison Population	11.37
Non-Consensual Executions per 1000 Homicides	0.66
Non-Consensual Executions per 100,000 Population	0.15
Non-Consensual Executions per 1000 Prison Population	0.41

Demographic Information

Average Population	3,247,142
Average Homicides	349
Average Homicide Rate per 100,000 Population	10.76
Average Prison Admissions	4,113
Average Prison Population	12,142
Percentage Population Non-White	31%

Court Factors

Political Pressure (judicial elections)	4
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	38.49
Expenditures per Capita on Courts	22.82

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Tennessee, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1979
First Consensual Execution	NONE
First Non-Consensual Execution	2000

Sentences and Executions

Total Number of Death Sentences	141
Total Number of Executions	0
Percentage of Death Sentences Carried Out	0%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	109
Number Reversed on Direct Appeal	32
Percentage Reversed on Direct Appeal	29%
Number Awaiting Direct Appeal	32
Percentage Awaiting Direct Appeal	23%
Number Forward to State Post-Conviction	77

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$13
Percentage Reversed on Post-Conviction	\$17%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$41%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	1
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	100%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	100% [100%]
Overall Success Rate	0% [0%]

Time

Time From First Death Sentence to First Non-Consensual Execution	23
Average Time from Sentence to Execution	N/A
Average Time from Sentence to Final Federal Relief	17

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	14.39
Death Sentences per 100,000 Population	2.98
Death Sentences per 1000 Prison Population	16.18
Non-Consensual Executions per 1000 Homicides	0.00
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	4,676,729
Average Homicides	474
Average Homicide Rate per 100,000 Population	10.13
Average Prison Admissions	3,086
Average Prison Population	8,716
Percentage Population Non-White	17%

Court Factors

Political Pressure (judicial elections)	6
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	16.51
Expenditures per Capita on Courts	26.92

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Texas, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1985
First Non-Consensual Execution	1982

Sentences and Executions

Total Number of Death Sentences	717
Total Number of Executions	104
Percentage of Death Sentences Carried Out	15%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	523
Number Reversed on Direct Appeal	160
Percentage Reversed on Direct Appeal	31%
Number Awaiting Direct Appeal	194
Percentage Awaiting Direct Appeal	27%
Number Forward to State Post-Conviction	363

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$22
Percentage Reversed on Post-Conviction	\$6%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$35%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	139
Number Reversed on Habeas Corpus	36
Percentage Reversed on Habeas Corpus	26%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	52% [49%]
Overall Success Rate	48% [51%]

Time

Time From First Death Sentence to First Non-Consensual Execution	8.00
Average Time from Sentence to Execution	9.12
Average Time from Sentence to Final Federal Relief	6.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	15.16
Death Sentences per 100,000 Population	4.55
Death Sentences per 1000 Prison Population	15.33
Non-Consensual Executions per 1000 Homicides	1.97
Non-Consensual Executions per 100,000 Population	0.59
Non-Consensual Executions per 1000 Prison Population	1.99

Demographic Information

Average Population	15,410,928
Average Homicides	2,056
Average Homicide Rate per 100,000 Population	13.34
Average Prison Admissions	18,229
Average Prison Population	46,774
Percentage Population Non-White	24%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	33.01
Expenditures per Capita on Courts	33.22

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Utah, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1977
First Consensual Execution	1977
First Non-Consensual Execution	1987

Sentences and Executions

Total Number of Death Sentences	25
Total Number of Executions	4
Percentage of Death Sentences Carried Out	16%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	20
Number Reversed on Direct Appeal	7
Percentage Reversed on Direct Appeal	35%
Number Awaiting Direct Appeal	5
Percentage Awaiting Direct Appeal	20%
Number Forward to State Post-Conviction	13

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$3
Percentage Reversed on Post-Conviction	\$23%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$50%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	3
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	33%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	67% [56%]
Overall Success Rate	33% [44%]

Time

Time From First Death Sentence to First Non-Consensual Execution	13.00
Average Time from Sentence to Execution	9.25
Average Time from Sentence to Final Federal Relief	10

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	21.89
Death Sentences per 100,000 Population	1.56
Death Sentences per 1000 Prison Population	14.23
Non-Consensual Executions per 1000 Homicides	1.75
Non-Consensual Executions per 100,000 Population	0.13
Non-Consensual Executions per 1000 Prison Population	1.14

Demographic Information

Average Population	1,561,677
Average Homicides	51
Average Homicide Rate per 100,000 Population	3.28
Average Prison Admissions	575
Average Prison Population	1,757
Percentage Population Non-White	6%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	26.28
Expenditures per Capita on Courts	34.65

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Virginia, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1978
First Consensual Execution/	1982
First Non-Consensual Execution	1984

Sentences and Executions

Total Number of Death Sentences	105
Total Number of Executions	29
Percentage of Death Sentences Carried Out	28%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	100
Number Reversed on Direct Appeal	10
Percentage Reversed on Direct Appeal	10%
Number Awaiting Direct Appeal	5
Percentage Awaiting Direct Appeal	5%
Number Forward to State Post-Conviction	90

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$3
Percentage Reversed on Post-Conviction	\$3%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$13%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	31
Number Reversed on Habeas Corpus	2
Percentage Reversed on Habeas Corpus	6%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	18% [15%]
Overall Success Rate	82% [85%]

Time

Time From First Death Sentence to First Non-Consensual Execution	7.00
Average Time from Sentence to Execution	7.50
Average Time from Sentence to Final Federal Relief	5.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.94
Death Sentences per 100,000 Population	1.82
Death Sentences per 1000 Prison Population	7.62
Non-Consensual Executions per 1000 Homicides	2.46
Non-Consensual Executions per 100,000 Population	0.45
Non-Consensual Executions per 1000 Prison Population	1.89

Demographic Information

Average Population	5,679,425
Average Homicides	482
Average Homicide Rate per 100,000 Population	8.49
Average Prison Admissions	5,526
Average Prison Population	13,783
Percentage Population Non-White	22%

Court Factors

Political Pressure (judicial elections)	2
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	47.32
Expenditures per Capita on Courts	34.60

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Washington, 1977-1995

History

First Death Sentence	1977
First Direct Appeal	1979
First Consensual Execution	1993
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	40
Total Number of Executions	2
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	22
Number Reversed on Direct Appeal	10
Percentage Reversed on Direct Appeal	45%
Number Awaiting Direct Appeal	18
Percentage Awaiting Direct Appeal	45%
Number Forward to State Post-Conviction	12

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	Unknown
Percentage Reversed on Post-Conviction	Unknown
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	Unknown
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	3
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	33%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	[63%]
Overall Success Rate	[37%]

Time

Time From First Death Sentence to First Non-Consensual Execution	17.00
Average Time from Sentence to Execution	7.50
Average Time from Sentence to Final Federal Relief	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	8.37
Death Sentences per 100,000 Population	0.90
Death Sentences per 1000 Prison Population	5.90
Non-Consensual Executions per 1000 Homicides	0.21
Non-Consensual Executions per 100,000 Population	0.02
Non-Consensual Executions per 1000 Prison Population	0.15

Demographic Information

Average Population	4,368,610
Average Homicides	216
Average Homicide Rate per 100,000 Population	4.94
Average Prison Admissions	2,558
Average Prison Population	6,781
Percentage Population Non-White	10%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	19.47
Expenditures per Capita on Courts	40.40

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Wyoming, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1977
First Consensual Execution	NONE
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	30
Total Number of Executions	1
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	9
Number Reversed on Direct Appeal	6
Percentage Reversed on Direct Appeal	67%
Number Awaiting Direct Appeal	21
Percentage Awaiting Direct Appeal	70%
Number Forward to State Post-Conviction	3

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$1
Percentage Reversed on Post-Conviction	\$33%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$78%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	2
Number Reversed on Habeas Corpus	1
Percentage Reversed on Habeas Corpus	50%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	89% [84%]
Overall Success Rate	11% [16%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	18.00
Average Time from Sentence to Execution	11.50
Average Time from Sentence to Final Federal Relief	6.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	58.48
Death Sentences per 100,000 Population	6.44
Death Sentences per 1000 Prison Population	37.57
Non-Consensual Executions per 1000 Homicides	1.95
Non-Consensual Executions per 100,000 Population	0.21
Non-Consensual Executions per 1000 Prison Population	1.25

Demographic Information

Average Population	456,589
Average Homicides	23
Average Homicide Rate per 100,000 Population	5.11
Average Prison Admissions	319
Average Prison Population	799
Percentage Population Non-White	8%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	26.67
Expenditures per Capita on Courts	63.57

Sources: DRCen; DeathRow U.S.A., Winter2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Appendix B: Federal Circuit Court and Regional Capital Punishment Report Cards

This Appendix contains report cards for the nine federal judicial circuits that conducted federal habeas corpus review of state death sentences during the 1973-1995 study period. Most of the information on the report cards serves merely as a regional composite of information generated by state courts or other state actors in the subset of particular states (noted in the title of each report) that are grouped in the circuit. Only the three items—all falling within the “Federal Habeas Corpus” section of each report, and all marked with a number sign (#)—reflect actions exclusively by the federal courts in the relevant circuit. An additional six rows of information (marked with a plus sign (+)) report on a mixture of actions by the relevant state courts *and* the federal courts in the circuit.

The federal circuit court report cards collected here contain seven categories of information:

1. Capital-sentencing history.

In the “History” section has information about the years in which four important capital-sentencing events occurred in the multi-state region following the Supreme Court’s invalidation of all preexisting capital statutes and sentences in *Furman v. Georgia*¹—the state’s first death sentence, first direct appeal, first consensual execution and first non-consensual execution.²

2. Sentences and executions.

This section reports aggregate information about how many death sentences were imposed in the states in the region and how many and what proportion of those death sentences were carried out, during the study period.

3. Error and success rates.

The third section of the report cards identifies, as a composite for the states within the region, (a) the rates

¹See *Report*, p.3.

² On the difference between consensual and non-consensual executions, see *Report* note 31; pp. 32 & note 140, 41; note 208.

of serious error discovered at each level of judicial inspection,³ (b) the overall error rate, meaning the proportion of capital judgments undergoing judicial inspection that were thrown out before reaching the end of the inspection process,⁴ and, conversely, (c) the overall success rate, meaning the proportion of capital judgments found after a full complement of inspections to be *free* of serious error.

4. Length of time of review.

This category of the report card aggregates information for the states within the region on (a) the average number of years it took death sentences to proceed through the three-stage inspection process to execution in the small proportion of cases in which an execution took place, and (b) the average time from death sentence to federal habeas corpus reversal in the minority of cases in which reversal occurred at the third (federal habeas corpus) checkpoint, as opposed to taking place at one of the first two (state court) checkpoints.

5. Capital-sentencing and execution rates.

This part of each regional capital punishment report card answers two questions. First, how often did the states within the region, in the aggregate, impose death sentences? To answer this question, we consider death sentences per 1,000 homicides per 100,000 population, and per 1,000 incarcerated inmates in the jurisdiction. Second, how often (relative to homicides, population and prison population) did the states within the region, in the aggregate, execute offenders? Because we are interested in success and error rates, we consider here only “non-consensual” executions, *i.e.*, ones that were fully reviewed and found free of serious error.⁵

³There are three levels of judicial inspection—state direct appeal, state post-conviction and federal habeas corpus. *See Report*, Part V, pp.18-22.

⁴*See Report*, pp. 4-5 & notes 39, 40.

⁵*See Report*, note 31; pp.32 & n.140, 41; note 208.

6. Demographic information.

The demographic information reported in the sixth report card category reveals the population pools against which each region's number of death sentences and executions are compared to determine the sentencing and execution rates. This part of the report card also provides bases for distinguishing among regions—and thus, potentially, for explaining variations among regions—in terms of the capital-sentence error rates detected on direct appeal and habeas corpus inspection.

“Average population” is the region's yearly average population from 1973 -1995.

“Average homicides” are the total number of homicides in each region from 1973-1995 divided by 23, the number of years in our study .

Homicides per population establishes a region's homicide rate. By “average homicides/average population,” we mean the average number of homicides per year during the study period for every 100,000 persons in the jurisdiction, averaged over the region's population during the study period.

“Average prison admissions” means the average number of persons admitted each year to the region's prisons during the study period.

“Average prison population” means the region's average population over study period.

We also report here the percentage of each region's population that is nonwhite.

**The Third Circuit
(Delaware, Pennsylvania New Jersey Region)**

History

First Death Sentence	1978
First Direct Appeal	1981
First Consensual Execution	1992
First Non-Consensual Execution	1993

Sentences and Executions

Total Number of Death Sentences	343
Total Number of Executions	7
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	261
Number Reversed on Direct Appeal	95
Percentage Reversed on Direct Appeal	36%
Number Awaiting Direct Appeal	82
Percentage Awaiting Direct Appeal	24%
Number Forward to State Post-Conviction	166

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	Unknown
Percentage Reversed on Post-Conviction	Unknown
Number Forward to Federal Habeas Corpus	Unknown

Federal Habeas Corpus

Number Reviewed on Habeas#	7
Number Reversed on Habeas#	2
Percentage Reversed on Habeas#	29%

Overall Rates [Excluding State Post-Conviction]

Overall Error Rate+	[55%]
Overall Success Rate+	[45%]

Time

Average Time from Sentence to Execution#	8.80
Average Time from Sentence to Final Federal Relief#	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	12.64
Death Sentences per 100,000 Population	1.70
Death Sentences per 1000 Prison Population	18.78
NC Executions per 1000 Homicides	0.07
NC Executions per 100,000 Population	0.01
NC Executions per 1000 Prison Population	0.11

Demographic Information

Average Population	20,134,374
Average Homicides	1,180
Average Homicides Rate per 100,000 Population	5.86
Percentage Population Non-White	14%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. Because no state post-conviction information was collected or available for Delaware and New Jersey, information on that stage of the review process is omitted.
5. No New Jersey cases were reviewed on federal habeas corpus during the study period.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

The Fourth Circuit
(Maryland, North Carolina, South Carolina, Virginia Region)

History

First Death Sentence	1979
First Direct Appeal	1980
First Consensual Execution	1982
First Non-Consensual Execution	1984

Sentences and Executions

Total Number of Death Sentences	574
Total Number of Executions	43
Percentage of Death Sentences Carried Out	8%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	494
Number Reversed on Direct Appeal	236
Percentage Reversed on Direct Appeal	48%
Number Awaiting Direct Appeal	80
Percentage Awaiting Direct Appeal	14%
Number Forward to State Post-Conviction	258

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$36
Percentage Reversed on Post-Conviction	\$14%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$55%
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Federal Habeas Corpus

Number Reviewed on Habeas#	52
Number Reversed on Habeas#	8
Percentage Reversed on Habeas#	15%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	62% [56%]
Overall Success Rate+	38% [44%]

Time

Average Time from Sentence to Execution+	7.91
Average Time from Sentence to Final Federal Relief+	8.04

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	13.10
Death Sentences per 100,000 Population	2.89
Death Sentences per 1000 Prison Population	10.14
NC Executions per 1000 Homicides	0.87
NC Executions per 100,000 Population	0.19
NC Executions per 1000 Prison Population	0.67

Demographic Information

Average Population	19,832,227
Average Homicides	1,905
Average Homicides Rate per 100,000 Population	9.61
Average Prison Population	56,630
Percentage Population Non-White	25%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

**The Fifth Circuit
(Louisiana, Mississippi, Texas Region)**

History

First Death Sentence	1977
First Direct Appeal	1978
First Consensual Execution	1985
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	1013
Total Number of Executions	130
Percentage of Death Sentences Carried Out	13%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	772
Number Reversed on Direct Appeal	295
Percentage Reversed on Direct Appeal	38%
Number Awaiting Direct Appeal	241
Percentage Awaiting Direct Appeal	24%
Number Forward to State Post-Conviction	477

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$37
Percentage Reversed on Post-Conviction	\$8%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$43%
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Federal Habeas Corpus

Number Reviewed on Habeas#	200
Number Reversed on Habeas#	63
Percentage Reversed on Habeas#	32%

Overall Success Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	61% [58%]
Overall Success Rate+	39% [42%]

Time

Average Time from Sentence to Execution+	8.28
Average Time from Sentence to Final Federal Relief+	7.05

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	14.64
Death Sentences per 100,000 Population	4.51
Death Sentences per 1000 Prison Population	15.09
NC Executions per 1000 Homicides	1.72
NC Executions per 100,000 Population	0.53
NC Executions per 1000 Prison Population	1.77

Demographic Information

Average Population	22,473,577
Average Homicides	3,009
Average Homicides Rate per 100,000 Population	13.39
Average Prison Population	67,151
Percentage Population Non-White	27%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

**The Sixth Circuit
(Kentucky, Ohio, Tennessee Region)**

History

First Death Sentence	1978
First Direct Appeal	1980
First Consensual Execution	N/A
First Non-Consensual Execution	N/A

Sentences and Executions

Total Number of Death Sentences	391
Total Number of Executions	0
Percentage of Death Sentences Carried Out	0%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	284
Number Reversed on Direct Appeal	87
Percentage Reversed on Direct Appeal	31%
Number Awaiting Direct Appeal	107
Percentage Awaiting Direct Appeal	27%
Number Forward to State Post-Conviction	197

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	Unknown
Percentage Reversed on Post-Conviction	Unknown
Number Forward to Federal Habeas Corpus	Unknown

Federal Habeas Corpus

Number Reviewed on Habeas#	2
Number Reversed on Habeas#	2
Percentage Reversed on Habeas#	100%

Overall Rates [Excluding State Post-Conviction]

Overall Error Rate+	[100%]
Overall Success Rate+	[0%]

Time

Average Time from Sentence to Execution+	N/A
Average Time from Sentence to Final Federal Relief+	13

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	11.46
Death Sentences per 100,000 Population	2.03
NC Executions per 1000 Homicides	0.00
NC Executions per 100,000 Population	0.00
NC Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	19,255,663
Average Homicides	1,484
Average Homicides Rate per 100,000 Population	7.71
Percentage Population Non-White	12%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. Because no state post-conviction information was collected or available for Kentucky and Ohio, information on that stage of the review process is omitted.
5. No Ohio cases were review on federal habeas corpus during the study period.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

**The Seventh Circuit
(Illinois, Indiana Region)**

History

First Death Sentence	1977
First Direct Appeal	1980
First Consensual Execution	1981
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	352
Total Number of Executions	10
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	297
Number Reversed on Direct Appeal	110
Percentage Reversed on Direct Appeal	37%
Number Awaiting Direct Appeal	55
Percentage Awaiting Direct Appeal	16%
Number Forward to State Post-Conviction	187

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$22
Percentage Reversed on Post-Conviction	\$12%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$44%
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Federal Habeas Corpus

Number Reviewed on Habeas#	14
Number Reversed on Habeas#	6
Percentage Reversed on Habeas#	43%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	68% [64%]
Overall Success Rate+	32% [36%]

Time

Average Time from Sentence to Execution+	10.90
Average Time from Sentence to Final Federal Relief+	10.92

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.95
Death Sentences per 100,000 Population	2.07
Death Sentences per 1000 Prison Population	11.74
NC Executions per 1000 Homicides	0.20
NC Executions per 100,000 Population	0.04
NC Executions per 1000 Prison Population	0.23

Demographic Information

Average Population	16,991,933
Average Homicides	1,538
Average Homicides Rate per 100,000 Population	9.05
Average Prison Population	29,978
Percentage Population Non-White	16%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

**The Eighth Circuit
(Arkansas, Missouri, Nebraska Region)**

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1990
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	248
Total Number of Executions	29
Percentage of Death Sentences Carried Out	12%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	201
Number Reversed on Direct Appeal	56
Percentage Reversed on Direct Appeal	28%
Number Awaiting Direct Appeal	47
Percentage Awaiting Direct Appeal	19%
Number Forward to State Post-Conviction	145

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$7
Percentage Reversed on Post-Conviction	\$5%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$31%
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Federal Habeas Corpus

Number Reviewed on Habeas#	58
Number Reversed on Habeas#	19
Percentage Reversed on Habeas#	33%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	54% [52%]
Overall Success Rate+	46% [48%]

Time

Average Time from Sentence to Execution+	9.88
Average Time from Sentence to Final Federal Relief+	9.79

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	14.24
Death Sentences per 100,000 Population	2.57
Death Sentences per 1000 Prison Population	14.10
NC Executions per 1000 Homicides	1.49
NC Executions per 100,000 Population	0.27
NC Executions per 1000 Prison Population	1.48

Demographic Information

Average Population	9,652,569
Average Homicides	757
Average Homicides Rate per 100,000 Population	7.84
Average Prison Population	17,592
Percentage Population Non-White	12%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

The Ninth Circuit
(Arizona, California, Idaho, Montana, Nevada, Oregon, Washington Region)

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1979
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	1028
Total Number of Executions	15
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	683
Number Reversed on Direct Appeal	259
Percentage Reversed on Direct Appeal	38%
Number Awaiting Direct Appeal	345
Percentage Awaiting Direct Appeal	34%
Number Forward to State Post-Conviction	298

State Post-Conviction [Excluding Oregon and Washington]

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$24
Percentage Reversed on Post-Conviction	\$8%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$41%
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Federal Habeas Corpus

Number Reviewed on Habeas#	34
Number Reversed on Habeas#	21
Percentage Reversed on Habeas#	62%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	78% [76%]
Overall Success Rate+	22% [24%]

Time

Average Time from Sentence to Execution+	9.75
Average Time from Sentence to Final Federal Relief+	10.05

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	11.86
Death Sentences per 100,000 Population	2.60
NC Executions per 1000 Homicides	0.07
NC Executions per 100,000 Population	0.02
NC Executions per 1000 Prison Population	0.07

Demographic Information

Average Population	39,600,622
Average Homicides	3,770
Average Homicides Rate per 100,000 Population	9.52
Percentage Population Non-White	21%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. No state post-conviction information was available or collected for Oregon and Washington.
5. No Oregon cases were reviewed on federal habeas corpus during the study period.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

The Tenth Circuit
(Colorado, New Mexico, Oklahoma, Utah, Wyoming Region)

History

First Death Sentence	1975
First Direct Appeal	1980
First Consensual Execution	1977
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	301
Total Number of Executions	11
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	237
Number Reversed on Direct Appeal	115
Percentage Reversed on Direct Appeal	49%
Number Awaiting Direct Appeal	64
Percentage Awaiting Direct Appeal	21%
Number Forward to State Post-Conviction	122

State Post-Conviction [Excluding Colorado and New Mexico]

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$6
Percentage Reversed on Post-Conviction	\$5%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$51%
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Federal Habeas Corpus

Number Reviewed on Habeas#	17
Number Reversed on Habeas#	8
Percentage Reversed on Habeas#	47%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	74% [73%]
Overall Success Rate+	26% [27%]

Time

Average Time from Sentence to Execution+	11.54
Average Time from Sentence to Final Federal Relief+	9.88

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	19.76
Death Sentences per 100,000 Population	3.09
NC Executions per 1000 Homicides	0.53
NC Executions per 100,000 Population	0.08
NC Executions per 1000 Prison Population	0.68

Demographic Information

Average Population	9,753,867
Average Homicides	662
Average Homicides Rate per 100,000 Population	6.79
Percentage Population Non-White	14%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. No state post-conviction information was collected or available for New Mexico and Colorado
5. No New Mexico or Colorado cases were reviewed on federal habeas corpus during the study period.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

**The Eleventh Circuit
(Alabama, Florida, Georgia Region)**

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	1993
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	1503
Total Number of Executions	68
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	1327
Number Reversed on Direct Appeal	627
Percentage Reversed on Direct Appeal	47%
Number Awaiting Direct Appeal	176
Percentage Awaiting Direct Appeal	12%
Number Forward to State Post-Conviction	700

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	\$85
Percentage Reversed on Post-Conviction	\$12%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	\$54%
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Federal Habeas Corpus

Number Reviewed on Habeas#	215
Number Reversed on Habeas#	108
Percentage Reversed on Habeas#	50%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	77% [74%]
Overall Success Rate+	23% [26%]

Time

Average Time from Sentence to Execution+	9.52
Average Time from Sentence to Final Federal Relief+	8.82

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	26.97
Death Sentences per 100,000 Population	7.09
Death Sentences per 1000 Prison Population	23.88
NC Executions per 1000 Homicides	1.20
NC Executions per 100,000 Population	0.32
NC Executions per 1000 Prison Population	1.06

Demographic Information

Average Population	21,190,210
Average Homicides	2,423
Average Homicides Rate per 100,000 Population	11.44
Average Prison Population	62,947
Percentage Population Non-White	23%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen

Appendix C: Incomplete List of Capital Judgments Reversed on State Post-Conviction and Related Types of Review

Introduction and Key

This Appendix contains an *incomplete* list of the capital cases in which state post-conviction relief was granted between 1973 and April 2000. The list is incomplete because many state post-conviction decisions (whether or not relief was granted) are not published, and information on some of them is not available except by a search—beyond our capacity—of the records of each of thousands of local, intermediate and statewide courts throughout the United States with potential jurisdiction over capital state post-conviction cases.

Because we only collected information about *reversals*, this list does not permit an accurate count of the proportion of capital judgments *finally reviewed* by state post-conviction courts during the study period that were affirmed or reversed. As we now explain, however, it *is* possible to use our data to make a different calculation that can serve as an extremely conservative estimate of the state post-conviction reversal rate.

From our direct appeal study, we can determine the number of capital judgments that “cleared” state direct review during the study period and thus were available for state post-conviction review. We also know that nearly all capital judgments that “clear” direct appeal go on to be reviewed by a state post-conviction court. *See Report*, pp. 19-20. Obviously, a sizeable number of capital judgments that “cleared” direct appeal and were subjected to state post-conviction review during the study period were pending in front of, and had not yet been finally reviewed by, state post-conviction courts as of the end of the study *See Report*, at note 132. But because we do not know how *many* cases were in that posture, we are forced to compute the number of capital judgments that were reversed during the study period due to serious error as a percentage of the state post-conviction cases that were *available* to be reviewed (whether or not they were *actually* decided). In this Report, we accordingly use that calculation—the number of known state post-conviction reversals of capital judgments taken as a proportion of all capital judgments *available* for state post-conviction review (available in the sense that they had cleared state direct appeal)—as a very conservative proxy for (meaning as a number that is reliably equal to or (in most cases) *lower than*) the number we actually are interested in, namely, the number of known reversals taken as a proportion of the capital judgments *actually reviewed* on state post-conviction.

The data in this Appendix were collected during April 2000. Multiple capital attorneys in each of the 28 states on which this study focuses (states in which at least one capital judgment was reviewed on federal habeas corpus between 1973 and 1995) were asked to report all known cases within their state in which capital judgments were overturned during state post-conviction proceedings since 1973, and to provide as much information as was available about: (1) the name of the capital prisoner granted state post-conviction relief, (2) the citation of, or other identifying information about, the decision granting relief, (3) the date of the decision, (4) the reason for the reversal, and (4) the outcome on retrial of the conviction or sentence. We received information from 26 of the 28 states (all but Delaware and Washington). In all cases, the reporting attorney cautioned that the list was, or may be, incomplete. Where possible, using the national reporter system and Westlaw, the information provided was verified and supplemented. Also verified were all unpublished decisions from Nevada (as to which the relevant unpublished opinions were provided); unpublished decisions from Arizona and Texas, as to which a Westlaw newspaper search and information available from the state departments of corrections was used; and a few additional unpublished

cases where secondary sources (which are cited in the list below, *see, e.g.*, the *Knapp* case in Arizona) were available. Other unreported information has not been verified, although in most instances, we have identified the case sufficiently to permits verification using local court records—a task for future research.

Included in this list are all decisions we were able to identify in which capital convictions or death sentences were set aside during the pendency of state post-conviction proceedings based on legal error with the concurrence of some state official, including state trial and appellate judges, district attorneys and state attorneys general (*e.g.*, in confessing error and agreeing to a new trial or a lesser sentence), and governors (*e.g.*, through commutation mechanisms that were used for the specific purpose of providing remedies for legal error).

Reported via a citation, a short narrative description, and a variety of notations explained in the “Key” below, are the case name, date (including whether or not the case fell within the study period), the reason for reversal, if known, and the outcome of the case on retrial following reversal, if known. Unless otherwise specified, references to the “trial court” are to the trial-level court with responsibility for deciding state post-conviction petitions in the first instance.

Key:

Timing: * = Decided after study period (1996 or after). All other cases were decided during the study period.

Basis for Relief:

- IAC = ineffective assistance of counsel
- PSE = prosecutorial suppression of evidence
- PM = other prosecutorial or law enforcement misconduct
- I = unconstitutional jury instructions
- JB = judge or juror bias
- O = other basis for relief
- UK = unknown basis for relief

Result on Retrial:

- L = a sentence less than death was imposed, either based on the original conviction of capital murder or based on a new conviction of capital or some lesser degree of murder
- NG = on retrial, the individual was found not guilty of capital or any other degree of murder—by judicial or jury verdict, dismissal of the charges, the dropping of charges, a formal pardon, or the like
- D = new death sentence imposed, either based on the original conviction of capital murder or based on a new conviction of capital murder
- RP = retrial pending
- DW = died while awaiting a new trial
- ? = outcome on retrial unknown

Summary of National Composite Results

Reversals pre-1996: 248

Reversals 1996 and after: 94 (over 52 months = average of 22/year)

Total reversals (1973- Apr. 2000): 342

Basis for Relief:

Total: 342 (1973 - Apr. 2000)

Total Known: 289

IAC = 107* (37% of known)

PSE = 46* (16% of known)

PM = 10 (3% of known)

PSE/PM = 56 (19% of known)

IAC/PSE/PM = 161* (56% of known)

JB = 12 (4% of known)

I = 57 (20% of known)

O = 59 (21% of known)

UK = 53

* Note: in two cases, the basis for relief was both IAC and PSE.

Result on Retrial:

Total: 342 (1973 - Apr. 2000)

Total Known (total minus RP, DW and ?) = 301

L = 225 (75% of known)

NG = 22 (7% of known)

L/NG=247 (82% of known)

D = 54 (18% of known)

RP = 37

DW = 1

? = 3

ALABAMA

Jimmy Wayne Davis v. State (Talladega Cnty. Cir. Ct., Case No. 90-086, Dec. 15, 1995) (during pendency of state post-conviction petition raising ineffective assistance of counsel claims, among others, and following state supreme court's order requiring trial counsel to submit to deposition based on substantial showing of ineffective assistance, *see Ex parte Davis*, 628 So.2d 530 (Ala. 1993), state agreed to withdrawal of death sentence and imposition of sentence of life in prison without parole) [IAC, L]

Ex parte Floyd, 571 So.2d 1234 (Ala. 1990) (conviction overturned because prosecutor intentionally discriminated against African American jurors by using his first 11 (of 12) peremptory challenges to strike all 11 African-Americans in the jury venire; resentenced to life) [PM, L]

State v. Freeman, 605 So.2d 1258 (Ala. Crim. App. 1992) (conviction and death sentence overturned by trial court due to jury foreman's prejudicially inaccurate and incomplete answers under oath to questions about bias during jury selection process; resentenced to life) [JB, L]

Johnny Harris v. State (Baldwin Cnty. Cir. Ct., Case No. 6699, July 1, 1981) (conviction and death sentence reversed on writ of error coram nobis because state failed to disclose evidence impeaching one of its principal witnesses at Harris' trial and because an exculpatory defense witness was unavailable at the time of Harris' trial; proceedings are described in a subsequent opinion reviewing a death sentence imposed on retrial, *see Harris v. State*, 552 So.2d 857 (Al. Crim. App. 1989)) [PSE, D]

Jefferson v. State, 645 So. 2d 313 (Ala. Crim. App. 1994) (conviction and death sentence overturned because state withheld exculpatory evidence that someone other than the defendant committed the crime and that seriously impeached the credibility of two key prosecution witnesses; resentenced to life) [PSE, L]

Frederick Lynn v. State (Barbour Cnty. Cir. Ct., Case No. 83-18, Mar. 12, 1992) (during pendency of state post-conviction proceeding, state agreed to withdrawal of death sentence and imposition of life sentence; proceedings are described in subsequent opinion in *Lynn v. State*, 629 So.2d 89 (Ala. Crim. App. 1993)) [UK, L]

Walter McMillian v. State, 616 So. 2d 933 (Ala. Crim. App. 1993) (conviction and death sentence overturned because state suppressed exculpatory evidence impeaching its principal witness (who subsequently recanted) and failed to disclose evidence creating a reasonable probability that the outcome of the guilt-innocence trial would have been different had the evidence been disclosed; petitioner was subsequently released from custody for lack of any evidence of guilt) [PSE, NG]

Philip Musgrove v. State (Madison Cnty. Cir. Ct., Case No.83-1976.60L, Mar. 22, 1989) (conviction and death sentence overturned by trial court; resentenced to life) [UK, L]

Hamilton v. State, 677 So.2d 1254 (Ala. Crim. App. 1995) (conviction overturned because the prosecutor permitted the state's principal witness to perjure himself, withheld other exculpatory evidence, and committed other forms of misconduct and because Hamilton's lawyer was egregiously ineffective; on retrial, Hamilton was convicted of a lesser offense and sentenced to a 20-year term) [PSE, L]

**Judy Haney v. State* (Talladega Cnty. Cir. Ct., Case No. 87-559, Oct. 9, 1997) (during pendency of state post-conviction proceeding, state agreed to withdrawal of death sentence and imposition of life sentence) [UK, L]

Darryl Watkins v. State, 659 So.2d 689 (Ala. Crim. App. 1995) (during pendency of state post-conviction appeal, the prosecutor requested that the sentence of death imposed in the case be set aside and that Watkins be resentenced to life; the trial court approved the settlement, and the appeal was dismissed as moot) [UK, L]

Ex parte Womack, 541 So. 2d 47 (Ala. 1988) (conviction and death sentence overturned because state (1) misrepresented that it had no plea bargain or other arrangement with the key witnesses against Womack at the time of trial, (2) knowingly suppressed a variety of evidence that the state's own witness may have been guilty of the crime in question, (3) withheld police reports revealing inconsistencies between key witnesses' testimony and their statements to the grand jury, (4) suppressed evidence of witness's attempt to recant grand jury testimony implicating Womack in the crime; conviction and sentence overturned, as well, because Womack received ineffective assistance of counsel when his own attorney took the stand and testified against him; resentenced to life) [PSE (also IAC), L]

Pre-1996: 11

1996 and after: 1

Basis for Relief: IAC = 1; PSE = 5; PM = 1; JB = 1; UK = 4

Result on Retrial: L = 10; NG = 1; D = 1

ARIZONA

State v. Britson (Pima Cnty. Super. Ct.) (sometime between 1981 and 1988, as described in subsequent opinion reviewing subsequent (noncapital) criminal judgment, *Britson v. Lewis*, 1988 WL 131765 (9th Cir. Nov. 29, 1988), trial court on third state post-conviction petition overturned death sentence based on ineffective assistance of counsel at the penalty phase, and a life sentence was imposed) [IAC, L]

State v. Carriger, 645 P.2d 816 (Ariz. 1982) (death sentence overturned due to ineffective assistance of trial counsel who acted as “neutral observer,” not zealous advocate; Carriger was resentenced to death, although he ultimately was granted federal habeas relief and was released from custody) [IAC, D]

State v. Michael Davis (Pima Cnty. Super. Ct. 1994) (conviction overturned due to ineffective assistance of counsel; resentenced to life; see Ariz. Republic, June 5, 1994, 1994 WL 6392862, and Tucson Citizen, 1994 WL 7831897) [IAC, L]

State v. Fisher, 859 P.2d 179 (Ariz.1993) & 730 P.2d 825 (Ariz. 1986) (conviction overturned based on ineffective assistance of counsel and state’s premising plea bargain with principal witness against Fisher upon her giving testimony specified by the state; Fisher not thereafter returned to death row) [IAC & PSE, L]

State v. Jordan, 672 P.2d 169 (Ariz. 1983) & 697 P.2d 323 (Ariz. 1985) (death sentence overturned due to trial court’s improper intervention in plea negotiations; life sentence imposed on retrial) [O, L]

**State v. Alvie Kiles* (Yuma Cnty. Super. Ct. Nos. C-15444, C-15577, Nov. 7, 1996) (conviction overturned due to ineffective assistance of trial and appellate counsel; retrial pending) [IAC, RP]

State v. Knapp (Pima Cnty. Super. Ct. 1987) (conviction and death sentence overturned in 1987 on third state post-conviction petition due to newly discovered scientific evidence of innocence and police and prosecutorial misconduct, as described in *Knapp v. Knapp*, 823 P.2d 685 (Ariz. 1992); in 1992, Knapp was released as innocent, as detailed in Roger Parloff, *Triple Jeopardy* (1996)) [PSE, NG]

State v. Schad, 691 P.2d 710 (Ariz. 1984) (conviction overturned due to failure to instruct jury on crucial elements of first-degree murder; resentenced to death) [I, D]

State v. Serna (Maricopa Cnty. Super. Ct. No. 150464, 1994) (conviction overturned due to prosecutor’s obstruction of defense’s ability to find exculpatory witness; on retrial, state offered and Serna accepted a guilty plea to manslaughter, after which he was sentenced to time served and was released from prison, see *From Death Row to Halfway House*, Phoenix Gazette, Jan. 24, 1995, at B1, 1995 WL 2752207) [PSE, NG]

State v. Roger Smith (Maricopa Cnty. Super. Ct. 1992) (during state post-conviction proceedings, state agreed to life sentence in return for Smith’s dropping his post-conviction challenge to his conviction, see Ariz. Republic/Phoenix Gazette, July 8, 1992, at B1, 1992 WL 8259715) [UK, L]

State v. Sylvester Smith (Maricopa Cnty. Super. Ct. No. 101738, 1990) (death sentence replaced with life sentence upon determination that Smith’s mental condition made him undeserving of a death sentence, see Phoenix Gazette, Mar. 25, 1991, 1991 WL 5982744) [O, L]

State v. Raymond Tison, 774 P.2d 805 (Ariz. 1989) (death sentence reversed because sentencer previously failed to determine that defendant had sufficient culpability to justify death penalty under Eighth Amendment; resentenced

to life, *see Tucson Citizen*, Jan. 23, 1997, at 1, 1997 WL 5866500)) (on remand from *Tison v. Arizona*, 481 U.S. 137 (1987)) [O, L]

State v. Ricky Tison, 774 P.2d 805 (Ariz. 1989) (death sentence reversed because sentencer previously failed to determine that defendant had sufficient culpability to justify death penalty under Eighth Amendment; resentenced to life, *see Tucson Citizen*, Jan. 23, 1997, at 1, 1997 WL 5866500)) (on remand from *Tison v. Arizona*, 481 U.S. 137 (1987)) [O, L]

State v. White (Yavapai Cnty. Super. Ct. No. 101738, 1990) (death sentence overturned due to ineffective assistance of counsel, as described in subsequent opinion reviewing the death sentence that was imposed on retrial, *see State v. White*, 982 P.2d 819 (Ariz. 1991)) [IAC, D]

**State v. Willoughby* (Maricopa Cnty Super. Ct., No. CR 91-10184, Nov. 1999) (conviction overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

Pre-1996: 12

1996 and after: 3

Basis for Relief: IAC = 6; PSE = 2; IAC & PSE = 1; I = 1, O = 4, UK = 1

Result on Retrial: L = 8; NG = 2; D = 3; RP = 2

ARKANSAS

Neal v. State, 623 S.W.2d 191 (Ark. 1981) (death sentence overturned and life sentence imposed by state supreme court based on ineffective assistance at sentencing phase) [IAC; L]

**Sheridan v. State*, 959 S.W.2d 29 (Ark. 1998) (conviction overturned due to representation by attorney with blatant conflict of interest; resentenced to life) [IAC, L]

Adrian Tisdale (conviction overturned due to ineffective assistance of 90-year-old trial attorney who died immediately after defendant's trial; life sentence imposed on retrial, see *Tisdale v. State*, 843 S.W.2d 803 (Ark. 1993)) [IAC, L]

Pre-1996: 2

1996 and after: 1

Basis for Relief: IAC = 3

Result on Retrial: L = 3

CALIFORNIA

**In re Brown*, 17 Cal.4th 873 (1998) (conviction and death sentence overturned due to prosecutorial suppression of exculpatory evidence; resentenced to death) [IAC, D]

**In re Gay*, 19 Cal.4th 771 (1998) (death sentence overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

In re Hitchings, 6 Cal.4th 97 (1993) (conviction and death sentence overturned due to juror misconduct; Hitchings pled to lesser offense and sentence) [JB, L]

**In re Jones*, 13 Cal.4th 552 (1996) (conviction and sentence overturned due to ineffective assistance of counsel; Jones subsequently was released in lieu of retrial) [IAC, NG]

In re Marquez, 1 Cal.4th 584 (1992) (death sentence overturned due to ineffective assistance of counsel; Marquez was not thereafter returned to death row) [IAC, L]

Oscar Morris (after having death sentence overturned on direct appeal in 1988, Morris had his capital conviction overturned by the L.A. Superior Court in a state post-conviction proceeding; outcome unknown) [UK, ?]

In re Neely, 6 Cal.4th 901 (1993) (conviction overturned due to ineffective assistance of counsel; on retrial, Neely received a life sentence) [IAC, L]

In re Sixto, 48 Cal.3d 1247 (1989) (conviction overturned based on ineffective assistance of counsel; lesser sentence imposed on retrial) [IAC, L]

In re (Laird) Stankewitz, 40 Cal.3d 391 (1985) (conviction overturned due to juror misconduct; lesser sentence imposed on retrial) [JB, L]

In re Wilson, 3 Cal.4th 945 (1992) (conviction overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

pre-1996: 7

1996 and after: 3

Basis for Relief: IAC = 7; JB = 2; UK = 1

Result on Retrial: L = 5; NG = 1; D = 2; RP = 1; ? = 1

DELAWARE [No available information]

FLORIDA [all defendants resentenced to sentence less than death unless otherwise indicated]

Arango v. State, 467 So.2d 692 (Fla. 1985) (conviction overturned due to prosecutorial suppression of evidence of innocence; resentenced to death) [PSE, D]

Arango v. State, 497 So.2d 1161 (Fla. 1986) (second conviction overturned due to prosecutorial suppression of exculpatory evidence supporting Arango's defense that someone else committed the offense) [PSE, L]

Barclay v. State, 470 So.2d 691 (Fla. 1985) (new appeal granted due to ineffective assistance of counsel and conflict of interest on appeal; on new appeal, supreme court reduces death sentence to life) [IAC, L]

Bassett v. State, 541 So.2d 596 (Fla. 1989) (death sentence overturned due to ineffective assistance of counsel in failing to discover and present mitigating evidence) [IAC, L]

Bates v. Dugger, 604 So.2d 457 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel; death sentence imposed on retrial) [IAC, D]

**Mauricio Beltran-Lopez v. State*, Dade Cnty. Cir. Ct. (Jan. 12, 1999) (during pendency of state post-conviction petition for relief in trial court based on evidence of prosecutorial suppression of evidence and ex parte contacts with trial court on sentencing, state offers and Beltran-Lopez accepts life sentence in return for dropping his claims) [PSE, L]

Larry Brown v. State, Pinellas Cnty Cir. Ct. (Feb. 18, 1994) (on remand for an evidentiary hearing on ineffective assistance of counsel as ordered by *Brown v. State*, 596 So.2d 1026 (Fla. 1992), state agrees to a sentence less than death) [IAC, L]

Burr v. State, 576 So.2d 278 (Fla. 1990) (death sentence overturned due to sentencer's reliance on alleged but unconvicted offenses as aggravating circumstances) [O, L]

**Clark v. State*, 690 So.2d 1280 (Fla. 1997) (death sentence overturned due to ineffective assistance of counsel at the sentencing trial) [IAC, L]

Combs v. State, 525 So.2d 853 (Fla.1988) (death sentence overturned due to improper and prejudicial instruction barring jury from considering mitigating circumstances) [I, L]

Cooper v. Dugger, 526 So.2d 900 (Fla.1988) (same as *Combs*; resentenced to death) [I, D]

Copeland v. Dugger, 565 So.2d 1348 (Fl. 1990) (same as *Combs*) [I, L]

Deaton v. Dugger, 635 So.2d 4 (Fla. 1993) (death sentence overturned due to ineffective assistance of counsel and improper instruction at sentencing hearing) [IAC, L]

Dougan v. Wainwright, 448 So.2d 1005 (Fla. 1984) (conviction overturned due to ineffective assistance on appeal; death sentence imposed on retrial) [IAC, D]

Downs v. Dugger, 514 So.2d 1069 (Fla.1987) (same as *Combs*) [I, D]

Gregory Engle v. State (Duval Cnty. Cir. Ct. July 27, 1993) (on remand ordered by *Engle v. State*, 576 So.2d 696 (Fla. 1991) to permit filing of new post-conviction petition following state's compliance with law requiring disclosure of potentially exculpatory evidence in state's file, prosecution agrees to a sentence less than death) [PSE, L]

**Henry Espinosa*, Dade Cnty. Cir. Ct. (Jan. 12, 1999) (during pendency of state post-conviction petition for relief in trial court based on evidence of prosecutorial suppression of evidence and ex parte contacts with trial court on sentencing, state offers and Espinosa accepts life sentence in return for dropping his claims) [PSE, L]

Foster v. State, 518 So.2d 901 (State 1987) (same as *Combs*; death sentence imposed on retrial) [I, D]

Garcia v. State, 622 So.2d 1325 (Fla. 1993) (death sentence overturned due to state's suppression of witness statement that Garcia was not the shooter and state's closing argument identifying Garcia as the shooter and due to ineffective assistance of counsel) [IAC & PSE, L]

Gorham v. State, 597 So.2d 782 (Fla. 1992) (conviction overturned due to prosecutorial suppression of evidence impeaching its principal witness; reconvicted of lesser offense) [PSE, L]

**State v. Alfonso Green* (Hillsborough County, 13th Judicial Circuit, May 2000, No. 86-14233) (on eve of state post-conviction hearing, state stipulated to an order, entered by the judge, finding ineffective assistance of counsel at sentencing, overturning the death sentence, and requiring a new sentencing trial; retrial pending) [IAC, RP]

Frank Griffin v. State (Dade Cnty. Cir. Ct. Aug. 14, 1991) (during pendency of state post-conviction petition and upon trial court's suggestion that counsel "work out" the case, state agrees to sentence less than death; state stipulated to relief based on prosecutorial suppression of evidence and incompetent lawyering) [IAC & PSE, L]

Kenneth Griffin v. State (Bradford Cnty. Cir. Ct. Apr. 28, 1993) (following filing of state post-conviction petition alleging prosecutorial suppression of evidence and other misconduct and newly discovered evidence, state agrees to sentence less than death) [PSE, L]

**Gunsby v. State*, 670 So.2d 920 (Fla. 1996) (new trial required due to cumulative effect of ineffective assistance of counsel in failing to discover exculpatory evidence that Gunsby was not the perpetrator, and the state's suppression of the fact that two of its crucial witnesses testified against Gunsby only after being promised lenient treatment in their own criminal cases; state did not seek death sentenced on retrial and life sentence was imposed upon reconviction) [IAC & PSE, L]

Hall v. State, 541 So.2d 1125 (Fla.1989) (same as *Combs*; resentenced to death) [I, D]

Harvard v. State, 486 So.2d 537 (Fla. 1986) (death sentence overturned due to trial court's refusal to consider nonstatutory mitigating circumstances) [O, L]

Tony Hayes v. State (Volusia Cnty. Cir. Ct. June 6, 1995) (death sentence overturned and, in August 1995, state agreed to a sentence less than death) [UK, L]

Heiney v. State, 620 So.2d 171 (Fla. 1993) (death sentence overturned due to ineffective assistance at sentencing phase for failure to investigate and discover mitigating evidence) [IAC, L]

Hildwin v. Dugger, 654 So.2d 107 (Fla. 1995) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

Hill v. State, 473 So.2d 1253 (Fla. 1985) (conviction overturned due to trial court's failure to hold hearing on Hill's competency to stand trial, despite substantial evidence that defendant, who was retarded and subject to grand mal seizures, was incompetent to plead guilty) [O, L]

Holmes v. State, 429 So.2d 297 (Fla. 1983) (death sentence overturned due to ineffective assistance of counsel at the penalty phase) [IAC, L]

Hudson v. State, 614 So.2d 482 (Fla. 1993) (death sentence overturned due to ineffective assistance of counsel at the penalty phase; death sentence imposed on retrial) [IAC, D]

Clarence Jackson v. State (Hillsborough Cnty. Cir. Ct. Sept. 14, 1991) (state stipulated to life sentence on eve of evidentiary hearing on state post-conviction petition; state stipulated to relief based on ineffective assistance of counsel, then stipulated to life sentence in return for Jackson's agreement to drop his claim of prosecutorial suppression of evidence) [IAC, L]

Nathaniel Jackson v. State (Pinellas Cnty. Cir. Ct. Oct. 29, 1991) (state stipulated to life sentence three years after the filing of a state post-conviction petition) [UK, L]

Eligaah Jacobs v. State (Pasco Cnty. Cir. Ct. July 30, 1986) (death sentence overturned; state stipulated to relief based on incompetent lawyering at penalty trial) [IAC, L]

James v. State, 615 So.2d 668 (Fla. 1993) (death sentence overturned due to improper instruction on unconstitutionally vague aggravating circumstance) [I, L]

Daniel Karr Johnson v. State (Clay Cnty. Cir. Ct. Aug. 4, 1988) (state offers and defendant accepts plea to life sentence after trial overturns conviction; order imposing new sentence gives incompetent lawyering as basis for relief) [IAC, L]

Paul Johnson v. Wainwright, 490 So.2d 938 (Fla. 1986) (conviction overturned due to ineffective assistance of counsel on appeal; death sentence imposed on retrial) [IAC, D]

**Jones v. State*, 740 S0.2d 520 (Fla. 1999) (conviction overturned because Jones was incompetent to stand trial; retrial pending) [O, RP]

Lara v. State, 581 So.2d 1288 (Fla. 1991) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing; resentenced to death) [IAC, D]

Leduc v. State, (Okaloosa Cnty. Cir. Ct.) (conviction overturned by trial court on remand, which was ordered by *Leduc v. State*, 415 So.2d 721 (Fla. 1982), for evidentiary hearing on claims of ineffective assistance of counsel and consequently involuntary guilty plea) [IAC, L]

Lemon v. State (Polk Cnty. Cir. Ct. Sept. 22, 1988) (conviction overturned by trial court following remand for evidentiary hearing in *Lemon v. State*, 498 So.2d 923 (Fla. 1986); remand order from Florida Supreme Court states that sole issue on remand, on which relief was granted, was ineffective assistance of counsel at guilt and sentencing trials) [IAC, L]

**Carlis Lindsey v. State* (Columbia Cnty. Cir. Ct. Apr. 1997) (following Dec. 29, 1995 filing of state post-conviction petition, state agrees to sentence less than death; relief granted because trial judge had permitted prosecutor, ex parte, to write the judge's order sentencing Lindsey to death) [O, L]

**Bobby Lusk v. State* (Bradford Cnty. Cir. Ct. Dec. 23, 1996) (on eve of evidentiary hearing on successive state post-conviction petition, state agrees to sentence less than death; only issue before court on state post-conviction motion that led to state's agreement of overturn prior judgment and impose lesser sentence was prosecutorial suppression of evidence) [PSE, L]

Jose Maqueira v. State (Dade Cnty. Cir. Ct. Feb. 10-11, 1993) (on the day after a state post-conviction petition was filed, the state agreed to a sentence less than death) [UK, L]

Mason v. State, 597 So.2d 776 (Fla. 1992) (same as *Combs*) [I, L]

Maxwell v. State, 603 So.2d 490 (Fla. 1992) (same as *Combs*) [I, L]

State v. Michael, 530 So.2d 929 (Fla. 1987) (death sentence overturned due to penalty-phase lawyer's ineffective assistance in failing to investigate and to discover substantial mitigating evidence based on Michael's mental condition) [IAC, L]

McCrae v. State, 510 So.2d 874 (Fla. 1987) (same as *Combs*; resentenced to death) [I, D]

Mikenas v. Dugger, 519 So.2d 601 (Fla.1988) (same as *Combs*; resentenced to life; see Orval Jackson, *Convicted killer is resentenced to life in prison*, Tampa Tribune, Sept. 13, 1991) [I, L]

Mitchell v. State, 595 So.2d 938 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing) [IAC, L]

Morgan v. State, 515 So.2d 975 (Fla.1987), *cert. denied*, 486 U.S. 1036 (1988) (same as *Combs*) [I, L]

O'Callaghan v. State, 542 So. 2d 1324 (Fl. 1989) (same as *Combs*) [I, L]

Anthony Ray Peek v. State (conviction overturned by trial court because state introduced false forensic evidence; reversal noted in opinion reviewing death sentence that was imposed on retrial, *State v. Peek*, 488 So.2d 52, 53 (Fla. 1986)) [PSE, D]

Phillips v. State, 608 So.2d 778 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

**Porter v. State*, 723 So.2d 191 (Fla. 1998) (death sentence overturned because the sentencing judge was manifestly biased against Porter on the issue of sentence; life sentence imposed on retrial on Dec. 2, 1999) [JB, L]

Preston v. State, 564 So.2d 120 (1990) (death sentence overturned because sentencer relied on invalid aggravating circumstance; death sentence imposed on retrial) [O, D]

State v. Riechmann, 2000 WL 205094 (Fla. 2000) (death sentence overturned based on ineffective assistance of counsel and on trial court's having permitted prosecutor, ex parte, to prepare judge's order sentencing Riechmann to

die, thus denying the defendant of an independent weighing of aggravating and mitigating circumstances; retrial pending) [IAC, RP]

Riley v. Wainwright, 517 So.2d 656 (Fla.1987) (same as *Combs*) [I, L]

Rivera v. Dugger, 629 So.2d 105 (Fla. 1994) (death sentence overturned because sentencer considered multiple invalid aggravating circumstances; committed suicide while awaiting retrial) [O, DW]

Roman v. State, 528 So.2d 1169 (Fla. 1988) (conviction overturned due to state's failure to disclose highly exculpatory statements by witness who gave highly inculpatory testimony at trial) [PSE, L]

**Rose v. State*, 675 So.2d 567 (Fla. 1996) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

Sawyer v. State (Dade Cnty. Cir. Ct. Aug. 6, 1976) (motion to mitigate sentence granted and sentence reduced to life) [O, L]

Scott v. Dugger, 604 So.2d 465 (Fla. 1992) (death sentence overturned as disproportionate to life sentence given to equally or more culpable codefendant; Supreme Court orders imposition of life sentence) [O, L]

Henry Perry Sireci (death sentence overturned by trial court because state relied on incompetent mental evaluations of defendant's mental condition at the time of the offense; reversal noted in opinion reviewing death sentence imposed on retrial, *State v. Sireci*, 587 So.2d 450, 451 (1991)) [PSE, D]

**Spaziano v. State*, 692 So.2d 174 (Fla. 1997) (conviction overturned on fifth successive state post-conviction petition due to recantation of key witness against defendant) [O, L]

Stevens v. State, 552 So.2d 1082 (Fla. 1989) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing; resentenced to death) [IAC, D]

**State v. Kenneth Stewart* (Hillsborough County, 13th Judicial Circuit, May 2000, No. 85-5667 & 6167) (on state post-conviction, state stipulated to an order, entered by the judge, finding ineffective assistance of counsel at sentencing, overturning the death sentence, and requiring a new sentencing trial; retrial pending; the basis for relief was that Stewart was sentenced to death while represented by a crack-addicted lawyer who subsequently was criminally convicted and disbarred) [IAC, RP]

Suarez v. State, 604 So.2d 488 (Fla. 1992) (following remand for an evidentiary hearing on bias of sentencing judge as revealed by his pre-sentencing statements to the press, new judge overturned death sentence on Mar. 8, 1992, and state's appeal thereafter was dismissed on state's stipulation) [JB, L]

Thomas v. State, 546 So.2d 716 (Fla. 1989) (death sentence overturned because sentencer prejudicially failed to consider nonstatutory mitigating circumstances) [O, L]

**Raymond Michael Thompson v. Florida*, 731 So.2d 1235 (Fla. 1999) (death sentence overturned due to bias of original judge who overrode jury recommendation of life; retrial pending) [JB, RP]

William Lee Thompson v. Dugger, 515 So.2d 173 (Fla.1987), *cert. denied*, 485 U.S. 960 (1988) (same as *Combs*; resentenced to death) [O, D]

Torres-Arboleda v. State, 636 So.2d 1321 (Fla. 1994) (death sentence overturned due to ineffective assistance of counsel at penalty trial) [IAC, L]

Trawick v. State, 617 So.2d 322 (Fla. 1993) (new trial granted and defendant given life sentence in 1992 following state's confession of ineffective assistance of counsel; appeal was thereafter dismissed) [IAC, L]

Charles Vaught v. State (Leon Cnty. Cir. Ct.) (on remand for evidentiary hearing on ineffective assistance of counsel claims, as ordered by *Vaughts v. State*, 442 So.2d 217 (Fla. 1985), state agreed to a sentence less than death) [IAC, L]

Waterhouse v. State, 522 So.2d 341 (Fla. 1988) (same as *Combs*; resentenced to death) [I, D]

Way v. Dugger, 568 So.2d 1263 (Fla. 1990) (same as *Combs*; resentenced to death) [I, D]

Richard Williams v. State (Bradford Cnty. Cir. Ct. May 23, 1985) (upon suggestion of Florida Supreme Court in denying direct appeal in *State v. Williams*, 438 So.2d 781 (Fla. 1983) that post-conviction relief might be appropriate in regard to claim of ineffective assistance of counsel due to trial court's denial of continuance, Williams files petition for post-conviction relief and state immediately agreed to a sentence less than death) [IAC, L]

Wilson v. Wainwright, 474 So.2d 1162 (Fla. 1985) (conviction overturned due to egregious ineffective assistance of Wilson's appellate attorney; on reappeal, the Florida Supreme Court determined that the evidence did not support a death sentence, and ordered that a life sentence be imposed) [IAC, L]

**Young v. State*, 739 So.2d 553 (Fla. 1999) (death sentence overturned due to state's suppression of eyewitness statements to police supporting Young's defense that he fired his weapon in self-defense only after the victim had first fired a shot at Young; resentenced to life) [PSE, L]

Zeigler v. Dugger, 524 So.2d 419 (Fla.1988) (same as *Combs*; resentenced to death) [I, D]

Pre-1996: 67*

1996 and after: 14

Basis for Relief: IAC = 30; IAC & PSE = 3; PSE = 13; I = 17; JB = 3; O = 12; UK = 3

Result on Retrial: L = 53; D = 22; RP = 5; DW = 1

Note:

Although we report *Hudson v. State*, 614 So.2d 482 (Fla. 1993), as having led to a death sentence on retrial after state post-conviction relief, it is interesting to note that the state supreme court subsequently overturned Hudson's death sentence *a second time*, on direct review of the new death sentence (see *Hudson v. State*, 708 So.2d 256 (Fla. 1998)), after which Hudson was resentenced to **life** on Nov. 9, 1998. Likewise, we report *Stevens v. State*, 552 So.2d 1082 (Fla. 1989), as having led to a death sentence on retrial after state post-conviction relief. But on direct appeal of the new death sentence, the state supreme court ruled that the state trial court should have imposed a **life** sentence at the retrial, which the state supreme court did (see *Stevens v. State*, 613 So.2d 402 (Fla. 1992)). Also, we report *McCrae v. State*, 510 So.2d 874 (Fla. 1987) as having led to a death sentence on retrial after state-post-conviction relief. But on direct appeal of the new death sentence, the state supreme court ruled, in this case as well, that the state trial court should have imposed a **life** sentence at the retrial, which the supreme court did (see *McCrae v. State*, 582 So.2d 613 (Fla. 1991)). Thus, three cases that we report as a "D" (death sentence imposed on retrial) involve individuals who in fact are no longer on death row, as a result of a court reversal followed by the imposition of a lesser sentence following retrial.

GEORGIA¹

State v. Anderson (Cook Cnty Super. Ct. No. 9854, Apr. 1, 1975) (trial court overturns death sentence and imposes lesser sentence due to absence of aggravating circumstances) [O,L]

Banks v. State, 268 S.E.2d 230 (Ga. 1980) (ordering new trial based on counsel's failure to discover evidence of innocence; on remand, petitioner was released for lack of any evidence of guilt, Henry Cnty. Super. Ct. No. 10032) [IAC, NG]

Eli Beck v. Zant (Bleckley Cnty. Super. Ct. No. 8563) (after state supreme court remanded Beck's successive state post-conviction petition to trial court for hearing to determine whether Beck was retarded, hence ineligible for the death penalty under the state constitution, *see Zant v. Beck*, 386 S.E.2d 349 (Ga. 1989), and during pendency of that proceeding, state Board of Pardons and Parole ruled that Beck was retarded and imposed a life sentence on May 2, 1994) [O, L]

Birt v. Hopper, 265 S.E.2d 276 (Ga. 1980) (affirming reversal of death sentence because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; resentenced to death) [I, D]

State v. John Brown (Chatham Cnty. Super. Ct. No. 23499, Dec. 4, 1978) (trial court granted Brown's extraordinary motion for new trial and sentenced Brown to life) [UK, L]

State v. Earl Charles (Chatham Cnty. Super. Ct. No. 23392-95, July 5, 1978) (trial court granted Charles's extraordinary motion for new trial; charges against Charles were dropped for lack of any evidence of guilt) [UK, NG]

**Turpin v. Christenson*, 497 S.E.2d 216 (Ga. 1998) (death sentence overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

Curry v. Zant, 371 S.E.2d 647 (Ga. 1988) (conviction overturned due to counsel's ineffective failure to secure expert evaluation of Curry's mental status at the time of the offense which would have provided substantial evidence that Curry was not sane at the time of the offense, nor capable of intelligently and voluntarily waiving his right to counsel when he confessed; on retrial, Curry pled to life (Washington Cnty. Super. Ct. No. 7)) [IAC, L]

Kenny Dampier v. Zant (Butts Cnty. Super. Ct. No. 5617, Aug. 31, 1982) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; life sentence imposed on retrial (Chatham Cnty. Super. Ct. No. 26638)) [I, L]

Stynchcombe v. Floyd, 311 S.E.2d 828 (Ga. 1984) (death sentence overturned because trial court's instructions suggested to jury that it had to impose death sentence if it found one aggravating circumstance, notwithstanding the mitigating evidence; life sentence imposed on retrial, Fulton Cnty. Super. Ct. No. A-19628) [I, L]

¹This list excludes 21 cases that the Georgia Supreme Court remanded between Jan. 4, 1990 and May 19, 1995, for hearings to determine whether the prisoner was mentally retarded and thus ineligible for the death penalty under Georgia constitutional law (Finney, Fleming, Foster, G. Davis, Frazier, Holiday, Holiday, Peek, Cohen, Collins, Wilson, Jarrells, Walker, S. Allen, Childs, Morrison, Pruitt, Miller, Rogers). Also excluded are 4 cases in which the Board of Pardons and Paroles found death sentences "disproportionate" and reduced them to life sentences (Charles Harris Hill, Freddie Davis, William Neal Moore, G. Williams).

Bobby Gene Gaddis v. Hopper (Tattnall Cnty. Super. Ct. Nos. 36985 & 37095, Sept. 20, 1980) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; life sentence imposed on retrial; direct appeal at *Gaddis v. State*, 236 S.E.2d 594 (Ga. 1977)) [I, L]

**D. Hall v. Zant* (Butts Cnty. Super. Ct. No. 95-V-651, July 10, 1998) (conviction and death sentence overturned and, on July 10, 1998, a life sentence was imposed) [UK, L]

Zant v. Hamilton, 307 S.E.2d 667 (Ga. 1983) (death sentence overturned due to ineffective assistance of trial counsel; on remand, trial court imposed a life sentence, Chatham Cnty. Super. Ct. No.27-002) [IAC, L]

Harris v. Hopper, 253 S.E.2d 707 (Ga. 1979) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; resentenced to life, DeKalb Cnty. Super. Ct. No. 17784) [I, L]

Harrison v. Zant, 402 S.E.2d 518 (Ga. 1991) (conviction overturned due to ineffective assistance of attorneys who presented fractured and contradictory defenses; on retrial, Harrison pled to life sentence, Hall Cnty. Super. Ct. No. K84-48,139) [IAC, L]

Zant v. Hill, 289 S.E.2d 765 (Ga. 1982) (death sentence overturned due to ineffective assistance of counsel at penalty phase; on retrial, life sentence imposed, as discussed in *Hill v. Zant*, 638 F. Supp. 969, 970 (M.D. Ga. 1986)) [IAC, L]

Jarrell v. Zant, 284 S.E.2d 17 (Ga. 1981) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; life sentence imposed on retrial) [I, L]

Krier v. Jarvis (Butts Cnty. Super. Ct. No. 83-2501-4) (state trial judge granted state habeas corpus relief on ineffective assistance of counsel, and D.A. simultaneously accepted a plea to a life sentence) [IAC, L]

Jessie Lee v. Zant (Butts Cnty. Super. Ct. No. 90-V-2616) (on remand to consider whether Lee was retarded, hence constitutionally ineligible for the death penalty, trial court imposed life sentence on Dec. 19, 1990, Walton Cnty. Super. Ct. No. 87-CR-229E) [O, L]

**Turpin v. Lipham*, 510 S.E.2d 32 (Ga. 1998) (death sentence overturned due to ineffective assistance of counsel in presenting jury with 2500 pages of Lipham's psychiatric records, without presenting an expert or taking any other steps to help the jury to sift through the materials and discover how mitigating the information was; retrial pending) [I, RP]

Nelson v. Zant, 405 S.E.2d 250 (Ga. 1991) (state suppressed FBI analyses establishing that the limb hair the state's expert had used to connect defendant to the crime lacked sufficient characteristics for microscopic analysis). Nelson was thereupon released from prison and not retried because, as the district attorney admitted, there was no valid evidence implicating him in the offense, *see* Jingle Davis & Mark Curriden, *Man Condemned for Murder of Girl Is Freed*, Atlanta Const., Nov. 7, 1991, at O6) [PSE, NG]

State v. Keith Eugene Pattillo (Bibb Cnty. Super. Ct. No. 27738) (after state supreme court remanded Pattillo's successive state post-conviction petition to trial court for hearing to determine whether Pattillo was retarded, hence ineligible for the death penalty under the state constitution, *see State v. Pattillo*, 417 S.E.2d 139 (Ga. 1992), and during pendency of that proceeding, state Board of Pardons and Parole ruled that Beck was retarded and imposed a life sentence in 1993) [O, L]

Zant v. Pitts, 436 S.E.2d 4 (Ga. 1993) (death sentence overturned due to ineffective assistance of counsel in failing to inform jury that petitioner was retarded, even though that created a bar to the death penalty under Georgia law; on retrial, judge imposed life sentence, Floyd Cnty. Super. Ct. No. S93A-1151, Aug. 22, 1996)) [IAC, L]

Leonard Pryor v. Hopper (Tattnall Cnty. Super. Ct. No. 3826, Mar. 29, 1979) (death sentence overturned because prosecutor argued that, state supreme court, not jury, bore ultimate responsibility for any sentence the jury imposed; on retrial, Pryor pled to life sentence, Irwin Cnty. Super. Ct. No. 5075) [PM, L]

Jessie Lewis Pulliam v. Hopper (Tattnall Cnty. Super. Ct. No. 77-358, June 20, 1979) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; pled to life sentence on retrial, Troup Cnty. Super. Ct. No. 715/143; direct appeal at *Pulliam v. State*, 224 S.E.2d 8 (Ga. 1976)) [I, L]

Ross v. Kemp, 393 S.E.2d 244 (Ga. 1990) (conviction overturned due to ineffective assistance of counsel and co-counsel who presented contradictory defenses, severely prejudicing Ross; on retrial, state and court accepted a plea to a life sentence, DeKalb Cnty. Super. Ct. No. 83-CR-2635) [IAC, L]

State v. J.L. Smith (DeKalb Cnty. Super. Ct. No. 81CR-3545, May. 10, 1983) (death sentence overturned due to ineffective assistance of counsel; resentenced to life) [IAC, L]

**State v. Spencer* (Butts Cnty. Super. Ct. 91-V-4040) (after state supreme court remanded Spencer's state post-conviction petition to trial court for hearing to determine whether Spencer was retarded, hence ineligible for the death penalty under the state constitution, trial judge imposed life sentence on July 1, 1996) [O, L]

**Turpin v. Todd*, 519 S.E.2d 678 (Ga. 1999) (death sentence overturned due to prejudicial communications between bailiff and jury during sentencing deliberations; retrial pending) [PM, RP]

Pre-1996: 24

1996 and after: 5

Basis for Relief: IAC = 10; PSE = 1; PM = 2; I = 8; O = 5; UK = 3

Result on Retrial: L = 22; NG = 3, D = 1; RP = 3

IDAHO

Aurelio Barajas, aka Miguel Ybarra v. State (Payette Cnty. Dist. Ct., 3rd Jud. Dist., No. SP-OT-0044, 1995) (trial judge, G. Weston, J., overturned capital judgment on state postconviction petition; Barajas was not returned to death row) [UK, L]

**Timothy Alan Dunlap v. State* (Caribou Cnty. Dist. Ct., 6th Jud. Dist., No. SP-94-863A, Apr. 11, 2000) (on remand for a hearing ordered by *Dunlap v. State*, 961 P.2d 1179 (Idaho 1998), state's attorney conceded sentencing error requiring reversal of death sentence; guilt phase claims are pending) [UK, RP]

**Donald Paradis* (in May 1996, Idaho governor commuted death sentence on the ground of probable innocence, ineffective assistance of counsel and prosecutorial suppression of evidence (*see Paradis v. Arave*, 130 F.3d 385, 388 (9th Cir. 1997)) [IAC & PSE, L]

**Shawn Eric Smith v. State* (Booneville Cnty. Dist. Ct., 7th Jud. Dist., Dec. 17, 1999) (death sentence overturned due to ineffective assistance of trial counsel in failing to prepare and present a case in mitigation; retrial pending) [IAC, RP]

pre-1996: 1

1996 and after: 3

Basis for Relief: IAC = 2; UK = 2

Result on Retrial: L = 2; RP = 2

ILLINOIS

**People v. Burrows*, 665 N.E.2d 1319 (1996) (conviction overturned based on admission by key witness against petitioner that she perjured herself at Burrows' trial, that she alone committed the killing, and that Burrows was elsewhere at the time; Burrows was released) [PSE, NG]

**People v. Caballero*, 688 N.E.2d 658 (Ill. 1997) (remanding for hearing on claim in second state post-conviction petition that Caballero's death sentence was disproportionate to lesser sentence imposed on codefendant; resentenced to life) [O, L]

**People v. Ondrea Edgeston* (state agrees to life sentence in return for Edgeston's agreement to drop his state post-conviction petition challenging his conviction and death sentence) [UK, L]

**People v. Fields*, 690 N.E.2d 999 (Ill. 1998) (conviction overturned because trial judge who imposed it (1) was under investigation, eventually substantiated, for taking bribes to "throw" criminal cases, (2) initially solicited a bribe in this case, but then (3) came to realize that his behavior in the case was under FBI scrutiny and changed his behavior) [JB, ?]

**People v. Hawkins*, 690 N.E.2d 999 (Ill. 1998) (same as *Fields*, *supra*) [JB, ?]

People v. Jimerson, 652 N.E.2d 278 (Ill. 1995) (conviction overturned due to prosecutorial suppression of exculpatory evidence and countenancing of perjury by crucial witness against Jimerson who denied being offered, but in fact had accepted, a deal in return for her testimony; during preparation for retrial, Jimerson was cleared of all charges and subsequently pardoned by the governor) [PSE, NG]

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**People v. Jones*, 1997 WL 11360 (Ill. July 30, 1997) (conviction overturned due to prosecutorial misconduct; charges subsequently were dropped, and Jones was released as innocent and was pardoned by the governor) [PM, NG]

People v. Lego, 660 N.E.2d 971 (Ill. 1995) (conviction overturned due to Lego's manifest incompetence, due to organic brain damage, to waive counsel and represent himself at his capital trial; resentenced to sentence less than death) [O, L]

**People v. Mack*, 658 N.E.2d 437 (Ill. 1997) (sentence reversed based on ineffective assistance of counsel and insufficient finding of aggravating circumstance; retrial pending) [IAC, RP]

**People v. Morgan*, 719 N.E.2d 681 (Ill. 1999) (death sentence overturned because incompetent trial attorney failed to investigate Morgan's mental status and thus to find easily accessible psychological and neurological tests results documenting Morgan's organic brain damage, history of child abuse and other mitigating evidence; retrial pending) [IAC, RP]

**People v. Nitz*, 670 N.E.2d 672 (Ill. 1996) (conviction overturned upon discovery the state suppressed evidence that it was secretly administering psychotropic medications to petitioner throughout his capital trial; on retrial, state dropped request for death penalty) [PSE, L]

People v. Orange, 659 N.E.2d 935 (Ill. 1995) (death sentence overturned by trial court due to ineffective assistance of counsel at penalty trial; proceedings challenging conviction are pending) [IAC, RP]

People v. Owens, 564 N.E.2d 1184 (Ill. 1990) (remanding to Will County Circuit Court to determine whether Owens was mentally competent to pursue additional proceedings and thus, depending on the outcome of those proceedings, to be executed; on remand, trial court declared Owens unfit) [O, L]

People v. Palmer (Mason Cnty. Cir. Ct. 1996) (same as *Nitz*, *supra*; prosecutor confessed error and Palmer received a negotiated sentence of 65 years) [PSE, L]

People v. Perez, 592 N.E.2d 984 (Ill. 1992) (sentence overturned due to ineffective assistance of counsel, who failed to investigate and discover substantial bases for mitigation of sentence; resentenced to 50-year term) [IAC, L]

**People v. Anthony Porter* (Apr. 1999) (during pendency before trial court of Porter's successive state post-conviction petition challenging his competence to be executed, Porter was released from prison as innocent based on another man's confession to the crime) [UK, NG]

**People v. Ruiz*, 686 N.E.2d 574 (Ill. 1997) (sentence overturned due to ineffective assistance of counsel, who failed to investigate and discover substantial bases for mitigation of sentence; on retrial, trial judge determined that death sentence would be disproportionate to the life sentence given to Ruiz's co-offender) [IAC, L]

People v. Salazar, 643 N.E.2d 698 (Ill. 1994) (conviction overturned due to instruction shifting burden of proof of guilt to Salazar and ineffective assistance of counsel on appeal; on retrial, Salazar was convicted of a lesser charge, sentenced to time served, and released) [IAC, NG]

**People v. Steidl*, 685 N.E.2d 1335 (Ill. 1997) (remanding for hearing on ineffective assistance of counsel at the guilt phase and newly discovered evidence (based on recantation of inculpatory testimony by important witness against Steidl; on remand, trial court overturned the death sentence based on ineffective assistance of counsel at the sentencing phase but denied relief from the conviction, and the state agreed to a life sentence in return for Steidl's agreement not to appeal) [IAC, L]

**People v. Christopher Thomas* (Lake Cnty. Cir. Ct. late 1998 or 1999) (death sentence vacated by trial court based on petition alleging multiple grounds for relief; Thomas was resentenced to a term of years) [UK, L]

**People v. Clarence Towns* (St. Clair Cnty. Cir. Ct. 1998 or 1999) (on remand for hearing on ineffective assistance of counsel at penalty trial based on counsel's manifestly prejudicial failure to discover Towns' "pervasive history of child abuse and maltreatment, coupled with . . . mental illness," *see People v. Towns*, 696 N.E.2d 1128 (Ill. 1998), trial court vacates sentence and orders a new sentencing hearing, which is pending) [IAC, RP]

People v. Titone, 600 N.E.2d 1160 (Ill. 1992) (noting trial court's unappealed decision, premised on unspecified grounds, overturning Titone's death sentence; Titone was not returned to death row) [UK, L]

People v. Jimmie Tye (Cook Cnty. Cir. Ct. 1994) (death sentence overturned by trial court based on ineffective assistance of counsel; Tye was resentenced to life) [IAC, L]

**People v. West*, 719 N.E.2d 664 (Ill. 1999) (death sentence overturned due to insufficiency of the evidence that the offense was death-eligible and due to ineffective assistance of counsel on appeal; Illinois Supreme Court orders imposition of lesser sentence) [O, L]

People v. William Young (Will Cnty. Cir. Ct. Feb. 1993) (death sentence overturned when state confesses error based on incompetent representation at trial; Young was resentenced to life) [IAC, L]

Pre-1996: 10

1996 and after: 15

Basis for Relief: IAC = 10; PSE = 4; PM = 1; JB = 2; O = 4; UK = 4

Result on Retrial: L = 14; NG = 5; RP = 4; ? = 2

INDIANA

Averhart v. State, 614 N.E.2d 924 (Ind. 1993) (death sentence overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

William Benirschke (Benirschke was permitted to plead to 140-year sentence in early 1990s during pendency of state post-conviction proceeding) [UK, L]

Russell Boyd (Boyd was permitted to plead to term of years in late 1980s during pendency of state post-conviction proceeding) [UK, L]

Burris v. State, 558 N.E.2d 1067 (Ind. 1990) (death sentence overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

Frank Davis (death sentence vacated on November 10, 1993 by state trial court on joint motion by state and Davis premised on jury's failure to hear and consider important mitigating evidence; these proceedings are described in a subsequent opinion reviewing the death sentence imposed on retrial, see *Davis v. State*, 675 N.E.2d 1097 (Ind. 1996)) [O, D]

**Games v. State*, 684 N.E.2d 466, on reh'g., 690 N.E.2d 211 (Ind. 1997) (sentence overturned because jury was permitted to rely on improper conviction as aggravating circumstance; resentenced to death) [O, D]

James Harris (Harris was permitted to plead to 120-year term in late 1980s during pendency of state post-conviction proceeding) [UK, L]

State v. Huffman, 643 N.E.2d 899 (Ind. 1994) (conviction overturned because jury was instructed that defendant, not state, bore the burden of proof on crucial defensive issue; on retrial, Huffman pled guilty and was sentenced to 60 years (see *State v. Huffman*, 717 N.E.2d 571 (Ind. 1999)) [I, L]

Phillip McCollum (during pendency of state post-conviction proceedings in early 1990s, state offered and McCollum accepted a plea to a term of years after evidence he presented in the post-conviction hearing showed that his trial attorney failed to investigate and inform the jury of his mental retardation) [IAC, L]

**State v. Moore*, 678 N.E.2d 1258 (Ind. 1997) (conviction and death sentence overturned by state trial court; on appeal, supreme court reinstates conviction but leaves reversal of death sentence intact; resentenced to death) [UK, D]

Larry Potts (Potts was permitted to plead to 210-year sentence in early 1990s during pendency of state post-conviction proceeding) [UK, L]

**Schiro v. State*, 669 N.E.2d 1357 (Ind. 1996) (death sentence overturned and 60-year sentence imposed on successive state post-conviction petition, because trial judge improperly rejected jury's recommendation of life sentence) [O, L]

Smith v. State, 547 N.E.2d 817 (Ind. 1990) (conviction overturned due to egregious ineffective assistance of counsel; on retrial, Smith was acquitted of all charges) [IAC, NG]

Spranger v. State, 650 N.E.2d 1117 (Ind. 1995) (death sentence overturned based on ineffective assistance of counsel; on retrial, Spranger was sentenced to 60-year term) [IAC, L]

Johnny Townsend (during pendency of state post-conviction proceedings in early 1990s, state permitted Townsend to plead out to 120-year term after he established Sixth Amendment error in the use against him of his codefendant's confession despite Townsend's inability to cross-examine the codefendant) [O, L]

Herbert Underwood (on April 21, 1995, trial court overturned capital conviction for unspecified reasons; on retrial, defendant was acquitted of capital murder but convicted of lesser (nonhomicide) offenses, *see* 722 N.E.2d 828, 830-31 (Ind. 2000)) [UK, NG]

**VanCleave v. State*, 674 N.E.2d 1293 (Ind. 1996) (death sentence overturned based on ineffective assistance of counsel; on retrial, VanCleave was sentenced to 60-year term) [IAC, L]

pre-1996: 13

1996 and after: 4

Basis for Relief: IAC = 6; I = 1; O = 4; UK = 6

Result on Retrial: L = 10; NG = 2; D = 5

KENTUCKY: None

LOUISIANA

State v. Brooks, 661 So.2d 1333 (La. 1995) (death sentence overturned based on ineffective assistance of counsel at penalty phase; retrial pending) [IAC, RP]

State ex rel. Busby v. Butler, 538 So.2d 164 (La. 1987) (death sentence overturned based on ineffective assistance of counsel at penalty phase; resentenced to life) [IAC, L]

**State v. Cage*, 667 So.2d 529 (La. 1996) (conviction and death sentence overturned based on misinstruction concerning requirement of proof beyond reasonable doubt; resentenced to life) [I, L]

**State v. Michael Graham* (Union Parish, 3rd Jud. Dist. Ct., Div. A, No. 28734B, Mar. 2000) (after pending for 12 years in state trial court on extraordinary motion for new trial, conviction was overturned due to prosecutorial suppression of evidence; retrial pending) [PSE, RP]

State v. Keith Messiah (trial court in New Orleans overturned death sentence in 1994 due to ineffective assistance at the penalty phase; resentenced to life, *see Killer Off Death Row in '83 Case: He'll Spend Life in Prison*, New Orleans Times-Picayune, Mar. 11, 1998, at B1, 1998 WL 6260994) [IAC, L]

State v. Lane Nelson (state conviction overturned; on retrial, lesser conviction and sentence were imposed by trial judge in mid-1980s) [UK, L]

pre-1996: 4

1996 and after: 2

Basis for Relief: IAC = 3; PSE = 1; I = 1; UK = 1

Result on Retrial: L = 5; RP = 1

MARYLAND

Bowers v. State, 578 A.2d 734 (Md. 1990) (conviction overturned based on variety of errors committed by Bower’s incompetent trial attorney—including in failing to show that forensic evidence found on the victim did not match Bowers, leaving a “substantial possibility” that the result of the trial would have been different had counsel done his job; lesser sentence imposed on retrial) [IAC, L]

State v. Kirk Bruce (Prince George’s Cnty. Cir. Ct. No. CT88-2226X, Apr. 1995) (conviction and death sentence overturned due to prosecutorial suppression of exculpatory evidence of innocence; on Jan. 22, 1996, state and Bruce stipulated to, and the trial court imposed, a life sentence) [PSE, L]

State v. James Arthur Calhoun (Montgomery Cnty. Cir. Ct. 1989) (death sentence overturned, due to instruction forbidding jurors to rely on mitigating factors that one or more of them believed warranted a sentence less than death unless all 12 jurors could agree that each such factor existed and was sufficiently mitigating; a properly instructed jury imposed a lesser sentence on retrial; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

State v. Colvin, 548 A.2d 506 (Md. 1988) (death sentence overturned due to sentencer’s reliance in sentencing Colvin to death on juvenile infractions that do not qualify as criminal convictions under Maryland, hence cannot qualify as aggravating circumstances and because the trial improperly forbade individual jurors to rely on bases for mitigating sentence unless each such basis was agreed to by all 12 jurors; resentenced to death) [O, D]

State v. Vernon Lee Evans (Worcester Cnty. Cir. Ct. Mar. 29, 1991) (death sentence overturned on same basis as in *Calhoun*; proceedings are described in a subsequent opinion reviewing the death sentence imposed on retrial, *see Evans v. State*, 637 A.2d 117 (Md. 1994)) [I, D]

State v. Anthony Grandison (Somerset Cnty. Cir. Ct. July 31 1992) (same as *Calhoun*; proceedings described in subsequent opinion reviewing death sentence imposed on retrial, in *Grandison v. State*, 670 A.2d 398, 407 (Md. 1995), *cert. denied*, 519 U.S. 1027 (1996)) [I, D]

State v. Ian Henry (Prince George’s Cnty. Cir. Ct. Oct. 24, 1994) (conviction overturned due to prosecutorial suppression of evidence of innocence; on Apr. 19, 1996, Henry pled guilty to a lesser offense; on May 31, 1996, Henry was resentenced to time served and released from custody) [PSE, L]

State v. James H. Huffington (Apr. 28 1992) (same as *Calhoun*; on retrial, state unilaterally withdrew its death notice (indicating its intention to seek the death penalty), and the trial judge imposed a life sentence; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

State v. Lawrence Johnson (Harford Cnty. Cir. Ct. Nov. 4, 1988) (same as *Calhoun*; resentenced to life; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

**Perry v. State*, 741 A.2d 1162 Md. (Md. 1999) (conviction overturned due to counsel’s ineffective assistance in failing to make timely objection to patently inadmissible evidence that provided the crucial link between Perry and the offense; retrial pending) [IAC, RP]

State v. Willie Reid (Baltimore City Cir. Ct. 1988) (same as *Calhoun*; resentenced to life; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

Trimble v. State, 582 A.2d 794 (Md. 1990) (death sentence overturned because the judge who imposed it upon Trimble's waiver of a jury trial did not properly advise Trimble of the adverse consequences of waiving a jury trial; resentenced to life life) [O, L]

State v. Derrick Quentin White (Baltimore Cnty. Cir. Ct. 1988) (death sentence overturned by trial court, as described in subsequent opinion overturning the death sentence imposed on resentencing, *State v. White*, 589 A.2d 969 (Md. 1991)) [UK, D]

State v. Derrick Quentin White (Baltimore Cnty. Cir. Ct. 1992) (after death sentence had been imposed and overturned twice, White's third death sentence was overturned time upon the state's admission of error in the sentencing instructions; a life sentence was imposed by a properly instructed jury on June 9, 1992, *see The Report of the [Maryland] Governor's Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

State v. Willie Reid (Baltimore City Cir. Ct. 1988) (same as *Calhoun*); resentenced to life sentence imposed on retrial; proceedings described in *The Report of the [Maryland] Governor's Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

pre-1996: 14

1996 and after: 1

Basis for Relief: IAC = 2; PSE = 2; I = 8; O = 2; UK = 1

Result on Retrial: L = 11; D = 3; RP = 1

MISSISSIPPI [petitioner was not returned to death row after retrial, unless otherwise noted]

**Booker v. State*, 699 So.2d 132 (Miss. 1997) (death sentence overturned because jury considered two improper aggravating circumstances) [O, L]

Davis v. State, 655 So.2d 864 (Miss. 1994) (death sentence overturned because jury relied on improperly defined aggravating circumstance) [I, L]

Gilliard v. State, 614 So.2d 370 (Miss. 1993) (same as *Davis*) [I, L]

Hill v. State, 659 So.2d 547 (Miss. 1994) (same as *Davis*) [I, L]

Irving v. State, 618 So.2d 58 (Miss. 1992) (death sentence overturned on second state post-conviction petition because jury relied on improperly defined aggravating circumstance) [I, L]

Johnson v. State, 547 So.2d 59 (Miss. 1989) (death sentence overturned because jury based it on invalid prior conviction; on remand from *Johnson v. Mississippi*, 486 U.S. 578 (1988); life sentence imposed on remand) [O, L]

Leatherwood v. State, 539 So.2d 1378 (Miss. 1989) (conviction overturned due to egregious ineffective assistance of counsel) [IAC, L]

Smith v. State, 648 So.2d 63 (Miss. 1994) (same as *Davis*) [I, L]

Stringer v. State, 638 So.2d 1285 (Miss. 1994) (same as *Davis*) [I, L]

Tokman v. State, 564 So.2d 1339 (Miss. 1990) (death sentence overturned because of ineffective assistance of counsel at sentencing phase) [IAC, L]

West v. State, 666 So.2d 767 (Miss. 1995) (same as *Davis*) [I, L]

Woodward v. State, 635 So.2d 805 (Miss. 1993) (same as *Davis*) [I, L]

pre-1996: 11

1996 and after: 1

Basis for Relief: IAC = 2; I = 8; O = 2

Result on Retrial: L = 11; D = 1

MISSOURI

**State v. Butler*, 951 S.W.2d 600 (Mo. 1997) (conviction and death sentence overturned based on ineffective assistance of counsel in failing to investigate and discover evidence that the victim was murdered by her nephew rather than by Butler and in failing to bring out substantial weaknesses in the prosecution's case, either of which could have raised a reasonable doubt in the jurors' minds; on retrial, Butler was convicted of a lesser (nonmurder) degree of homicide and given a 20-year term) [IAC, NG]

**State v. Dexter*, 954 S.W.2d 332 (Mo. 1997) (conviction overturned due to prosecutor's repeated use against Dexter of his invocation of his right to silence; on retrial, the state dismissed the charges against Dexter and released him for lack of any evidence of guilt) [PM, NG]

State v. Roderick Nunley (Mo. S. Ct.) (sometime between Oct. 28, 1991 and Mar. 31, 1994, as described in a subsequent opinion in *State v. Nunley*, 923 S.W.2d 911, 916 (Mo. 1996), death sentence was vacated by state supreme court based on evidence that the trial judge who imposed it was intoxicated at the time; resentenced to death) [JB, D]

**State v. Phillips*, 940 S.W.2d 512 (Mo. 1997) (death sentence overturned based on exclusion of evidence shifting blame for part of offense to someone other than the defendant; resentenced to life) [O, L]

**State v. Ed Reuscher*, (Mo. 1995 or after) (unpublished opinion granting relief apparently based upon ineffective assistance of appellate counsel; resentenced to life) [IAC, L]

**State v. Rhodes*, 988 S.W.2d 521 (Mo. 1999) (death sentence overturned because of prosecutorial misconduct in closing argument at sentencing phase; retrial pending) [PM, RP]

State v. Michael Taylor (Mo. June 1993) (death sentence was vacated because of evidence that the trial judge who imposed it was intoxicated at the time, as described in subsequent opinion reviewing death sentence that was imposed on retrial, *State v. Taylor*, 929 S.W.2d 209, 215 (1996)) [JB, D]

**State v. Thompson*, 985 S.W.2d 779 (Mo. 1999) (death sentence overturned because state prejudicially relied on surprise aggravating evidence, denying Thompson a fair chance to rebut it; retrial pending) [O, RP]

State v. Wells, 804 S.W.2d 746 (Mo. 1991) (conviction overturned based on ineffective assistance of trial counsel in failing to uncover and present evidence that another man committed the offense; convicted of a lesser offense on retrial and sentenced to a term of years) [IAC, L]

pre-1996: 3

1996 and after: 6

Basis for Relief: IAC = 3; PM = 2; JB = 2; O = 2

Result on Retrial: L = 3; NG = 2; D = 3; RP = 2

MONTANA

Lester Kills on Top v. State, 901 P.2d 1368 (Mont. 1995) (death sentence overturned due to state's suppression of material evidence impeaching its key witness at sentencing; defendant was not returned to death row) [PSE, L]

**Vernon Kills on Top v. State*, 928 P.2d 182 (Mont. 1997) (death sentence overturned as disproportionate to defendant's minor participation in the killing; life sentence imposed) [O, L]

pre-1996: 1

1996 and after: 1

Basis for Relief: PSE =1; O = 1

Result on Retrial: L = 2

NEBRASKA

Reeves v. Nebraska, 498 U.S. 964 (1990) (on certiorari review of denial of state post-conviction petition, Court vacates death sentence that state supreme court had improperly affirmed despite having invalidated an aggravating circumstance on which the sentence was based; remanding for resentencing; *see State v. Reeves*, 604 N.W.2d 152, 161 (2000); resentenced to death) [O, D]

**State v. Reeves*, 604 N.W.2d 152 (2000) (overturning death sentence that was reimposed following U.S. Supreme Court's vacation of it, concluding that the reimposition of death violated Reeves' right to a sentencing trial; proceedings pending) [O, RP]

Simants v. State, 277 N.W.2d 217 (Neb. 1979) (conviction overturned based on sheriff's repeated course of ex parte contacts with jurors during course of trial; on retrial, petitioner was found not guilty by reason of insanity, *see State v. Simants*, 537 N.W.2d 346, 348 (1995)) [PM, NG]

pre-1996: 2

1996 and after: 1

Basis for Relief: PM = 1; O = 2

Result on Retrial: NG = 1; D= 1; RP = 1

NEVADA

**State v. Jason Browne* (Nev. S. Ct., No. 33769, Apr. 27, 2000) (death sentence overturned due to ineffective assistance at the penalty phase in failing to discover and document petitioner's mental disorder; retrial pending) [IAC, RP]

State v. Vincent Pasquale (Carson City Dist. Ct., No. 88-01304C-II, Jan. 19, 1993) (upon state's confession to having committed "a nonspecified error . . . during the sentencing phase of the trial," trial court vacates death sentence and imposes life sentence) [UK, L]

Richard Lee Hardison v. State (Nev. S. Ct., No. 24195, May 24, 1994 & July 22, 1994) (death sentence overturned due to ineffective assistance of counsel in failing to do any investigation in mitigation, thus leaving the jury unaware that the victim had previously stabbed, beaten and otherwise provoked Hardison and that Hardison was brain damaged and retarded; on retrial, Hardison was removed from death row) [IAC, L]

**Jimenez v. State*, 918 P.2d 687 (Nev. 1996) (conviction overturned due to state's suppression of evidence implicating other suspects and impeaching key informant witness against Jimenez; on retrial, Jimenez pled to noncapital murder and was released from prison the next year) [PSE, L]

**Mazzan v. Warden*, 993 P.2d 25 (Nev. 2000) (conviction overturned on third state post-conviction petition due to prosecutorial suppression of police reports "provid[ing] support for Mazzan's defense that someone else murdered [the victim] . . . [and] provid[ing] a basis to impeach the thoroughness of the state's investigation of the crime"; Mazzan was released, see Brendan Riley, *Emotional Mazzan Released*, Las Vegas Rev.-J., May 7, 2000, at 1) [PSE, NG]

Roberto Hernandez Miranda v. Warden, (Nev. S. Ct., No. 17497, Apr. 28, 1988) (judgment overturned due to egregious ineffective assistance of counsel based on counsel's failure to interview 10 witnesses named by his client who were able to exonerate Miranda and identify the actual killer; on retrial, Miranda was released as innocent) [IAC, NG]

Olausen v. State, 771 P.2d 583 (Nev. 1989) (death sentence overturned due to counsel's negligent failure to present a large body of available mitigating evidence and his own damaging remarks to the sentencing panel; Olausen was not returned to death row) [PSE, L]

**State v. Danny Alfred Padilla* (Clark Cnty. Dist. Ct., No. C70597-IV-C, July 12, 1996) (state confesses that error occurred at Padilla's trial and permits him to plead guilty to second-degree murder) [UK, L]

Dewayne Derek Stevens v. State (Nev. S. Ct., No. 24138, July 8, 1994) (conviction overturned due to trial court's failure to advise Stevens properly about the pitfalls of self-representation at a capital trial and failure to determine whether self-representation was permitted under the circumstances; on remand, Stevens pled to a lesser sentence) [IAC, L]

pre-1996: 5

1996 and after: 4

Basis for Relief: IAC = 4; PSE = 3; UK = 2

Result on Retrial: L = 6; NG = 2; RP = 1

NORTH CAROLINA

**State v. Bishop*, No. 93 CRS 20410-20423 (Guilford Cnty., Jan. 10, 2000) (death sentence overturned because prosecution concealed material, exculpatory evidence and its discovery of a witness who placed Bishop elsewhere at the time of the crime; retrial pending) [PSE, RP]

**State v. Thomas Jack Brown*, No. 65A85-2 (Robeson Cnty., June 30, 1997) (conviction overturned by trial court due to ineffective assistance of counsel; state offered and Brown accepted a plea to second-degree murder and was sentenced to life) [IAC, L]

State v. Gladden, No. 82 CRS 18706 (Onslow Cnty., Dec. 7, 1988) (death sentence overturned by trial court due to ineffective assistance of counsel at the penalty phase; Gladden was resentenced to life) [IAC, L]

State v. Alton Green, No. 85 CRS 11245 (Wake Cnty., Oct. 29, 1993) (death sentence overturned by trial court because jury was misinstructed on proper consideration of mitigating evidence; Green was resentenced to life) [I, L]

State v. Holden, No. 85 CRS 1559 (Duplin Cnty., Dec. 7, 1990) (death sentence overturned by trial court because jury was misinstructed on proper consideration of mitigating evidence) [I, D]

State v. McNeil, No. 83 CRS 25605 (Wake Cnty., Aug. 26, 1993) (conviction overturned by trial court due to ineffective assistance of counsel and *Harbison* error; resentenced to death) [IAC, D]

**State v. Munsey*, No. 93 CRS 4078 (Wilkes Cnty., May 14, 1999) (conviction overturned because prosecution concealed material, exculpatory evidence, another man confessed to the offense, and a key witness against Munsey recanted and admitted giving false testimony; Munsey died while awaiting retrial) [PSE, DW]

State v. Oliver, No. 78 CRS 25575 (Robeson Cnty., Apr. 4, 1994) (death sentence overturned by trial court because prosecution suppressed exculpatory evidence; Oliver was not returned to death row) [PSE, L]

State v. Robbins, No. 82 CRS 13883 (Durham Cnty., Feb. 1, 1993) (conviction overturned by trial court due to ineffective assistance of counsel; Robbins was not returned to death row) [IAC, L]

State v. Roper, No. 87 CRS 4488 (Burke Cnty., August 29, 1995) (death sentence overturned by trial court due to ineffective assistance of counsel at the penalty phase; resentenced to death) [IAC, D]

State v. Spruill, No. 84 CRS 1423 (Northampton Cnty., Feb. 21, 1992) (conviction overturned by trial court due to ineffective assistance of counsel and *Harbison* error; resentenced to death) [IAC, D]

**State v. Womble*, No. 93 CRS 1992-1993 (Columbus Cnty., July 22, 1998) (conviction overturned by trial court because prosecution concealed material, exculpatory evidence; on retrial, Womble pled to second-degree murder and received a life sentence) [PSE, L]

State v. Zuniga, 444 S.E.2d 443 (No. Car. 1994) (death sentence overturned by state supreme court because jury was misinstructed on proper consideration of mitigating evidence; resentenced to death) [I, D]

pre-1996: 9

1996 and after: 4

Basis for Relief: IAC = 6; PSE = 4; I = 3

Result on Retrial: L = 6; D = 5; RP = 1; DW = 1

OKLAHOMA

Green v. State, 881 P.2d 751 (Okl. Cr. App. 1994) (death sentence overturned because jury instructions invited jury to rely upon improperly vague aggravating circumstance; resentenced to life) [I, L]

State v. Munson, 886 P.2d 999 (Okl. Cr. App. 1994) (conviction overturned because prosecution deliberately withheld 165 photographs and more than 300 pages of reports, most of it suggesting that Munson was innocent; on retrial, Munson was acquitted, *see* Randall Coyne, *Abe Munson's Near-Death Experience*, Okla. Observer, Apr. 25, 1995, at 9) [PSE, NG]

pre-1996: 2

Basis for Relief: PSE = 1; I = 1

Result on Retrial: L = 1; NG = 1

PENNSYLVANIA

**Commonwealth v. Anthony Bryant* (Allegheny Cnty. Com. Pl. No. CC8407686A, May 15, 1998) (death sentence overturned; proceedings challenging conviction are pending) [UK; RP]

**Commonwealth v. George Edwards* (Lackawanna Cnty. Com. Pl. Nos. 84-CR 529 & CR 996, June 21, 1999) (death sentence overturned on state's stipulation to life sentence) [UK, L]

Commonwealth v. DeHart, 650 A.2d 38 (Pa. 1994) (death sentence overturned due to ineffective assistance of counsel; life sentence imposed on retrial) [IAC; L]

**Commonwealth v. Morales*, 701 A.2d 516 (Pa. 1997) (death sentence overturned on successive state post-conviction petition due to improper argument by the prosecutor; life sentence imposed on retrial) [PM, L]

**Commonwealth v. Willard Moran* (Phila. Cnty. Com. Pl. Nos. 3091 & 3092, 1999) (death overturned and Moran reportedly was offered and accepted life sentence in return for ending proceedings) [UK, L]

**Commonwealth v. Florencio Rolan* (Philadelphia Cnty. Com. Pl. Nos. 2893-2896, Mar. 5, 1997) (death sentence overturned; proceedings challenging conviction are pending) [UK, RP]

**Commonwealth v. Benjamin Terry* (Montgomery Cnty. Com. Pl. No. 1563-79, Oct. 22, 1996) (death sentence overturned on successive state post-conviction review following unsuccessful federal habeas review; life sentence imposed on retrial) [UK, L]

**Commonwealth v. Harold C. Wilson* (Philadelphia Cnty. Com. Pl. Nos. 3267-73, Aug. 19, 1999) (death sentence overturned; proceedings challenging conviction are pending upon Pennsylvania Supreme Court's remand for a hearing in April 2000) [UK, RP]

pre-1996: 1

post-1996: 7

Basis for Relief: IAC = 1; PM = 1; UK = 6

Result on Retrial: L = 5; RP = 3

SOUTH CAROLINA

Butler v. State, 397 S.E.2d 87 (S.C. 1990) (convictions and death sentence vacated on state habeas within the original jurisdiction of the South Carolina Supreme Court because the trial court coerced Butler, who was mentally retarded, into testifying at trial against his will and in violation of his privilege against self-incrimination; resentenced to life) [O, L]

James Russell Cain v. Evatt (S.C. 4th Cir. Common Pleas No. 90-CP-13-382, May 4, 1995), *cert. dismissed as improvidently granted*, 477 S.E.2d 98 (S.C. 1996) (convictions and death sentence vacated; resentenced to life) [UK, L]

**Robert Conyers v. Moore* (S.C. 3rd Cir. Common Pleas No. 97-CP-14-506, Feb. 10, 2000) (death sentence vacated; state's appeal pending) [UK, RP]

Chaffee v. State, 362 S.E.2d 875 (S.C. 1987) (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial; resentenced to life) [O, L]

Ferrell v. State, 362 S.E.2d 875 (S.C. 1987) (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial; resentenced to life) [O, L]

**Ellis Franklin v. Moore* (S.C. 3rd Cir. Common Pleas No. 96-CP-45-117, Oct. 2, 1998) (murder conviction and death sentence vacated; retrial pending) [UK, RP]

**Bobby Lee Holmes v. Moore* (S.C. 16th Cir. Common Pleas No. 96-CP-46-966, Jan. 15, 1998) (murder conviction and death sentence vacated; retrial pending) [UK, RP]

**Joseph Hudgins v. Moore*, 1999 WL 1114701 (S.C. Dec. 6, 1999) (conviction and death sentence vacated due to ineffective assistance of counsel in permitting prosecutor to pursue patently inadmissible and prejudicial line of inquiry while cross-examining Hudgins; retrial pending) [IAC, RP]

Alvin Owens (murder conviction and death sentence vacated in unpublished order in 1991 or before, which is discussed in subsequent opinion (reviewing life sentence imposed follow resentencing), in *Owens v. State*, 503 S.E.2d 462 (S.C. 1998)) [UK, L]

**Raymond Patterson v. State* (S.C. 11th Cir. Common Pleas No. 98-CP-32-97, Sep. 23, 1999) (death sentence vacated; resentencing pending) [UK, RP]

Andy Lavern Smith (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial, as discussed in subsequent opinion (reviewing death sentence imposed following resentencing) in *State v. Smith*, 381 S.E.2d 724 (S.C. 1989)) [O, L]

State v. Singleton, 437 S.E.2d 53 (S.C. 1993) (execution of death sentence forbidden due to finding that petitioner was incompetent to be executed) [O, L]

**Robert "Bo" Southerland v. State*, 1999 WL 1140298 (S.C. Dec. 13, 1999) (death sentence vacated due to ineffective assistance on appeal; resentencing pending) [IAC, RP]

**State v. Spann*, 513 S.E.2d 98 (S.C. 1999) (after direct appeal and first state post-conviction proceeding and in midst of federal habeas corpus proceeding, conviction overturned on extraordinary motion for new trial based on discovery of evidence appearing to exonerate petitioner of offense; retrial pending) [O, RP]

Thompson v. Aiken, 315 S.E.2d 110 (S.C. 1984) (death sentence vacated due to prosecutorial misconduct during closing argument; resentenced to life) [PM, L]

Truesdale v. Aiken, 480 U.S. 527 (1987) (death sentence overturned because defendant was prevented from making argument in mitigation to jury based on his good record in prison; resentenced to death, *see State v. Truesdale*, 393 S.E.2d 198 (S.C. 1990)) [O, D]

**James Whipple v. Moore* (S.C. 15th Cir. Common Pleas No. 97-CP-26-295, Dec. 18, 1998) (death sentence vacated; state's appeal pending) [UK, L]

Yates v. Evatt, 500 U.S. 391 (1991) (conviction overturned because trial court prejudicially instructed jury in manner that shifted burden of proof to the defendant; Yates was not returned to death row) [I, L]

pre-1996: 10

1996 and after: 8

Basis for Relief: IAC = 2; PM = 1; I = 1; O = 7; UK = 7

Result on Retrial: L = 10; D = 1; RP = 7

TENNESSEE (incomplete, especially prior to 1985, when decisions were not published or made available on Westlaw)

Adkins v. State, 911 S.W.2d 334 (Tenn. Crim. App. 1994) (death sentence overturned due to counsel's failure to investigate or to use information regarding Adkin's psychiatric and psychological condition and abuse as a child, thus leaving jury with little choice but to impose a death sentence; resentenced to life) [IAC, L]

Bell v. State, 1995 WL 113420 (Tenn. Crim. App. Mar. 15, 1995) (death sentence overturned due to ineffective assistance of counsel at the penalty phase; resentenced to life) [IAC, L]

Bobo v. State (Shelby Cnty. Crim. Ct.) (trial court overturned death sentence due to ineffective assistance of counsel in failing to investigate and present presenting evidence of Bobo's mental disturbance; resentenced to life) [UK, L]

**Brimmer v. State*, 1998 WL 612888 (Tenn. Crim. App. Sept. 15, 1998) (death sentence overturned due to egregious ineffective assistance of counsel by intoxicated and drug-abusing defense lawyer at the penalty phase; resentenced to life) [IAC; L]

Campbell v. State, 1993 WL 122057 (Tenn. Crim. App. Apr. 21, 1993) (death sentence overturned because trial judge instructed sentencing jury to rely in support of aggravating-circumstance findings on a variety of inadmissible evidence; Campbell was not returned to death row) [I, L]

**Caughron v. State*, 1999 WL 49906 (Tenn. Crim. App. Feb. 5, 1999) (death sentence overturned due to ineffective assistance of counsel at the penalty phase; retrial pending) [IAC, RP]

**Rocky Lee Coker v. State* (Hamilton Cnty. Cir. Ct. April 1996) (death sentence overturned due to "fatally flawed" representation at sentencing phase; life sentence imposed on retrial; proceedings described in subsequent opinion in *Coker v. State*, 1999 WL 228789 (Tenn. Crim. App. Apr. 21, 1999)) [IAC, L]

Cooper v. State, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (death sentence overturned due to defense counsel's materially prejudicial failure to interview mental health experts who had evaluated defendant prior to trial and who were aware of substantial mitigating evidence; Cooper was not returned to death row) [IAC, L]

**Goad v. State*, 938 S.W.2d 363 (Tenn. 1996) (death sentence overturned due to trial lawyers' prejudicially deficient failure to investigate and present evidence demonstrating Goad's affliction with post-traumatic stress syndrome; retrial pending) [IAC, RP]

Hartman v. State, 896 S.W.2d 94 (Tenn. 1995) (death sentence overturned due to sentencing jury's prejudicial reliance on unconstitutional aggravating circumstance; resentenced to death) [O, D]

**Randy Hurley v. State* (Cocke Cnty. Crim. Ct.) (death sentence overturned by trial court in mid- to late 1990s; resentenced to life) [UK, L]

**Erskine Leroy Johnson v. State*, 1999 WL 608861 (Tenn. Crim. App. 1999) (death sentence overturned due to state's suppression of evidence that Johnson did not commit offense that jury relied on as aggravating circumstance in imposing death sentence, and because of state's and jury's reliance on second, aggravating circumstance which state conceded was invalid; review pending) [O, RP]

Walter Keith Johnson v. State, 1992 WL 210576 (Tenn. Crim. App. Sept. 2, 1992) (death sentence overturned as grossly disproportionate to the offense; life sentence ordered) [O, L]

Thomas G. Laney v. State (Sullivan Cnty. Crim. Ct. 1994) (death sentence overturned by trial court on successive state post-conviction petition due to sentencing jury's reliance on unconstitutional aggravating circumstance; life sentence imposed on retrial on November 15, 1995, as described in *Laney v. Campbell*, 1997 WL 401829 (Tenn. App. July 18, 1997)) [O, L]

Michael Matson v. State (Hamilton Cnty. Crim. Ct.) (death sentence overturned by trial court in early 1990s on successive state post-conviction petition due to sentencing jury's reliance on unconstitutional aggravating circumstance; resentenced to life) [O, L]

**McCormick v. State*, 1999 WL 394935 (Tenn. Crim. App. June 17, 1999) (conviction and death sentence overturned due to egregiously ineffective assistance of counsel; retrial pending) [IAC, RP]

**David Poe v. State* (Montgomery Cnty. Crim. Ct.) (death sentence overturned by trial court in late 1990s; retrial pending) [UK, RP]

Richard W. Simon v. State (Montgomery Cnty. Crim. Ct.) (death sentence overturned by trial court in early 1990s on successive state post-conviction petition due to sentencing jury's reliance on unconstitutional aggravating circumstance; resentenced to life) [O, L]

**Ricky G. Smith v. State* (Shelby Cnty. Crim. Ct.) (death sentence overturned by trial court on successive state post-conviction petition sometime after January 1994 due to sentencing jury's reliance on unconstitutional aggravating circumstance; resentenced to life; proceedings described in subsequent decision in *Smith v. State*, 1997 WL 206769 (Tenn. Crim. App. Apr. 28, 1997)) [O, L]

**Sylvester Smith v. State*, 1999 WL 899362 (Tenn. Crim. App. Dec. 28, 1998) (conviction and death sentence overturned due to "the plethora and gravity of counsel's deficiencies," which were "glaring . . . throughout all phases of this trial" and "rendered the entire proceeding fundamentally unfair"; resentenced to life) [IAC, L]

Sparks v. State, 1993 WL 151324 (Tenn. May 10, 1993) (death sentence overturned because sentencer relied upon invalid aggravating factor and on evidence obtained in violation of Sparks' post-arraignment right to consult with assigned counsel before being questioned by another inmate who was secretly acting as a government agent; resentenced to life) [PM, L]

**State v. Taylor*, 1999 WL 512149 (Tenn. Crim. App. July 21, 1999) (conviction and death sentence overturned due to egregiously ineffective assistance of counsel; retrial pending) [IAC, RP]

Teague v. State, 772 S.W.2d 915 (Tenn. 1989) (death sentence overturned due to sentencer's reliance on unconstitutional conviction as an aggravating circumstance; resentenced to life) [O, L]

Homer Teel v. State (Marion Cnty. Crim. Ct.) (trial court granted relief in early 1990s; direct appeal decision is in *State v. Teel*, 793 S.W.2d 236 (Tenn. 1990); Teel was not returned to death row). [UK, L]

**Wilcoxson v. State*, 1999 WL 826035 (Tenn. Oct. 18, 1999) (death overturned based on state's admission that Wilcoxson's trial representation was so prejudicially below par as to require resentencing; retrial pending) [IAC, RP]

pre-1996: 13

1996 and after: 12

Basis for Relief: IAC = 12; PM = 1; I = 1; O = 7; UK = 4

Result on Retrial: L = 18; D = 1; RP = 6

TEXAS

Ex Parte Randall Dale Adams, 768 S.W.2d 281 (Tex. Crim. App. 1989) (conviction overturned and prisoner released as innocent due to prosecution's (1) intentional failure to disclose crime witness' prior inconsistent statement, which was diametrically opposed to her material trial testimony; (2) failure to correct witness's perjurious testimony that she had identified defendant in a lineup; and (3) failure to disclose misidentification and improper coaching of witness by police) [PSE, NG]

Ex Parte Banda (Tex. Crim. App. Writ No. 21,327-02, Oct. 21, 1992) (overturning conviction and sentence due to ineffective assistance of appellate counsel; resentenced to death) [IAC, D]

Ex Parte Bell (Tex. Crim. App. No. 70,946, Nov. 6, 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation as a mitigating circumstance; unpublished opinion reported as appendix to dissenting opinion in *Ex Parte Tennard*, 960 S.W.2d 57 (1997); resentenced to death) [I, D]

Ex Parte Brandley, 781 S.W.2d 886 (Tex. Crim. App. 1989) (conviction overturned because that prosecution suppressed evidence placing other suspects at scene of crime near time the crime was perpetrated, its suggestive conduct of investigation so as to create false testimony, and its failure to resolve conflicts in physical evidence; Brandley was released in lieu of retrial) [PSE, NG]

Ex Parte Bravo, 702 S.W.2d 189 (Tex. Crim. App. 1982) (death sentence overturned because the trial court excluded impartial jurors due to their doubts about the death penalty; 99-year sentence imposed on retrial *see* <www.tdcj.state.tx.us/stat/permanentout.htm>) [JB, L]

Ex Parte Chambers, 688 S.W.2d 483 (Tex. Crim. App. 1984) (death sentence overturned because state psychiatrist interviewed petitioner without informing him that his statements could be used as a basis for sentencing him to die; resentenced to death) [O, D]

Ex Parte Demouchette, 633 S.W.2d 879 (Tex. Crim. App. 1982) (same) [O, D]

Ex Parte Duffy, 607 S.W.2d 507 (Tex. Crim. App. 1980) (conviction and death sentence overturned due to ineffective assistance of counsel; resentenced to life, *see* <www.tdcj.state.tx.us/stat/permanentout.htm>) (IAC, L)

Ex Parte Edwin ("Edward") Eldon Corley (Tex. Crim. App. Dec. 1992) (as described in *Austin American-Statesman*, Nov. 15, 1993, 1993 WL 6810836, "Corley's [death] sentence was reversed in December 1992, after the Court of Criminal Appeals found that two state psychiatrists failed to warn Corley before they examined him that they could testify against him"; resentenced to life) [O, L]

Ex Parte Goodman, 816 S.W.2d 383 (Tex. Crim. App. 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation as a mitigating circumstance; resentenced to life) [I, L]

Ex Parte Hughes, 728 S.W.2d 372 (Tex. Crim. App. 1987) (death sentence overturned because trial court excluded impartial jurors due to their doubts about the death penalty; resentenced to death) [JB, D]

Ex Parte Jordan, 758 S.W.2d 250 (Tex. Crim. App. 1988) (death sentence overturned because Jordan was incompetent to be executed) [O, L]

Ex Parte McCormick, 645 S.W.2d 801 (Tex. Crim. App. 1983) (conviction overturned due to capital attorney's conflict of interest in representing two criminal defendant's with conflicting defenses; McCormick was resentenced to life and has since been paroled) [IAC, L]

Ex Parte McGee, 817 S.W.2d 77 (Tex. Crim. App. 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation as a mitigating circumstance; resentenced to life [I, L]

Ex Parte McKay, 819 S.W.2d 478 (Tex. Crim. App. 1991) (death sentence overturned due to trial court's improper limitation of counsel's ability to question prospective jurors on whether they would feel compelled to condemn the defendant in the event that they convicted him; resentenced to life) [JB, L]

Ex Parte McMahon, 645 S.W.2d 801 (Tex. Crim. App. 1983) (conviction overturned due to capital attorney's conflict of interest in representing two criminal defendant's with conflicting defenses; McMahon was resentenced to life and has been released on parole) [IAC, L]

Ex Parte Mitchell, 853 S.W.2d 1 (Tex. Crim. App. 1993) (conviction overturned due to prosecutorial suppression of exculpatory evidence showing that victim was alive after last time when Mitchell could have killed him; lengthy but inconclusive proceedings on remand described in *Ex parte Mitchell*, 977 S.W.2d 575 (Tex. Crim. App. 1998)) [PSE; ?]

Ex Parte Modden (Tex. Crim. App. Case No. 71,312, Feb. 12, 1992) (death sentence overturned due to improper jury instructions forbidding jury to consider Modden's mental retardation as a mitigating circumstance; resentenced to death) [I, D]

Ex Parte Purtell (Tex. Crim. App. Case No. 71,515, Oct. 12, 1994) (death sentence overturned because state psychiatrist interviewed petitioner without informing him that his statements could be used as a basis for sentencing him to die; resentenced to life) [O, L]

Ex parte Terry Nash Sterling (Tex. Crim. App. Apr. 29, 1992) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation and brain damage as a mitigating circumstance, as reported in *Austin American-Statesman*, Apr. 30, 1992, at B12, 1992 WL 4716376; resentenced to life) [I, L]

Ex Parte Philip Tompkins (230th Judicial District Court of Harris County, Texas Cause No. 329,004A) (on July 7, 1990, the Texas governor commuted Tomkins' death sentence at the request of the D.A., after Tompkins' volunteer state post-conviction lawyers developed evidence that the prosecution's star witness at the penalty phase—purportedly a clinical psychologist who had “examined” and “treated” Phil during a prior stint in prison—was not a psychologist at all but an imposter whose only post-high-school educational credential was a degree in fine arts) [PSE, L]

Ex Parte Williams, 833 S.W.2d 150 (Tex. Crim. App. 1992) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation as a mitigating circumstance; resentenced to life) [I, L]

**Ex Parte Bobby Joe Wills* (Tex. Crim. App. Writ No. 72,915, May 13, 1998) (death sentence overturned due to improper instruction forbidding jury to consider defendant's mental retardation as a mitigating circumstance, as reported in *Austin American-Statesman*, May 18, 1998, at A6, 1998 WL 3610947; resentenced to life) [I, L]

pre-1996: 22

1996 and after: 1

Basis for Relief: IAC = 4; PSE = 4; I = 7; JB = 3, O = 5

Result on Retrial: L = 15; NG = 2, D = 6

UTAH

Codianna v. Morris, 660 P.2d 1101, 1103 (Utah 1983) (in opinion denying habeas corpus relief from capital conviction, court notes trial court's 1980 grant of habeas corpus relief from capital sentence for Codianna and his two codefendants, Craig Marvell and Irvin Dunsdon, based on prosecutorial suppression of mitigating evidence; all three were resentenced to life in prison) [PSE, L]

Irvin Dunsdon v. Morris (see *Codianna, supra*) [PSE, L]

Craig Marvell v. Morris (see *Codianna, supra*) [PSE, L]

pre-1996: 3

Basis for Relief: PSE = 3

Result on Retrial: L = 3

VIRGINIA

Wilbert Evans (death sentence overturned by trial court after state “confessed error” based on its reliance to secure a death sentence on “seriously misleading” or “otherwise defective” prior convictions (reversal noted in decision reviewing death sentence imposed on retrial *Evans v. Commonwealth*, 323 S.E.2d 114 (Va. 1984))) [O, D]

Joseph Giarratano (in 1991, Virginia governor accepted prisoner’s request that he impose a quasi-judicial judgment by way of “conditional pardon” (setting aside the conviction on condition that the prisoner waive double jeopardy and submit to reprosecution) to enable the prisoner to secure a new trial that several judicial doctrines of issue-preclusion had barred him from getting in either the Virginia state courts or the federal courts; on retrial, Giarratano was sentenced to life; see Greg Schneider, *2 Years After Escaping Execution, Giarratano’s Stature Still Grows*, The Virginian-Pilot & Ledger Star, Sept. 5, 1993, at B1) [UK, L]

**Chauncey Jackson v. Warden*, 2000 WL 462516 (Va. April 21, 2000) (conviction overturned because court that convicted defendant did not have jurisdiction over him; retrial pending) [O, RP]

Earl Washington (in 1992, Virginia governor commuted capital conviction and death sentence to life imprisonment based on DNA evidence showing that Washington, who was retarded, had been compelled to confessed to a rape-murder that he did not commit; see Robert Perske, *Unequal Justice?* 54-56 (1991); Joe Jackson & June Arney, *Sentenced To Die Without Fair Trials*, Virginian-Pilot & Ledger Star, June 26, 1994, at A1) [PSE, L]

pre-1996: 3

1996 and after: 1

Basis for Relief: PSE =1; O = 2; UK = 1

Result on Retrial: L = 2; D = 1; RP = 1

WASHINGTON [No available information]

WYOMING

Engberg v. Meyer, 820 P.2d 70 (Wyo. 1991) (death sentence reversed due to improper bootstrapping of accompanying felony that was used to elevate offense from second- to first-degree murder as aggravating circumstance sufficient to elevate first-degree murder to capital offense; life sentence imposed on retrial, *see Engberg v. State*, 874 P.2d 890 (Wyo. 1994)) [O, L]

pre-1996: 1

Basis for Relief: O = 1

Result on Retrial: L = 1

Appendix D: Examples of Serious Error Warranting Federal Habeas Corpus Relief¹

1. *Amadeo v. Zant*, 486 U.S. 214 (1988) (**Georgia**) (prosecutor unconstitutionally instructed jury commissioner to under-represent African-Americans on the jury venire).
2. *Banks v. Reynolds*, 54 F.3d 1508 (10th Cir. 1995) (**Oklahoma**) (prosecution suppressed evidence that at least three other men were previously arrested for the crime with which petitioner was charged, that two of them had been positively identified by eyewitnesses, and that the cell-mate of one of the previously arrested suspects claimed that THE suspect had confessed to the crime).
3. *Beam v. Paskett*, 3 F.3d 1301 (9th Cir. 1993), *cert denied*, 511 U.S. 1060 (1994) (**Idaho**) (death sentence premised in part on trial judge's distaste for petitioner's prior history of nonviolent “abnormal sexual relationships,” including homosexuality and relationships with women substantially younger and older than petitioner).
4. *Bowen v. Maynard*, 799 F.2d 593 (10th Cir.), *cert denied*, 479 U.S. 962 (1986) (**Oklahoma**) (prosecutors suppressed a sheaf of investigative reports that a suspect other than the capitally sentenced petitioner had murdered the victim and that an investigating officer with a grudge against the petitioner had maliciously framed him; Bowen was subsequently released from prison for lack of any evidence of his guilt).
5. *Brown v. Wainwright*, 785 F.2d 1457 (11th Cir. 1986) (**Florida**) (state deliberately withheld fact that chief witness against Brown lied on the stand about not having been granted leniency in return for testifying against Brown; on retrial, Brown was released from prison after the charges against him were dropped).
6. *Buttrum v. Black*, 908 F.2d 965 (11th Cir. 1990) and 721 F. Supp. 1261 (N.D. Ga. 1989) (**Georgia**) (prosecutor unconstitutionally secured death sentence based on a plethora of errors, including (1) insisting on going to trial before a jury saturated with prejudicial pretrial publicity; (2) employing a private psychiatrist to testify against Buttrum but insisting that she be limited to the services of a psychiatrist employed by and beholden to the state, rather than the independent expert the Constitution requires; (3) blatantly and unconstitutionally inviting the jurors to use against Buttrum the fact that she had exercised her right not to testify; (4) urging the jury, whatever its qualms about a death sentence might be, to impose that punishment because the decision would later be reviewed by appellate courts that would bear the real responsibility for Buttrum's fate; (5) urging the jury to ignore factors warranting mercy, notwithstanding that the Constitution makes those very factors the crux of the sentencing decision; (6) relying on a vague and overbroad aggravating circumstance as a basis for a death sentence)
7. *Carriger v. Stewart*, 132 F.3d 463 (9th Cir. 1997) (*en banc*), *cert. denied*, 118 S. Ct. 1827 (1998) (**Arizona**) (prosecutor failed to disclose information in state's files showing that prosecution's central witness—who later confessed to the murder he theretofore had successfully pinned on petitioner at trial—had a “long history” of prior crimes and assaultive acts and “of lying to the police and blaming others to cover up his own guilt”; Carriger subsequently pled guilty to a lesser offense in return for the state's agreement that he be immediately released, *see generally* Samuel R. Gross, *Lost Lives: Miscarriages of Justice in Capital Cases*, 61 L. & CONTEMP. PROB. 125, 139-40 (1998)(providing additional details on *Carriger* case)).

¹For many other examples of “serious error” requiring judicial reversal of capital judgments, see cases collected in Appendix C, *supra*; *Report*, at notes 36, 44, 97-106, 140; Liebman & Hertz, *supra Report*, note 33, § 11.2c.

8. *Cervi v. Kemp*, 855 F.2d 702 (11th Cir. 1988), *cert. denied*, 489 U.S. 1033 (1989) (**Georgia**) (after Cervi informed the judge at an initial hearing that he wanted a lawyer, thus giving him a constitutional right to the assistance of counsel before and while being questioned by police—and during the very period when Cervi’s lawyer was in the police station repeatedly demanding to see his client, but was denied the opportunity—police interrogated Cervi until he confessed; Cervi was resentenced to life).
9. *Chambers v. Armontrout*, 907 F.2d 825 (8th Cir.), *cert. denied*, 498 U.S. 950 (1990) (**Missouri**) (counsel incompetently failed to interview and call witness who would have supported petitioner’s claim that he did not deserve the death penalty because he acted in self-defense).
10. *Clemons v. Bowersox*, 124 F.3d 944 (8th Cir. 1997) (**Missouri**) (on rehearing after relief initially had been denied, conviction and death sentence were overturned due to the state’s suppression of an eye-witness report identifying as the actual killer another man whom Clemons had all along claimed was the culprit; on retrial in February 2000, Clemons was acquitted)
11. *Christy v. Horn*, 28 F. Supp. 2d 307 (W.D. Pa. 1998) (**Pennsylvania**) (prosecutor violated due process by disparaging petitioner’s mental illness defense despite the prosecutor’s awareness of inadmissible evidence substantiating the defense and by implicitly encouraging the jury to believe, erroneously, that petitioner might be eligible for parole if sentenced to life imprisonment; in addition, the trial court unconstitutionally denied a defense request for an independent psychiatrist at guilt and penalty stages and instead limited the accused to a court-appointed psychiatrist who was not competent to marshal the necessary facts; in addition, Christy’s attorneys provided prejudicially incompetent representation at the penalty phase by “fail[ing] to investigate the mountain of mitigating evidence readily available to them,” failing to seek psychiatric testimony, failing to object to the prosecutor’s improper closing argument, and incorrectly advising the jury about Pennsylvania law in a manner that was highly prejudicial to Christy).
12. *United States ex rel. Collins v. Wellborn* and *United States ex rel. Bracy v. Gramley*, 79 F. Supp. 898 (N.D. Ill. 1999) (**Illinois**) (death sentences overturned based on proof that trial judge, who repeatedly took bribes to acquit in other cases, exhibited compensatory pro-prosecution bias against Collins and Bracy and other defendants who did not bribe him).
13. *Crivens v. Roth*, 172 F.3d 991 (7th Cir. 1999) (**Illinois**) (prosecutor failed to disclose that its key eyewitness had a criminal history and had used an alias in past, thereby “demonstrat[ing] a propensity to lie to police officers, prosecutors, and even judges”).
14. *Davis v. Zant*, 36 F.3d 1538 (11th Cir. 1994) (**Georgia**) (conviction and death sentence overturned due to blatant prosecutorial misrepresentations to the jury in the course of objections and closing argument: having successfully objected to Davis’ effort to inform the jury that another person had confessed to the killing for which Davis was convicted and sentenced to die, and having known that Davis for months before trial had hinged his defense on his claim that the other person was the killer, the prosecutor repeatedly vouched to the jury that there was no evidence that the other person had committed the crime and that Davis had “fabricated” the defense at the last minute, during the course of the trial).
15. *Felder v. McCotter*, 765 F.2d 1245 (5th Cir. 1985), *cert. denied*, 484 U.S. 1077 (1986) (**Texas**) (after Felder was appointed counsel, giving him a constitutional right to have his lawyer present when the police questioned him, and after the appointed lawyer told the police he wanted to be present at any interrogation, the police proceeded to interrogate Felder (a man of low intelligence) outside the presence of counsel, using a variety of stratagems designed to make Felder believe the police knew he was guilty, until Felder confessed).

16. *Ford v. Norris*, 67 F.3d 162 (8th Cir. 1995) (**Arkansas**) (conviction and death sentence overturned because of “overwhelming record evidence . . . that the prosecutor routinely attempted to pervert the peremptory challenge system by using it to exclude black venirepersons for reasons wholly unrelated to the trial” and did so at Ford’s trial, striking every potential black juror, and giving an explanation in each case that was blatantly pretextual because it was either a false statement of the facts regarding the prospective juror or, if true, would have required the prosecutor to strike white jurors whom he left on the jury; district judge also found ineffective assistance of trial counsel at the sentencing phase).
17. *Francis v. Franklin*, 471 U.S. 307 (1985) (**Georgia**) (trial judge instructed jury to “presume” that defendant was guilty of murder unless defendant proved otherwise).
18. *Groseclose v. Bell*, 130 F.3d 1161 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 1826 (1998) (**Tennessee**) (counsel failed to develop defense theory and “to conduct any meaningful adversarial challenge, as shown by his failure to cross-examine more than half of the prosecutions’ witnesses, to object to any evidence, to put on any defense witnesses, to make a closing argument, and, at sentencing, to put on any meaningful mitigation evidence”; instead, counsel abdicated client’s case to counsel for codefendant who presented a defense that was antagonistic to Groseclose).
19. *Guerra v. Johnson*, 916 F. Supp. 620 (S.D. Tex. 1995), *aff’d*, 90 F.3d 1075 (5th Cir. 1996) (**Texas**) (police and prosecutors, among other things, “intimidated” numerous eyewitnesses, who initially said that petitioner’s companion fired the fatal shots, into corroborating the prosecution’s theory that Guerra had fired the shots—in the process coercing witnesses into giving testimony and into signing affidavits that the police and witnesses knew were false; police told one witness that her common-law husband was at risk of parole revocation if she did not cooperate and told another witness that her infant daughter could be taken from her if she refused to cooperate; district judge concluded that the defendant would surely have been acquitted if he had received a fair trial; on retrial, the D.A. demanded that the state trial judge reconsider all of the federal courts’ findings about prosecutorial misconduct, which the trial judge did, concluding that the findings were accurate in all respects; in April 1997, the D.A. dropped all charges against Guerra, and he was released).
20. *Harris v. Wood*, 64 F.3d 1432 (9th Cir. 1995) (**Washington**) (counsel incompetently failed to interview a majority of the witnesses, advised the defendant to confess to the prosecutor without receiving any promise of reduced charges in return, and failed to file potentially meritorious suppression motions, to propose or object to improper jury instructions, and to raise and preserve meritorious issues for appeal).
21. *Houston v. Dutton*, 50 F.3d 381 (6th Cir.), *cert. denied*, 516 U.S. 905 (1995) (**Tennessee**) (capital conviction overturned because—in a trial at which the single, decisive issue was whether the defendant deliberately killed the victim or whether the killing was an accident, and at which the state’s evidence on that decisive issue was so weak that it raised a substantial question whether it was even barely sufficient to avoid a directed verdict in favor of the defense—the trial judge instructed the jury that it was required to “presume” that the killing was intentional).
22. *Jones v. Thigpen*, 788 F.2d 1101 (5th Cir. 1986), *cert. denied*, 479 U.S. 1087 (1987) (**Mississippi**) (counsel conducted no investigation in mitigation of death penalty and did not realize, nor inform jury, that his client had an I.Q. below 41).
23. *Jurek v. Estelle*, 623 F.2d 929 (5th Cir. 1980) (*en banc*), *cert. denied*, 450 U.S. 1001 (1981) (**Texas**) (habeas decision overturning a capital conviction after police obtained two very different confessions from the mentally deficient petitioner during a 42-hour period of interrogation without counsel; the exculpatory

version of the confession, not admitted at trial, appeared to be in the defendant's words; the inculpatory version, used at trial, had prose beyond defendant's ken).

24. *Kordenbrock v. Scroggy*, 919 F.2d 1091 (6th Cir. 1990) (*en banc*), *cert. denied*, 499 U.S. 970 (1991) (**Kentucky**) (police obtained confession after (1) ignoring petitioner's statements that he wanted the interrogation to stop, (2) threatening to arrest petitioner's girlfriend (against whom they had no evidence) and (3) threatening to send petitioner to Ohio, where, police said, he could be held incommunicado and put through "an ordeal [he] may not forget for a long time," then (4) suppressed the tape-recorded version of the confession and pieced together a written statement giving a far more inculpatory account than the actual confession).
25. *Kyles v. Whitley*, 514 U.S. 419 (1995) (**Louisiana**) (in investigating robbery-murder of supermarket customer in store's parking lot, New Orleans police (1) accepted the word of a long-time criminal and police informant Beanie, whom police found in possession of the victim's car, that Curtis Kyles had sold him the car, while suppressing a variety of statements by Beanie that (a) were inculpatory, self-contradictory and inconsistent with Beanie's trial testimony, (b) suggested that Beanie (in his own words) had "'set up'" Kyles, and (c) revealed a course of dealings between Beanie and the police that strongly impugned the investigation, then (2) manipulated eyewitnesses into identifying Kyles at trial, inconsistently with their initial but thereafter suppressed descriptions that much more closely matched Beanie; a majority of jurors in three successive retrials voted to acquit Kyles, whom prosecutors finally released from custody).
26. *Martinez-Macias v. Collins*, 810 F. Supp. 782 (W.D. Tex. 1991), *aff'd*, 979 F.2d 1067 (5th Cir. 1992) (**Texas**) (conviction and death sentence overturned due to egregious, comprehensive, prejudicial incompetence by trial lawyer who (1) failed to call disinterested alibi witness who was available at time of trial and whose testimony would have established that Macias could not have committed the offense; (2) failed to impeach a crucial prosecution witness with her contradictory statements before trial to a private investigator and by calling witnesses who were with the witness at the critical time and did not see what she saw; (3) failed to investigate and present evidence from defendant's family members regarding Macias's good character traits, failed to prepare defendant's wife for testimony, and failed to utilize records from a California rehabilitation center to demonstrate the defendant's good behavior and attempts to rehabilitate while in custody; (4) failed to utilize an expert witness to introduce important mitigating information—all of which, taken together, left the federal court of appeals "with the firm conviction that Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question" and that the "state [having] paid defense counsel \$11.84 per hour[,] [u]nfortunately . . . got only what it paid for"; on remand, Macias was released after a grand jury determined that there was not even enough evidence of guilt to justify indicting him).
27. *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078 (N.D. Ill. 1999) (**Illinois**) (granting evidentiary hearing to capably sentenced habeas petitioner and denying presumption of correctness to state court's voluntary-confession finding because the state suppression-hearing judge "did not have access to the voluminous [subsequently disclosed] information about the systematic . . . [physical] abuse [of suspects by the police unit that interrogated and secured a confession from Maxwell], . . . and Maxwell's attorney never had the opportunity to use that information to cross-examine the officers who testified at the suppression hearing"). In regard to the police unit that took the confession in Maxwell's case, see Sasha Abramsky, *Trial by Torture, Mother Jones*, March 3, 2000 ("Dozens of other prisoners [including 10 death row inmates] have come forward saying they were tortured into confessing by police officers from . . . Area Two" and presenting "hair-raising and remarkably consistent [claims] . . . of alligator clips attached to their ears, noses, mouths, penises, and testicles; of electric shocks to the genitals; of being burned atop radiators" and of "mock executions" and "bags put over their heads for minutes at a time, a technique known as the 'Dry Submarino'").

28. *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988), *cert. denied*, 489 U.S. 1033 (1989) **(North Carolina)** (police withheld the fact that before petitioner’s arrest for the offense, the chief prosecution witness—who at trial identified petitioner, a dark-skinned African American man sentenced to die for the offense, as the assailant—had told police that the assailant was white).
29. *Miller and Jent v. Wainwright*, Nos. 86-98-Vic.-T-13 and 85-1910-Civ.-T-13 (M.D. Fla. Nov. 13, 1987) **(Florida)** (prosecutor exhibited “callous and deliberate disregard for ... truth” by suppressing police reports identifying numerous witnesses who were fishing at the location where the victim’s body was found at the only time the two capitally sentenced petitioners (who otherwise had an airtight alibi defense) could have deposited the victim’s body and who saw nothing amiss; Jent and Miller pled to a lesser offense and were immediately released on time served).
30. *Monroe v. Blackburn*, 748 F.2d 958 (5th Cir. 1984), *cert. denied*, 476 U.S. 1145 (1985) **(Louisiana)** (state failed to disclose that police obtained information after trial that someone other than petitioner may have committed the murder).
31. *Orndorff v. Lockhart*, 998 F.2d 1426 (8th Cir. 1993), *cert. denied*, 511 U.S. 1063 (1994) **(Arkansas)** (prosecutor failed to inform defense that key witness in favor of death penalty was hypnotized prior to trial, preventing fair cross-examination concerning discrepancies between witness’s prehypnotic and posthypnotic statements to police).
32. *Parker v. Bowersox*, 188 F.3d 923 (8th Cir. 1999) **(Missouri)** (defense counsel failed to respond to state’s argument in aggravation—that defendant killed his girlfriend to eliminate her as a witness against him in a criminal proceeding—by presenting accessible evidence proving that petitioner knew for certain prior to the murder that the victim could and would not testify against him).
33. *Parker v. Dugger*, 498 U.S. 308 (1991) **(Florida)** and *Richmond v. Lewis*, 506 U.S. 40, 48 (1992) **(Arizona)** and *Stringer v. Black*, 503 U.S. 222 (1992) **(Mississippi)** (state appellate court struck down an aggravating circumstance on which a death sentence was based without determining whether a death sentence remained appropriate absent the faulty aggravating circumstance).
34. *Paxton v. Ward*, 199 F.3d 1197 (10th Cir. 1999) **(Oklahoma)** (overturning judgment because D.A. “clearly and deliberately made two critical misrepresentations to the jury” as an “an integral part of the deprivation of Mr. Paxton’s constitutional rights to present mitigating evidence, to rebut evidence and argument used against him, and to confront and cross-examine the state’s witnesses”)
35. *Rickman v. Bell*, 131 F.3d 1150 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 1827 (1998) **(Tennessee)** (counsel’s “total failure to actively advocate his client’s cause” and “repeated expressions of contempt for his client for his alleged actions” had the effect of “provid[ing] [petitioner] not with a defense counsel, but with a second prosecutor”).
36. *Shillinger v. Haworth*, 70 F.3d 1132 (10th Cir. 1995) **(Wyoming)** (deputy sheriff’s listening in on and reporting to prosecutor substance of defense counsel’s jailhouse conversations with client violated Sixth Amendment right to counsel).
37. *Estelle v. Smith*, 451 U.S. 454 (1981) **(Texas)** (state-employed psychiatrist was permitted to testify at death penalty phase based on petitioner’s pretrial statements that were not freely and voluntarily given and that were made without counsel or waiver of counsel).

38. *Smith v. McCormick*, 914 F.2d 1153 (9th Cir. 1990) (**Montana**) (state unconstitutionally secured a death sentence against an indigent defendant with mental disorders when the trial judge (1) forced the defense to rely on the psychiatric evaluation of a doctor acting under the direction of the judge (who had previously sentenced Smith to die), rather than appointing the independent psychiatrist required by law in a case in which doing so would have generated substantial mitigating evidence; (2) refused to consider most of the mitigating circumstances that Smith did manage to present; and, (3) as to the limited set of mitigating factors the judge did take into consideration, he refused to assess their overall effect in mitigation, instead insisting that each individual factor be sufficient in itself to warrant a life sentence).
39. *Stockton v. Virginia*, 852 F.2d 740 (4th Cir. 1988), *cert. denied*, 489 U.S. 1071 (1989) (**Virginia**) (in lunch break during jury's death sentencing deliberations, courtroom deputies allowed owner of restaurant in which jurors were eating to tell jurors "they ought to fry the son of a bitch").
40. *Strickland v. Francis*, 738 F.2d 1542 (11th Cir. 1984) (**Georgia**) (state court violated Strickland's due process rights by forcing him to trial despite mental disorders so severe and unequivocal that he had no idea what the proceedings were about and could not assist his attorney).
41. *Troedel v. Dugger*, 828 F.2d 670 (11th Cir. 1987), *aff'g* 667 F. Supp. 1426 (S.D. Fla. 1986) (**Florida**) (prosecutor suborned testimony of expert witness at separate trials of two codefendants that each codefendant had to have been sole triggerman in single killing with which both were charged and for which Troedel was sentenced to death).
42. *Turner v. Murray*, 476 U.S. 28 (1986) (**Virginia**) (trial court forbade capital defendant charged with interracial crime to question prospective jurors in order to discover possible racial biases)
43. *Wade v. Calderon*, 29 F.3d 1312 (9th Cir. 1994) (**California**) (sentence of death based on unconstitutionally vague special circumstance of torture-murder and based on prejudicially ineffective representation at penalty phase due to counsel's failure to present any significant evidence of defendant's child abuse and his argument to the jury that executing defendant would benefit him by freeing him of his mental illness).
44. *Wallace v. Kemp*, 757 F.2d 1102 (11th Cir. 1985) (**Georgia**) (capitally sentenced petitioner found to have been incompetent to assist attorney at trial; on retrial, after being restored to sanity, Wallace was acquitted).
45. *Wheat v. Thigpen*, 793 F.2d 621 (5th Cir. 1986), *cert. denied*, 480 U.S. 930 (1987) (**Mississippi**) (prosecutor encouraged jurors to exercise less than full responsibility for death sentence by telling jurors that any mistake they made in sentencing the defendant to die would be corrected by an appellate court).
46. *Wilkins v. Bowersox*, 145 F.3d 1006 (8th Cir. 1998), *cert. denied* 119 S. Ct. 852 (1999) (**Missouri**) (conviction and death sentence overturned because the trial court permitted the 16-year old defendant—who "from infancy through his teenage years [had] suffered severe physical and emotional abuse at the hands of his mother and other adults in his life," who "began abusing drugs as a kindergartner on his way to school," who was diagnosed at age 10 "as a severely depressed boy with homicidal and suicidal tendencies," who "was transferred in and out of mental health facilities" between ages 10 and 16, and who court-appointed psychiatrists at trial, on direct appeal and during state post-conviction proceedings had unanimously and consistently concluded could not make voluntary, knowing and intelligent decisions about important matters in his case, and who was never advised by the court or counsel about "his possible defenses to the charges against him . . . or the full range of punishments that he might receive"—to fire his lawyer, represent himself

at trial (as a 16-year-old), waive all his rights and plead guilty, and then waive his right to present any evidence in mitigation of the death penalty).

47. *Williams v. Taylor*, 120 S. Ct. 1495 (2000) (**Virginia**) (death sentence overturned due to incompetence of Williams' trial attorneys who "did not begin to prepare for [the penalty trial] until a week before" it took place, "failed to conduct an investigation that would have uncovered extensive records graphically describing Williams' nightmarish childhood, not because of any strategic calculation but because they incorrectly thought that state law barred access to such records," thereby kept "the jury [from] learn[ing] that Williams' parents had been imprisoned for the criminal neglect of Williams and his siblings, that Williams had been severely and repeatedly beaten by his father, that he had been committed to the custody of the social services bureau for two years during his parents' incarceration (including one stint in an abusive foster home), and then, after his parents were released from prison, had been returned to his parents' custody"; concluding that "there existed 'a reasonable probability that the result of the sentencing phase would have been different' if the jury had heard that evidence").
48. *Williamson v. Ward*, 904 F. Supp. 1529 (E.D. Okla. 1995) (**Oklahoma**) (overturning capital conviction based on faulty hair analysis which was so "scientifically unreliable" that it should not have been permitted as evidence of guilt and based on claims that hairs found at the crime scene "matched" the defendant's, although hair analysis can never support that categorical a claim), *aff'd*, 110 F.3d 1508 (10th Cir. 1997) (affirming reversal of capital conviction on habeas because appointed counsel, who received no funding for expert or investigative services and was paid the statutory maximum of \$3200, failed to investigate a videotaped statement by another person confessing to the crime and extensive evidence of petitioner's mental illness and likely incompetence to stand trial) (DNA testing subsequently established that Williamson was innocent, and he was released from prison, *see* Bill Dedman, *DNA Evidence Frees Two in Murder Case*, Milwaukee J. Sentinel, Apr. 25, 1999, at 20; Barry Scheck, Peter Neufeld & Jim Dwyer, *Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted* 126-27, 130-57, 251-54 (2000)).

**Examples of Serious Error
Warranting State Post-Conviction or
Federal Habeas Corpus Relief;
with Contact Information***

Arranged by State

Index:

Innocence cases: Carriger/Arizona; Knapp/Arizona; Brown/Florida; Miller & Jent/Florida; Nelson/Georgia; Jimerson/Illinois; Bowen/Oklahoma; Munson/Oklahoma; Williamson/Oklahoma; Brandley/Texas, Martinez-Macias/Texas

Cases with multiple serious error: Gunsby/Florida; Buttrum/Georgia; Smith/Montana; Christy/Pennsylvania

Very recent cases: Young/Florida; Collins and Bracy/Illinois; Crivens/Illinois; Parker/Missouri; Wilkins/Missouri; Mazzan/Nevada; Munsey/North Carolina; Hudgins/South Carolina; Spann/South Carolina; Brimmer/Tennessee; Sylvester Smith/Tennessee; Williams v. Taylor/Virginia

Pattern of wrongful convictions (often due to prosecutorial suppression of evidence): See Arizona cases; Oklahoma cases

Chronic incompetent lawyering: See Missouri cases; Tennessee cases (many more cases can be supplied)

Chronic prosecutorial suppression of evidence of innocence and other prosecutorial misconduct: See Florida cases; North Carolina cases; Oklahoma cases; also Alabama and Arizona cases

States with error running the gamut and large numbers of serious errors found: See Florida cases; Georgia cases; Illinois cases; Texas cases

Racial discrimination in selecting jurors: Floyd/Alabama; Ford/Arkansas, Amadeo/Georgia

Lawyers with multiple cases on the list:

John H. Blume, Esq., Columbia, SC, 803-765-1044: Butler/South Carolina; Spann/South Carolina

Professor John C. Boger, U. No. Car. L. School, 919-962-843-9288: McDowell/

North Carolina; Jurek/Texas; Estelle v. Smith/Texas

Stephen B. Bright, Esq., Atlanta, GA, 404-688-1202: Amadeo/Georgia;

*In some cases, this information comes from the published decision in the listed case. Although we have tried to update the information about lawyers' phone numbers and locations, some of it is outdated.

Wheat/Mississippi
Prof. Randall T.E. Coyne, Univ. of Oklahoma Law School, 405-325-4646:
Munson/Oklahoma; Martinez-Macias/Texas
Laura Wightman FitzSimmons, Esq., Las Vegas, NV, 702-733-8877:
Jimenez/Nevada; Miranda/Nevada
Professor Eric Freedman, Hofstra Law School, NY, NY, 212-665-2713:
Monroe/Louisiana; McCormick/Texas; Earl Washington/Virginia
George Kendall, Esq., NY, NY, 212-965-2267: Buttrum/Georgia;
Cervi/Georgia; Curry/Georgia; Ross/Georgia
Professor James S. Liebman, NY, NY, 212-854-3423: Kyles/Louisiana;
Houston/Tennessee
Mark Olive, Esq., Tallahassee, FL, 850-224-0004: Michael/Florida;
Roman/Florida; Troedel/Florida; Wilson/Florida
Bryan Stevenson, Esq., Montgomery, AL, 334-269-1803: Jefferson/AL
McMillian/AL
Denise Young, Esq., Tucson, AZ, 520-322-5344: Carriger/AZ; Serna/AZ

ALABAMA

Ex parte Floyd, 571 So.2d 1234 (Ala. 1990) (conviction overturned because prosecutor intentionally discriminated against African American jurors by using his first 11 (of 12) peremptory challenges to strike all 11 African-Americans in the jury venire; resentenced to life)

CONTACT: Christopher Knight, Esq., Mobile, AL
Charles Hollifield, Esq., Montgomery, AL

Jefferson v. State, 645 So. 2d 313 (Ala. Crim. App. 1994) (conviction and death sentence overturned because state withheld exculpatory evidence that someone other than the defendant committed the crime and that seriously impeached the credibility of two key prosecution witnesses; resentenced to life)

CONTACT: Bryan A. Stevenson, Esq., Montgomery, AL, 334-269-1803
Ruth E. Friedman, Esq., Washington, D.C. 202-393-8070

Walter McMillian v. State, 616 So. 2d 933 (Ala. Crim. App. 1993) (conviction and death sentence overturned because state (1) suppressed exculpatory evidence impeaching its principal witness (who subsequently recanted) and (2) failed to disclose evidence creating a reasonable probability that the outcome of the guilt-innocence trial would have been different had the evidence been disclosed; petitioner subsequently released from custody as innocent)

CONTACT: Bryan A. Stevenson, Esq., 334-269-1803

ARIZONA

Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997) (*en banc*), *cert. denied*, 118 S. Ct. 1827 (1998) (prosecutor failed to disclose information in state's files showing that prosecution's central witness—who later confessed to the murder he successfully pinned on Carriger at trial—had a “long history” of prior crimes and assaultive acts and “of lying to the police and blaming others to cover up his own guilt”; on retrial, Carriger was released from prison)

CONTACT: Jay Pultz, Esq., Center for Capital Assistance, San Francisco, CA
415-621-8860
Denise Young, Esq., Tucson, AZ, 520-322-5344
Prof. Samuel Gross, U. Mich. Law School, 734-764-1519

State v. Knapp (conviction and death sentence overturned in 1987 on third state post-conviction petition due to newly discovered scientific evidence of innocence and police and prosecutorial misconduct, as described in *Knapp v. Knapp*, 823 P.2d 625 (Ariz. 1992); Knapp was subsequently released as innocent, as detailed in Roger Parloff, *Triple Jeopardy* (1996))

CONTACT: Larry Hammond, Esq., LAHammond@omlaw.com, 602-640-0000
Roger Parloff, NY, NY, 212-313-9050

State v. Serna (Maricopa Cnty. Super. Ct. No. 150464, 1994) (conviction overturned due to prosecutor's obstruction of defense's ability to find an exculpatory witness; on retrial, state offered and Serna accepted a guilty plea to manslaughter, who was then sentenced to time served and was released from prison, see *From Death Row to Halfway House*, Phoenix Gazette, Jan. 24, 1995, at B1, 1995 WL 2752207)

CONTACT: Denise Young, Esq., Tucson, AZ, 520-322-5344

ARKANSAS

Ford v. Norris, 67 F.3d 162 (8th Cir. 1995) (conviction and death sentence overturned because of "overwhelming record evidence . . . that the prosecutor routinely attempted to pervert the peremptory challenge system by using it to exclude black venirepersons for reasons wholly unrelated to the trial" and did so at Ford's trial, striking every potential black juror, and giving an explanation in each case that was blatantly pretextual because it was either a false statement of the facts regarding the prospective juror or, if true, would have required the prosecutor to strike white jurors whom he left on the jury; district judge also found ineffective assistance of trial counsel at the sentencing phase)

CONTACT: Timothy O. Dudley, Little Rock, Arkansas, 501-372-0080

Orndorff v. Lockhart, 998 F.2d 1426 (8th Cir. 1993), *cert. denied*, 511 U.S. 1063 (1994) (prosecutor failed to inform defense that key witness in favor of death penalty was hypnotized prior to trial, preventing fair cross-examination concerning discrepancies between witness's prehypnotic and posthypnotic statements to police)

CONTACT: Kenneth Breckenridge, Hot Springs, AR,

Sheridan v. State, 959 S.W.2d 29 (Ark. 1998) (conviction overturned due to representation by attorney with blatant conflict of interest; resentenced to life)

CONTACT: Deborah Sallings, Esq., 501-340-6120

CALIFORNIA

In re Jones, 13 Cal.4th 552 (1996) (conviction and sentence overturned due to ineffective assistance of counsel; Jones subsequently was released in lieu of retrial)

CONTACT: Charles M. Bonneau, Sacramento, CA, 916-444-8828

In re Neely, 6 Cal.4th 901 (1993) (conviction overturned to ineffective assistance of counsel; on retrial, Neely was given a life sentence)

CONTACT: Karen S. Sorensen, Kentfield, CA

Wade v. Calderon, 29 F.3d 1312 (9th Cir. 1994) (sentence of death based on unconstitutionally vague special circumstance of torture-murder and based on prejudicially ineffective representation at penalty phase due to counsel's failure to present any significant evidence of defendant's child abuse and his argument to the jury that executing defendant would benefit him by freeing him of his mental illness)

CONTACT: Barry P. Helft, Donald J. Ayoob, Deputy State Public Defenders, San Francisco, CA, 415-553-9650
Michael R. Levine, Asst. Federal Public Defender, Portland, OR

FLORIDA

Arango v. State, 497 So.2d 1161 (Fla. 1986) (conviction overturned due to prosecutorial suppression of exculpatory evidence supporting Arango's defense that someone else committed the offense)

CONTACT: Sharon Jacobs, Esq., Miami, FL

Brown v. Wainwright, 785 F.2d 1457 (11th Cir. 1986) (state deliberately withheld fact that chief witness against Brown lied on the stand about not having been granted

leniency in return for testifying against Brown, who was released from prison after the charges against him were dropped)

CONTACT: Richard Blumenthal, Attorney General of the State of Connecticut,
Hartford, CT
David Golub, Stanford, CT, 203-325-4491
Also contact Brown himself, now Shebaka Waglini, at 202-789-
2126

Miller and Jent v. Wainwright, Nos. 86-98-Vic.-T-13 and 85-1910-Civ.-T-13 (M.D. Fla. Nov. 13, 1987) (prosecutor exhibited “callous and deliberate disregard for ... truth” by suppressing police reports identifying numerous witnesses who were fishing at the location where the victim’s body was found at the only time the two capitally sentenced petitioners (who otherwise had an airtight alibi defense) could have deposited the victim’s body and who saw nothing amiss); pled to lesser offense in order that they could be released on time served).

CONTACT: Sharlette Holdman, San Francisco, CA, 415-621-8860

Gunsby v. State, 670 So.2d 920 (Fla. 1996) (new trial required due to cumulative effect of ineffective assistance of counsel in failing to discover exculpatory evidence that Gunsby was not the perpetrator, and the state’s suppression of the fact that two of its crucial witnesses testified against Gunsby in return for lenient treatment in their own criminal cases; state did not seek death sentence on retrial and life sentence was imposed upon reconviction)

CONTACT: Hon. Bruce Peterson, Minneapolis, MN, 612-596-7126
John M. Baker, Esq., Greene, Espel, Minneapolis, MN, 612-373-
8344
James C. Lohman, Tallahassee, 850-878-8260

State v. John Michael, 530 So.2d 929 (Fla. 1987) (death sentence overturned due to penalty-phase lawyer’s ineffective assistance in failing to investigate and secure expert support for defendant’s mental condition as basis for mitigation)

CONTACT: Mark E. Olive, Esq., Tallahassee, FL, 850-224-0004

Porter v. State, 723 So.2d 191 (Fla. 1998) (death sentence overturned because sentencing judge was manifestly and admittedly biased against Porter on the issue of

sentence; life sentence imposed on retrial on Dec. 2, 1999)

CONTACT: Martin J. McClain, Esq., NY, NY, 212-577-3429
Todd Scher, Esq., Ft. Lauderdale, FL 954-713-1284

Roman v. State, 528 So.2d 1169 (Fla. 1988) (conviction overturned due to state's failure to disclose highly exculpatory statements by witness who gave highly inculpatory testimony at trial)

CONTACT: Mark Olive, Esq., Tallahassee, FL., 850-224-0004

Troedel v. Dugger, 828 F.2d 670 (11th Cir. 1987), *aff'g* 667 F. Supp. 1426 (S.D. Fla. 1986) (prosecutor suborned testimony of expert witness at separate trials of two codefendants that each codefendant had to have been sole triggerman in single killing with which both were charged and for which Troedel was sentenced to death)

CONTACT: Mark Olive, Esq., Tallahassee, FL., 850-224-0004

Wilson v. Wainwright, 474 So.2d 1162 (Fla. 1985) (conviction overturned due to egregious ineffective assistance of Wilson appellate attorney; on reappeal, the Florida Supreme Court determined that the evidence did not support a death sentence, and order that a life sentence be imposed)

CONTACT: Mark Olive, Esq., Tallahassee, FL., 850-224-0004

Young v. State, 739 So.2d 553 (Fla. 1999) (death sentence overturned due to state's suppression of eyewitness statements to police supporting Young's defense that he fired his weapon in self-defense after the victim had first fired a shot at Young; resentenced to life)

CONTACT: Martin J. McClain, Esq., NY, NY, 212-577-3429
Todd Scher, Esq., Ft. Lauderdale, FL, 954-713-1284

GEORGIA

Amadeo v. Zant, 486 U.S. 214 (1988) (prosecutor unconstitutionally instructed jury commissioner to under-represent African-Americans on the jury venire).

CONTACT: Stephen B. Bright, Esq., Atlanta, GA, 404-688-1202

Buttrum v. Black, 908 F.2d 965 (11th Cir. 1990) and 721 F. Supp. 1261 (N.D. Ga. 1989) (prosecutor unconstitutionally secured death sentence based on a plethora of errors, including (1) insisting on going to trial before a jury saturated with prejudicial pretrial publicity; (2) employing a private psychiatrist to testify against Buttrum but insisting that she be limited to the services of a psychiatrist employed by and beholden to the state, in lieu of the independent expert the Constitution requires; (3) blatantly and unconstitutionally inviting the jurors to use hold Buttrum the fact that she had exercised her right not to testify; (4) urging the jury, whatever its qualms about a death sentence, to impose that punishment because the decision would later be reviewed by appellate judges who would bear the real responsibility for Buttrum's fate; (5) urging the jury to ignore factors warranting mercy, notwithstanding that the Constitution makes those very factors the crux of the sentencing decision; (6) relying on a vague and overbroad aggravating circumstance as a basis for a death sentence; resentenced to life)

CONTACT: George H. Kendall, Esq., NY, NY, 212-965-2267

Cervi v. Kemp, 855 F.2d 702 (11th Cir. 1988), *cert. denied*, 489 U.S. 1033 (1989) (after Cervi informed the judge at an initial hearing that he wanted a lawyer, thus giving him a constitutional right to the assistance of counsel before and while being questioned by police—and during the very period when Cervi's lawyer was in the police station repeatedly demanding to see his client, but was denied the opportunity—police interrogated Cervi until he confessed; resentenced to life)

CONTACT: George H. Kendall, Esq., NY, NY, 212-965-2267

Curry v. Zant, 371 S.E.2d 647 (Ga. 1988) (conviction overturned due to counsel's ineffective failure to secure expert evaluation of Curry's mental status at the time of the offense which would have provided substantial evidence that Curry was not sane at the time of the offense and was not capable of intelligently and voluntarily waiving his right to counsel when he confessed; on retrial, Curry was permitted to plead to life (Washington Cnty. Super. Ct. No. 7))

CONTACT: David Lane, Esq., Denver, CO, 303-534-6400
George H. Kendall, Esq., 212-965-2267

Davis v. Zant, 36 F.3d 1538 (11th Cir. 1994) (conviction and death sentence overturned due to blatant prosecutorial misrepresentations to the jury in the course of objections

and closing argument: having successfully objected to Davis' effort to inform the jury that another person had confessed to the killing with which Davis was charged, and having known that Davis, for months before trial, had hinged his defense on his claim that the other person was the killer, the prosecutor repeatedly stated to the jury that there was no evidence that the other person had committed the crime and that Davis had "fabricated" the defense at the last minute, during the course of the trial)

CONTACT: Donald B. Verrilli, Jr., Jenner & Block, Washington D.C., 202-639-6000

Francis v. Franklin, 471 U.S. 307 (1985) (trial judge instructed jury to "presume" that defendant was guilty of murder unless defendant proved otherwise)

CONTACT: Ronald J. Tabak, Esq. NY, NY, Skadden, Arps, State, Meagher & Flom, 212-735-2226

Harrison v. Zant, 402 S.E.2d 518 (Ga. 1991) (conviction overturned due to ineffective assistance of attorneys who presented fractured and inconsistent defenses; on retrial, Harrison pled to life sentence, Hall Cnty. Super. Ct. No. K84-48,139)

CONTACT: Ogden N. Lewis, Esq., Davis, Polk & Wardlaw, NY, NY, 212-450-4000

Turpin v. Lipham, 510 S.E.2d 32 (Ga. 1998) (death sentence overturned due to ineffective assistance of counsel in simply presenting jury with 2500 pages of Lipham's psychiatric records without presenting an expert or taking any other steps to assist the jury in understanding how mitigating the information was; retrial pending)

CONTACT: Greg Alexander Alexion, Esq., Brooklyn, NY
John Youngblood, NY, NY

Nelson v. Zant, 405 S.E.2d 250 (Ga. 1991) (state suppressed FBI analyses establishing that the limb hair the state's expert had used to connect defendant to the crime lacked sufficient characteristics for microscopic analysis). Nelson was thereupon released from prison and not retried because, as the district attorney admitted, there was no valid evidence implicating him in the offense. See Jingle Davis & Mark Curriden, *Man Condemned for Murder of Girl Is Freed*, Atlanta Const., Nov. 7, 1991, at O6)

CONTACT: Emmett J. Bondurant II, Bondurant, Mixon & Elmore, Atlanta, GA,
404-881-4100

Zant v. Pitts, 436 S.E.2d 4 (Ga. 1993) (death sentence overturned due to ineffective assistance of counsel in failing to inform jury that petitioner was retarded, even though that created a bar to the death penalty under Georgia law; on retrial, state agreed to life sentence, Floyd Cnty. Super. Ct. No. S93A-1151, Aug. 22, 1996))

CONTACT: Mitchell D. Raup, Esq., Mayer, Brown & Platt, Washington, DC,
202-263-3257

Ross v. Kemp, 393 S.E.2d 244 (Ga. 1990) (conviction overturned due to ineffective assistance of counsel and co-counsel who presented inconsistent defenses, severely prejudicing Ross; on retrial, petitioner permitted to plead to life sentence, DeKalb Cnty. Super. Ct. No. 83-CR-2635)

CONTACT: George H. Kendall, Esq., NY, NY, 212-965-2267

Strickland v. Francis, 738 F.2d 1542 (11th Cir. 1984) (state court violated Strickland's due process rights by forcing him to trial despite mental disorders so severe and unequivocal that he had no idea what the proceedings were about and could not assist his attorney)

CONTACT: Millard Farmer, Esq., Atlanta, Georgia, 404-688-8116

Wallace v. Kemp, 757 F.2d 1102 (11th Cir. 1985) (Georgia) (capitally sentenced petitioner found to have been incompetent to assist attorney at trial). On retrial after being restored to sanity, Wallace was acquitted)

CONTACT: Elyse Aussenberg, Hyatt Legal Svcs., Atlanta, Ga., Risa L.
Lieberwitz, N.Y. State School of Industrial & Labor Relations,
Ithaca, N.Y., Frank L. Derrickson, Atlanta, Ga.

IDAHO

Beam v. Paskett, 3 F.3d 1301 (9th Cir. 1993), *cert denied*, 511 U.S. 1060 (1994) (death sentence premised in part on trial judge's distaste for petitioner's prior history of nonviolent "abnormal sexual relationships," including homosexuality and relationships

with women substantially younger and older than petitioner).

CONTACT: David Skeen, Port Townsend, WA and Gar Hackney, Lynn, Scott, Hackney & Jackson, Boise, ID

ILLINOIS

United States ex rel. Collins v. Wellborn and *United States ex rel. Bracy v. Gramley*, 79 F. Supp. 898 (N.D. Ill. 1999) (death sentences overturned based on proof that trial judge, who repeatedly took bribes to acquit in other cases, exhibited compensatory pro-prosecution bias against Collins and Bracy and other defendants who did not bribe him)

CONTACT: Robert Hugh Farley, Naperville, IL, Stephen E. Eberhardt, Tinley Park, IL, for Roger Collins; John Ladell Stainthorp, Chicago, IL and Gilbert H. Levy, Seattle, WA for Bracy; and , Daniel R. Collins, Ramsell & Armamentos, Wheaton, IL, for both

Crivens v. Roth, 172 F.3d 991 (7th Cir. 1999) (prosecutor failed to disclose that its key eyewitness had a criminal history and had used an alias in past, thereby “demonstrat[ing] a propensity to lie to police officers, prosecutors, and even judges”).

CONTACT: Brian D. Roche, J. Samuel Tenenbaum, Lisa J. Krasberg, Henry Pietrkowski, Sachnoff & Weaver, Chicago, IL

United States ex rel. Maxwell v. Gilmore, 37 F. Supp. 2d 1078 (N.D. Ill. 1999) (granting evidentiary hearing to capitally sentenced habeas petitioner and denying presumption of correctness to state court’s voluntary-confession finding because the state suppression-hearing judge “did not have access to the voluminous [subsequently disclosed] information about the systematic . . . [physical] abuse [of suspects by the police unit that interrogated and secured a confession from Maxwell], . . . and Maxwell’s attorney never had the opportunity to use that information to cross-examine the officers who testified at the suppression hearing”). In regard to the police unit that took the confession in Maxwell’s case, see Sasha Abramsky, *Trial by Torture*, *Mother Jones*, March 3, 2000 (“Dozens of other prisoners [including 10 death row inmates] have come forward saying they were tortured into confessing by police officers from . . . Area Two” and presenting “hair-raising and remarkably consistent [claims] . . . of alligator clips attached to their ears, noses, mouths, penises, and testicles; of electric shocks to the genitals; of being burned atop radiators” and of “mock executions” and “bags put over their heads for minutes at a time, a technique known as the ‘Dry Submarino’”)

CONTACT: Gary Ravitz, Eric Palles, Chicago, IL

People v. Jimerson, 652 N.E.2d 278 (1995) (conviction overturned due to prosecutorial suppression of exculpatory evidence and countenancing of perjury by crucial witness against Jimerson who denied being offered a deal in return for her testimony; trial court dismissed the charges and defendant was released due to the absence of any evidence of guilt and due to DNA evidence implicating 4 other men, 3 of whom eventually confessed to the crime (the 4th had died) and one of whom had killed another of his rape victims in the meantime)

CONTACT: Mark R. Ter Molen, Esq., Mayer, Brown & Platt, 312-782-0600
Fredrick S. Levin, Esq., 213-229-5124
Professor Andrea D. Lyon, U. Mich. Law. School, 734-647-4091
Jesse A. Witten, Esq., Nussbaum & Wald, Washington, DC, 202-879-5451

People v. Lego, 660 N.E.2d 971 (Ill. 1995) (conviction overturned due to Lego's manifest incompetence to stand trial, due to organic brain damage, to waive counsel and represent himself at his capital trial; resentenced to sentence less than death)

CONTACT: Charles Schiedel, 217-782-1989
Charles Hoffman, Office of the State Appellate Defender, Chicago, IL, 312-814-5100

People v. Ruiz, 686 N.E.2d 574 (Ill. 1997) (sentence overturned due to ineffective assistance of counsel, who failed to investigate and discover substantial bases for mitigation of sentence; on retrial, judge determined that death sentence would be disproportionate to life sentence given co-offender; state's appeal is pending)

CONTACT: Richard H. McLeese, Thomas D. Decker & Associates, Chicago, 312-922-4180

INDIANA

Smith v. State, 547 N.E.2d 817 (Ind. 1990) (conviction overturned due to egregious ineffective assistance of counsel; on retrial, Smith was acquitted of all charges)

CONTACT: Teresa D. Harper, 812-333-5355
Rhonda R. Long-Sharp, 317-630-0137

KENTUCKY

Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990) (*en banc*), *cert. denied*, 499 U.S. 970 (1991) (police obtained confession after (1) ignoring petitioner's statements that he wanted the interrogation to stop, (2) threatening to arrest petitioner's girlfriend (against whom they had no evidence) and (3) threatening to send petitioner to Ohio, where, police said, he could be held incommunicado and put through "an ordeal [he] may not forget for a long time," then (4) suppressed the tape-recorded version of the confession and pieced together a written statement giving a far more inculpatory account than the actual confession)

CONTACT: Edward C. Monahan, 502-564-8006, Ext. 236

LOUISIANA

Kyles v. Whitley, 514 U.S. 419 (1995) (in investigating robbery-murder of supermarket customer in store's parking lot, New Orleans police (1) accepted the word of a long-time criminal and police informant Beanie, whom police found in possession of the victim's car, that Curtis Kyles had sold him the car, while suppressing a variety of statements by Beanie that (a) were inculpatory, self-contradictory and inconsistent with Beanie's trial testimony, (b) suggested that Beanie (in his own words) had "set up" Kyles, and (c) revealed a course of dealings between Beanie and the police that strongly impugned the investigation, then (2) manipulated eyewitnesses into identifying Kyles at trial, inconsistently with their initial but thereafter suppressed descriptions that much more closely matched Beanie; a majority of jurors in three successive retrials voted to acquit Kyles, whom prosecutors finally released from custody)

CONTACT: Prof. James S. Liebman, Columbia Law School, NY, NY, 212-854-3423

Monroe v. Blackburn, 748 F.2d 958 (5th Cir. 1984), *cert. denied*, 476 U.S. 1145 (1985) (Louisiana) (state failed to disclose that police obtained information after trial that someone other than petitioner may have committed the murder)

CONTACT: Prof. Eric Freedman, Hofstra Law School, NY, NY, 212-665-2713
Douglas G. Morris, Esq., Brooklyn, NY, 718-330-1209

MARYLAND

Bowers v. State, 578 A.2d 734 (Md. 1990) (conviction overturned based on variety of incompetent errors that trial counsel committed—including in failing to show that

forensic evidence found on the victim did not match Bowers, but for which there was a “substantial possibility” that the result of the trial would have been different; lesser sentence imposed on retrial)

CONTACT: Judith R. Catterton, Esq., Catterton, Kemp & Mason, Rockville, MD, 301-294-0460

MISSISSIPPI

Jones v. Thigpen, 788 F.2d 1101 (5th Cir. 1986), *cert. denied*, 479 U.S. 1087 (1987) (counsel conducted no investigation in mitigation of death penalty and did not realize, or inform jury, that his client had an I.Q. below 41)

CONTACT: T.H. Freeland, III, Freeland & Gafford, T.H. Freeland, IV, Oxford, Miss.,
Mary Carolyn Ellis, University, Miss.

Stringer v. Black, 503 U.S. 222 (1992) (state appellate court struck down an aggravating circumstance on which a death sentence was based without determining whether a death sentence remained appropriate absent the faulty aggravating circumstance)

CONTACT: Kenneth Rose, Esq., Durham, NC, 919-956-9545

Wheat v. Thigpen, 793 F.2d 621 (5th Cir. 1986), *cert. denied*, 480 U.S. 930 (1987) (prosecutor encouraged jurors to exercise less than full responsibility for death sentence by telling jurors that any mistake they made in sentencing the defendant to die would be corrected by an appellate court)

CONTACT: Stephen B. Bright, Esq., Atlanta, GA, 404-688-1202

MISSOURI

State v. Butler, 951 S.W.2d 600 (Mo. 1997) (conviction and death sentence overturned based on ineffective assistance of counsel in failing to investigate and discover evidence that the victim was murdered by her nephew rather than by Butler and in failing to bring out substantial weaknesses in the prosecution's case, either of which could have raised a reasonable doubt in the jurors' minds; on retrial, Butler was convicted of a lesser degree of homicide and given a 20-year term)

CONTACT: Melinda K. Pendergraph, Asst. Public Defender, Columbia, MO,
573-882-9855
Pat Berrigan, Esq., Kansas City, MO, 816-474-3350 , ext. 113.

State v. Dexter, 954 S.W.2d 332 (Mo. 1997) (conviction overturned due to prosecutor's repeated use against Dexter of his invocation of his right to silence; on retrial, Dexter was released after the state dismissed the charges against him for lack of evidence of guilt)

CONTACT: Cyndi Short, Esq., Kansas City, MO, 816-889-7699

Clemons v. Bowersox, 124 F.3d 944 (8th Cir. 1997) (on rehearing after relief initially had been denied, conviction and death sentence were overturned due to the state's suppression of an eye-witness report identifying as the actual killer another man whom Clemons had all along claimed was the culprit; on retrial in February 2000, Clemons was acquitted)

CONTACT: Charles Rogers and Cheryl Pilate, Esqs., Kansas City, MO,
816-221-0080

Parker v. Bowersox, 188 F.3d 923 (8th Cir. 1999) (defense counsel failed to respond to state's argument in aggravation—that defendant killed his girlfriend to eliminate her as a witness against him in a criminal proceeding—by presenting accessible evidence proving that petitioner knew for certain prior to the murder that the victim could and would not testify against him)

CONTACT: Gregg F. Lombardi, Esq., Kansas City, Missouri, 816-531-6565,
ext. 103

Wilkins v. Bowersox, 145 F.3d 1006 (8th Cir. 1998), *cert. denied* 119 S. Ct. 852 (1999) (conviction and death sentence overturned because the trial court permitted the 16-year old defendant—who “from infancy through his teenage years [had] suffered severe physical and emotional abuse at the hands of his mother and other adults in his life,” who “began abusing drugs as a kindergartner on his way to school,” who was diagnosed at age 10 “as a severely depressed boy with homicidal and suicidal tendencies,” who “was transferred in and out of mental health facilities” between ages 10 and 16, and who court-appointed psychiatrists at trial, on direct appeal and during state post-conviction proceedings had unanimously and consistently concluded could not make voluntary, knowing and intelligent decisions about important matters in his

case, and who was never advised by the court or counsel about “his possible defenses to the charges against him . . . or the full range of punishments that he might receive”—to fire his lawyer, represent himself at trial (as a 16-year-old), waive all his rights and plead guilty, and then waive his right to present any evidence in mitigation of the death penalty)

CONTACT: Sean O'Brien, Esq., Kansas City, Mo., 816-363-2795

MONTANA

Smith v. McCormick, 914 F.2d 1153 (9th Cir. 1990) (state unconstitutionally secured a death sentence against an indigent defendant with mental disorders when the trial judge (1) forced the defense to rely on the psychiatric evaluation of a doctor acting under the direction of the judge (who had previously sentenced Smith to die), rather than appointing the independent psychiatrist required by law in a case in which doing so would have generated substantial mitigating evidence; (2) refused to consider most of the mitigating circumstances that Smith did manage to present; and, (3) as to the limited set of mitigating factors the judge did take into consideration, he refused to assess their overall effect in mitigation, instead insisting that each individual factor be sufficient in itself to warrant a life sentence)

CONTACT: Cliff Gardner, Esq., San Francisco, CA, 415, 922-9404

NEVADA

Jimenez v. State, 918 P.2d 687 (Nev. 1996) (conviction overturned due to state's suppression of evidence implicating other suspects and impeaching key informant witness against Jimenez; on retrial, Jimenez pled guilty to lesser charge and was released from prison the next year)

CONTACT: Laura Wightman FitzSimmons, Esq., Las Vegas, NV, 702-733-8877

Mazzan v. Warden, 993 P.2d 25 (Nev. 2000) (conviction overturned on third state post-conviction petition due to prosecutorial suppression of police reports “provid[ing] support for Mazzan's defense that someone else murdered [the victim] . . . [and] provid[ing] a basis to impeach the thoroughness of the state's investigation of the crime”; Mazzan was released from prison, see Brendan Riley, *Emotional Mazzan*

Released, Las Vegas Rev.-J., May 7, 2000, at 1)

CONTACT: JoNell Thomas, Esq., Las Vegas, NV, 702-471-6535

Roberto Hernandez Miranda v. Warden, (Nev. S. Ct., No. 17497, Apr. 28, 1988) (judgment overturned due to egregious ineffective assistance of counsel based on counsel's failure to interview 10 witnesses named by his client who were able to exonerate Miranda and identify the actual killer; on remand for retrial, Miranda was released as innocent) [IAC, NG]

CONTACT: Laura Wightman FitzSimmons, Esq., Las Vegas, NV, 702-733-8877

NORTH CAROLINA

State v. Bishop, No. 93 CRS 20410-20423 (Guilford Cnty., Jan. 10, 2000) (death sentence overturned because prosecution concealed material, exculpatory evidence and discovery of witness who placed Bishop elsewhere at the time of the crime; retrial pending)

CONTACT: Stephen Dear, 919-933-7567

McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988), *cert. denied*, 489 U.S. 1033 (1989) (police withheld the fact that before petitioner's arrest for the offense, the chief prosecution witness—who at trial identified petitioner, a dark-skinned African American man sentenced to die for the offense, as the assailant—had told police that the assailant was white)

CONTACT: Professor John C. Boger, U. No. Car. L. School, 919-962-843-9288

State v. Munsey, No. 93 CRS 4078 (Wilkes Cnty., May 14, 1999) (conviction overturned because prosecution concealed material, exculpatory evidence, another man confessed to the offense, and key witness against Munsey recanted and admitted to giving false testimony; Munsey died while awaiting retrial)

CONTACT: Stephen Dear, 919-933-7567

OKLAHOMA

Banks v. Reynolds, 54 F.3d 1508 (10th Cir. 1995) (prosecution suppressed evidence that at least three other men were previously arrested for the crime with which petitioner was charged, that two of them had been positively identified by eyewitnesses, and that the cell-mate of one of the previously arrested suspects claimed that suspect had confessed to the crime)

CONTACT: James T. Priest, McKinney, Stringer & Webster, P.C., Oklahoma City, OK, 405-239-6444

Bowen v. Maynard, 799 F.2d 593 (10th Cir.), *cert denied*, 479 U.S. 962 (1986) (prosecutors suppressed a sheaf of investigative reports that a suspect other than the capitally sentenced petitioner had murdered the victim and that an investigating officer with a grudge against the petitioner had maliciously framed him). Bowen was subsequently released from prison for lack of any evidence of his guilt)

CONTACT: Jack B. Zimmermann and Jim E. Lavine of Zimmermann & Lavine, P.C., Houston, TX
Patrick A. Williams, Williams, Donovan & Savage, Tulsa, OK

State v. Munson, 886 P.2d 999 (Okl. Cr. App. 1994) (conviction overturned because prosecution deliberately withheld 165 photographs and more than 300 pages of reports, most of it suggesting that Munson was innocent; on retrial, Munson was acquitted, see Randall Coyne, *Abe Munson's Near-Death Experience*, Okl. Observer, Apr. 25, 1995, at 9)

CONTACT: Prof. Randall T.E. Coyne, Univ. of Oklahoma Law School, 405-325-4646

Paxton v. Ward, 199 F.3d 1197 (10th Cir. 1999) (**Oklahoma**) (overturning judgment because D.A. "clearly and deliberately made two critical misrepresentations to the jury" as an "an integral part of the deprivation of Mr. Paxton's constitutional rights to present mitigating evidence, to rebut evidence and argument used against him, and to confront and cross-examine the state's witnesses")

CONTACT: Robert A. Nance, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Oklahoma City, OK

Williamson v. Ward, 904 F. Supp. 1529 (E.D. Okla. 1995) (overturning capital conviction based on faulty hair analysis which was so “scientifically unreliable” that it should not have been permitted as evidence of guilt and based on claims that hairs found at the crime scene “matched” the defendant’s, although hair analysis can never support that categorical a claim), *aff’d*, 110 F.3d 1508 (10th Cir. 1997) (affirming reversal of capital conviction on habeas because appointed counsel, who received no funding for expert or investigative services and was paid the statutory maximum of \$3200, failed to investigate a videotaped statement by another person confessing to the crime and extensive evidence of petitioner’s mental illness and likely incompetence to stand trial). DNA testing subsequently established that Williamson was innocent, and he was released from prison. See Bill Dedman, *DNA Evidence Frees Two in Murder Case*, *Milwaukee Journal Sentinel*, Apr. 25, 1999, at 20; Barry Scheck, Peter Neufeld & Jim Dwyer, *Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted* 126-27, 130-57, 251-54 (2000)

CONTACT: Prof. Barry Scheck, Cardozo Law School, NY, NY, 212-790-0377

PENNSYLVANIA

Christy v. Horn, 28 F. Supp. 2d 307 (W.D. Pa. 1998) (prosecutor violated due process by disparaging petitioner's mental illness defense despite the prosecutor's awareness of inadmissible evidence substantiating the defense and by implicitly encouraging the jury to believe, erroneously, that petitioner might be eligible for parole if sentenced to life imprisonment; in addition, the trial court unconstitutionally denied a defense request for an independent psychiatrist at guilt and penalty stages and instead limited the accused to a court-appointed psychiatrists who was not competent to marshal the necessary facts; in addition, Christy’s attorneys provided prejudicially incompetent representation at the penalty phase by “fail[ing] to investigate the mountain of mitigating evidence readily available to them,” failing to seek psychiatric testimony, failing to object to the prosecutor’s improper closing argument, and incorrectly advising the jury about Pennsylvania law in a manner that was highly prejudicial to Christy)

CONTACT: W. Thomas McGough, Jr., Pittsburgh, PA, 412-288-3088
John C. Unkovic, Pamina Ewing, Eric Chaffin, Pittsburgh, PA

SOUTH CAROLINA

Butler v. State, 397 S.E.2d 87 (S.C. 1990) (convictions and death sentence vacated via state habeas within the original jurisdiction of the South Carolina Supreme Court because trial court coerced Butler, who was mentally retarded, into testifying at trial against his will and in violation of his privilege against self-incrimination; resentenced

to life)

CONTACT: John H. Blume, Esq., Columbia, SC, 803-765-1044

Joseph Hudgins v. Moore, 1999 WL 1114701 (S.C. Dec. 6, 1999) (conviction and death sentence vacated due to ineffective assistance of counsel in permitting prosecutor to pursue patently inadmissible and prejudicial line of inquiry while cross-examining Hudgins; retrial pending)

CONTACT: David I. Bruck, Esq., Columbia, SC, 803-765-1044

State v. Spann, 513 S.E.2d 98 (S.C. 1999) (after direct appeal and first state post-conviction proceeding and in midst of federal habeas corpus proceeding, conviction overturned on extraordinary motion for new trial based on discovery of evidence appearing to exonerate petitioner of offense; retrial pending)

CONTACT: John H. Blume, Esq., Columbia, SC, 803-765-1044

TENNESSEE

Brimmer v. State, 1998 WL 612888 (Tenn. Crim. App. Sept. 15, 1998) (death sentence overturned due to egregious ineffective assistance of counsel by intoxicated and drug-abusing defense lawyer at the penalty phase; resentenced to life)

CONTACT: W. Thomas Dillard, Esq., Ritchie, Fels & Dillard, P.C., Knoxville, TN, 865-637-0661

Cooper v. State, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (death sentence overturned due to defense counsel's materially prejudicial failure to interview mental health experts who had evaluated defendant prior to trial and who were aware of substantial mitigating evidence; Cooper was not returned to death row)

CONTACT: William B. Mitchell Carter, Karen Broadway Petosa, Esqs., Chattanooga, TN

Groseclose v. Bell, 130 F.3d 1161 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 1826 (1998)

(counsel failed to develop defense theory and “to conduct any meaningful adversarial challenge, as shown by his failure to cross-examine more than half of the prosecutions’ witnesses, to object to any evidence, to put on any defense witnesses, to make a closing argument, and, at sentencing, to put on any meaningful mitigation evidence”; instead, counsel abdicated client’s case to counsel for codefendant who presented a defense that was antagonistic to Groseclose)

CONTACT: Larry D. Woods, Esq., Woods & Woods, Nashville, TN, 615-259-4366

Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 1827 (1998) (counsel’s “total failure to actively advocate his client’s cause” and “repeated expressions of contempt for his client for his alleged actions” had the effect of “provid[ing] [petitioner] not with a defense counsel, but with a second prosecutor”)

CONTACT: Henry Martin, Paul Bottei, Esqs., Nashville, TN, 615-736-5047

Sylvester Smith v. State, 1999 WL 899362 (Tenn. Crim. App. Dec. 28, 1998) (conviction and death sentence overturned due to “the plethora and gravity of counsel’s deficiencies,” which were “glaring . . . throughout all phases of this trial” and “rendered the entire proceeding fundamentally unfair”; resentenced to life)

CONTACT: William P. Redick, Jr., Esq., Whites Creek, TN, 615-742-9865

TEXAS

Ex Parte Brandley, 781 S.W.2d 886 (Tex. Crim. App. 1989) (conviction overturned because that prosecution suppressed evidence placing other suspects at scene of crime near time the crime was perpetrated, its suggestive conduct of investigation so as to create false testimony, and its failure to resolve conflicts in physical evidence; released in lieu of retrial)

CONTACT: Mike DeGeurin, Paul Nugent, Esqs., Houston, TX, 713-655-9000

Martinez-Macias v. Collins, 810 F. Supp. 782 (W.D. Tex. 1991), *aff’d*, 979 F.2d 1067 (5th Cir. 1992) (conviction and death sentence overturned due to egregious, comprehensive, prejudicial incompetence by trial lawyer who (1) failed to call disinterested alibi witness who was available at time of trial and whose testimony would have established that Macias could not have committed the offense; (2) failed to

impeach a crucial prosecution witness with her contradictory statements before trial to a private investigator and by calling witnesses who were with the witness at the critical time and did not see what she saw; (3) failed to investigate and present evidence from defendant's family members regarding Macias's good character traits, failed to prepare defendant's wife for testimony, and failed to utilize records from a California rehabilitation center to demonstrate the defendant's good behavior and attempts to rehabilitate while in custody; (4) failed to utilize an expert witness to introduce important mitigating information—all of which, taken together, left the federal court of appeals “with the firm conviction that Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question” and that the “state [having] paid defense counsel \$11.84 per hour[,] [u]nfortunately . . . got only what it paid for”; on remand, Macias was released after a grand jury determined that there was not even enough evidence of guilt to justify indicting him)

CONTACT: Douglas G. Robinson, Esq., Skadden, Arps, State, Meagher &
Flom, Washington, D.C., 202-371-7000
Prof. Randall T.E. Coyne, Univ. of Oklahoma Law School, 405-
325-
4646

Guerra v. Johnson, 916 F. Supp. 620 (S.D. Tex. 1995), *aff'd*, 90 F.3d 1075 (5th Cir. 1996) (police and prosecutors, among other things, “intimidated” numerous eyewitnesses, who initially said that petitioner’s companion fired the fatal shots, into corroborating the prosecution’s theory that Guerra had fired the shots—in the process coercing witnesses into giving testimony and into signing affidavits that the police and witnesses knew were false; police told one witness that her common-law husband was at risk of parole revocation if she did not cooperate and told another witness that her infant daughter could be taken from her if she refused to cooperate; district judge concluded that the defendant would surely have been acquitted if he had received a fair trial; on retrial, the D.A. demanded that the state trial judge reconsider all of the federal courts’ findings about prosecutorial misconduct, which the trial judge did, concluding that the findings were accurate in all respects; in April 1997, the D.A. dropped all charges against Guerra, and he was released; Guerra died in an automobile accident four months later)

CONTACT: Scott J. Atlas, Vinson & Elkins, Houston, TX, 713-758-2024
Stanley Schneider, Schneider & McKinney, Houston, TX,
713-951-9555

Jurek v. Estelle, 623 F.2d 929 (5th Cir. 1980) (*en banc*), *cert. denied*, 450 U.S. 1001 (1981) (habeas decision overturning a capital conviction after police obtained two very

different confessions from the mentally deficient petitioner during a 42-hour period of interrogation without counsel; the exculpatory version of the confession, not admitted at trial, appeared to be in the defendant's words; the inculpatory version, used at trial, had prose beyond defendant's ken)

CONTACT: John Charles Boger, U. No. Car. L. School, 919-843-9288
Jay Topkis, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, NY,
NY, 212-373-3000

Ex Parte McCormick and *Ex Parte McMahon*, 645 S.W.2d 801 (Tex. Crim. App. 1983) (convictions overturned due to capital attorney's irreconcilable conflict of interest in representing two criminal defendant's with conflicting defenses; both were resentenced to life and have since been released on parole)

CONTACT: Prof. Eric Freedman, Hofstra Law School, NY, NY, 212-665-2713
(for McCormick)
Marc Fleisher, Esq., NY, NY, 212-595-0595 (for McCormick)
Frederick T. Davis, Esq, Shearman & Sterling,
NY, NY, 212-848-4675 (for McMahon)

Estelle v. Smith, 451 U.S. 454 (1981) (state-employed psychiatrist permitted to testify at death penalty phase based on petitioner's pretrial statements that were not freely and voluntarily given and that were made without counsel or waiver of counsel)

CONTACT: John Charles Boger, U. No. Car. L. School, 919-962-843-9288

VIRGINIA

Stockton v. Virginia, 852 F.2d 740 (4th Cir. 1988), *cert. denied*, 489 U.S. 1071 (1989) (in lunch break during jury's death sentencing deliberations, courtroom deputies allowed owner of restaurant in which jurors were eating to tell jurors "they ought to fry the son of a bitch")

CONTACT: Louis Martin Bograd, Donald G. Frankel, Kevin S. Marks, Joseph G. Poluka, Pamela K. Chen, Arnold & Porter, Washington, D.C.,
202-942-5000

Williams v. Taylor, 120 S. Ct. 1495 (2000) (death sentence overturned due to incompetence of Williams' trial attorneys who "did not begin to prepare for [the penalty

trial] until a week before” it took place, “failed to conduct an investigation that would have uncovered extensive records graphically describing Williams’ nightmarish childhood, not because of any strategic calculation but because they incorrectly thought that state law barred access to such records,” thereby kept “the jury [from] learn[ing] that Williams’ parents had been imprisoned for the criminal neglect of Williams and his siblings, that Williams had been severely and repeatedly beaten by his father, that he had been committed to the custody of the social services bureau for two years during his parents’ incarceration (including one stint in an abusive foster home), and then, after his parents were released from prison, had been returned to his parents’ custody”; concluding that “there existed ‘a reasonable probability that the result of the sentencing phase would have been different’ if the jury had heard that evidence”)

CONTACT: Brian A. Powers, Esq., O’Donoghue & O’Donoghue, 202-362-0041

Earl Washington (in 1992, Virginia governor commuted capital conviction and death sentence to life imprisonment based on DNA evidence showing that Washington, who was retarded, had been compelled to confessed to a rape-murder that he did not commit; see Robert Perske, *Unequal Justice?* 54-56 (1991); Joe Jackson & June Arney, *Sentenced To Die Without Fair Trials*, Virginian-Pilot & Ledger Star, June 26, 1994, at A1; David Swanson, *Retarded Man Awaits DNA Decision*, Culpeper News, May 25, 2000, at 1)

CONTACT: Eric M. Freedman, Hofstra Law School, NY, NY, 212-665-2713
Gerald T. Zerk, Richmond, VA, 804-788-4412

WASHINGTON

Harris v. Wood, 64 F.3d 1432 (9th Cir. 1995) (counsel’s incompetently failed to interview a majority of the witnesses, advice to the defendant to confess to the prosecutor without receiving any promise of reduced charges in return, and failure to file potentially meritorious suppression motions, to propose or object to improper jury instructions, and to raise and preserve meritorious issues for appeal)

CONTACT: Allen M. Ressler, Esq., Browne & Ressler, Seattle, WA, 206-624-7364
Kany M. Levine, 360-779-6038

WYOMING

Shillinger v. Haworth, 70 F.3d 1132 (10th Cir. 1995) (deputy sheriff’s listened in on and

reported to prosecutor the substance of defense counsel's jailhouse conversations with the client, in blatant violation of the Sixth Amendment right to counsel)

CONTACT: Professor Emeritus Gerald Gallivan, University of Wyoming
College of Law, 307-766-6416 (dean's office at U. of WY)

Appendix E: Tables and Figures

**Table 1: Overall Error Rates and Percent Death Sentences Carried Out,
by State, 1973-1995**

State	Percent of Death Sentences Carried Out	Overall Error Rates on State DA and PC and Federal Habeas
National Composite	5	68
Virginia	28	18
Delaware*	21	26
Louisiana	17	64
Utah	16	67
Texas	15	52
Missouri	13	32
Arkansas	12	70
Georgia	6	80
Montana	5	87
Nevada	5	68
Washington*	5	63
Alabama	4	77
Florida	4	73
Nebraska	4	65
South Carolina	4	67
Illinois	3	66
Indiana	3	75
North Carolina	3	71
Oklahoma	3	75
Wyoming	3	89
Arizona	2	79
Idaho	2	82
Maryland	2	100
Mississippi	2	91
Pennsylvania	1	57
California	0.4	87
Kentucky	0	100
Tennessee	0	100

* Overall reversal rates for Delaware and Washington only include rates detected on state direct appeal and federal habeas corpus because information about state post-conviction reversal rates is not available.

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; Appendix C; HCDB

Table 2: Death Row Population, Executions, and Percent Executed, 1973-1999

Year	Initial Death Row Pop.	New Death Sentences	Total Death Row Pop.	Total Executions	Nonconsen. Executions	% Executed	% Noncon. Executions
1973	334	42	376	0	0	0	0
1974	134	149	283	0	0	0	0
1975	244	298	542	0	0	0	0
1976	488	233	721	0	0	0	0
1977	420	137	557	1	0	.18	0
1978	423	187	610	0	0	0	0
1979	483	152	635	2	1	.31	.16
1980	595	174	769	0	0	0	0
1981	697	229	926	1	0	.11	0
1982	863	268	1131	2	1	.18	.09
1983	1073	254	1327	5	5	.38	.38
1984	1216	283	1499	21	21	1.40	1.40
1985	1421	268	1689	18	14	1.07	.83
1986	1589	299	1888	18	17	.95	.90
1987	1800	289	2089	25	23	1.20	1.10
1988	1964	291	2255	11	10	.49	.44
1989	2111	263	2374	16	14	.67	.59
1990	2232	252	2484	23	16	.93	.64
1991	2346	264	2610	14	14	.54	.54
1992	2466	289	2755	31	30	1.13	1.09
1993	2575	291	2866	38	31	1.33	1.08
1994	2716	321	3037	31	27	1.02	.89
1995	2890	322	3212	56	49	1.74	1.53
1996	3064	317	3381	45	37	1.33	1.09
1997	3242	274	3516	74	70	2.10	1.99
1998	3328	285	3613	68	58	1.88	1.61
1999	3452	300	3752	98	89	2.61	2.37

Sources: BJS 1998 Cap. Pun. Study (death row pop.; 1999 is est.); Death Row U.S.A., Winter 2000 (executions)

Table 3: State and Federal Reversals by Year, 1973-1995

Year	Percent Relief on Direct Relief	Percent Relief on Habeas	Combined Error Rate, Excluding State Post- Conviction*	Number of Known Reversals in State PC
1973-1995	41	40	65	248**
1973	100	0	100	0
1974	50	0	50	0
1975	66	0	66	1
1976	39	0	39	1
1977	57	0	57	0
1978	51	67	84	2
1979	63	0	63	4
1980	48	80	90	4
1981	53	71	86	3
1982	49	72	86	5
1983	41	32	60	6
1984	33	35	55	6
1985	41	43	66	5
1986	32	43	61	4
1987	40	49	69	13
1988	42	39	65	16
1989	42	33	61	16
1990	45	30	62	18
1991	44	36	64	18
1992	38	36	60	28
1993	36	28	54	29
1994	30	24	47	25
1995	32	45	63	20
1996-4/2000	N/A	N/A	N/A	[ave. of 22/yr] 94

* Information on the proportion of cases reversed on state post-conviction, by year, is not generally available.

**Column does not add up to 248 because the year of several post-conviction reversals known to have occurred between 1973 and 1995 is not know.

Sources: DADB; HCDB; Appendix C

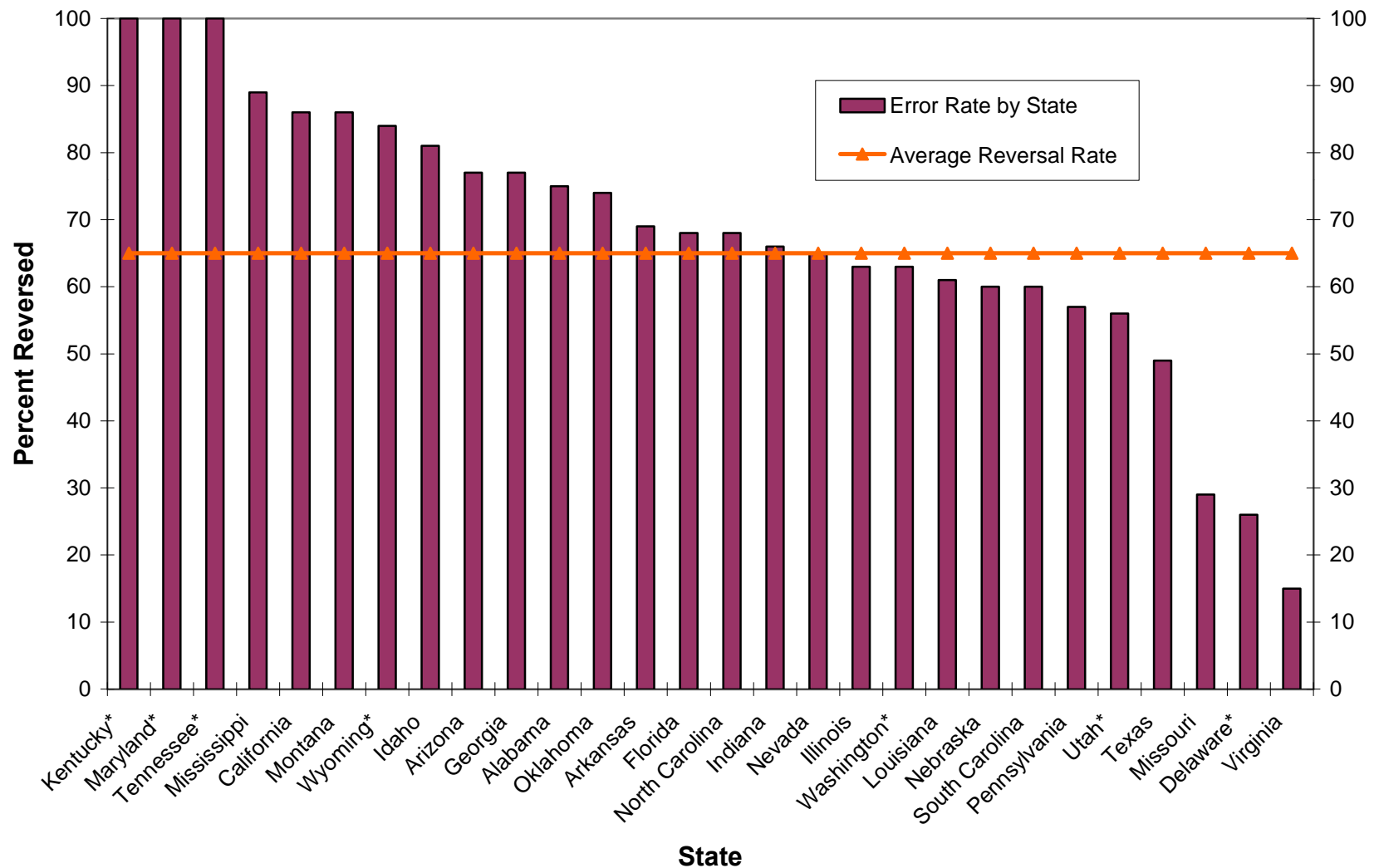
Table 9: Overall Error Rates, by State, 1973-1995
Excluding State Post-Conviction

State	Overall Error Rate, Excluding State Post-Conviction
National Composite	64%
1. Kentucky*	100%
1. Maryland*	100%
1. Tennessee*	100%
4. Mississippi	89%
5. California	86%
5. Montana	86%
7. Wyoming*	84%
8. Idaho	81%
9. Arizona	77%
9. Georgia	77%
11. Alabama	75%
12. Oklahoma	74%
13. Arkansas	69%
14. Florida	68%
14. North Carolina	68%
16. Indiana	66%
17. Nevada	65%
18. Illinois	63%
18. Washington*	63%
20. Louisiana	61%
21. Nebraska	60%
21. South Carolina	60%
23. Pennsylvania	57%
24. Utah*	56%
25. Texas	49%
26. Missouri	29%
27. Delaware*	26%
28. Virginia	15%

* States with three or fewer federal habeas corpus cases.

Sources: DADB; HCDB

Figure 11. Combined Error Rate on State Direct Appeal and Federal Habeas, 1973-95*



* States with three or fewer federal habeas corpus cases

**Table 11: Years from First Death Sentence
to First Non-Consensual Execution, 1973-2000**

State	Years From 1 st Death Penalty to Execution
1. Tennessee (2000)*	23
2. Montana	22
3. Nevada (1996)*	21
4. Indiana	20
5. Kentucky (1997)*	19
5. Nebraska	19
7. Arizona	18
7. Maryland (1997)*	18
7. Wyoming	18
10. Illinois	17
10. Washington	17
12. Arkansas	16
12. California	16
14. Delaware	15
15. Oklahoma	13
15. Utah	13
17. Georgia	10
17. Missouri	10
19. Mississippi	9
20. Alabama	8
20. South Carolina	8
20. Texas	8
23. North Carolina	7
23. Virginia	7
24. Florida	6
24. Louisiana	6
Idaho**	>23
Pennsylvania**	>20

* The first non-consensual execution occurred after the end of the study period (*i.e.*, after 1995) in the year indicated.

** As of this publication there has not yet been a non-consensual execution.

Sources: DRCen; Death Row U.S.A., Winter 2000

Table 12: Average Years from Death Sentence to Execution, 1973-95

State	Ave. Years from Sentence to Execution
National Composite	9.00
1. Montana	17.33
2. Arizona	16.00
2. Nebraska	16.00
4. Oklahoma	14.67
5. Illinois	13.38
6. Pennsylvania	11.50
7. Wyoming	11.50
8. Arkansas	10.00
9. Missouri	9.85
10. Georgia	9.81
11. Alabama	9.44
12. North Carolina	9.40
12. South Carolina	9.40
14. Florida	9.39
15. Utah	9.25
16. Texas	9.12
17. California	9.00
18. Virginia	7.50
18. Washington	7.50
20. Delaware	7.00
20. Mississippi	7.00
22. Louisiana	5.60
23. Indiana	5.00
24. Nevada*	2.25
25. Maryland*	2.00

* Includes only consensual executions

Sources: DRCen; Death Row U.S.A., Winter 2000

**Table 13: Proportion of 1973-1995 Death Sentences
Awaiting State Direct Review as of 1995**

State	Percent Awaiting Direct Appeal
National Composite	21
Delaware	4
Montana	5
Maryland	5
Virginia	5
Arkansas	7
Georgia	7
Nevada	11
Idaho	12
Florida	13
Oklahoma	13
Nebraska	13
South Carolina	14
Alabama	14
Louisiana	15
Illinois	16
Indiana	16
Mississippi	17
Kentucky	18
North Carolina	20
Arizona	20
Utah	20
Tennessee	23
Missouri	26
Texas	27
Pennsylvania	27
Washington	45
California	47
Wyoming	70

Sources: DRCen; DADB

Table 14: Death Sentences Per 1,000 Homicides, 1973-1995

State	Death Sentences per 1,000 homicides
National Composite (only death states)	14.90
Wyoming	58.48
Idaho	55.03
Nevada	43.10
Arizona	40.98
Oklahoma	39.16
Delaware	32.48
Florida	30.85
Alabama	28.93
Montana	28.25
Mississippi	24.10
Utah	21.89
Nebraska	21.74
Georgia	19.24
North Carolina	19.08
South Carolina	18.20
Arkansas	18.09
Pennsylvania	16.73
Texas	15.16
Tennessee	14.39
Missouri	12.18
Indiana	10.15
Virginia	9.94
Illinois	9.89
Kentucky	9.32
Louisiana	9.29
Washington	8.37
California	7.75
Maryland	5.72

Sources: DRCen; UCRDB

Table 15: Death Sentences Per 100,000 Population, 1973-1995

State	Death Sentences per 100,000 population
National Composite (death states)	3.90
Nevada	10.91
Arizona	7.82
Alabama	7.75
Florida	7.74
Oklahoma	7.06
Mississippi	6.47
Wyoming	6.44
Georgia	5.44
Texas	4.55
North Carolina	4.34
South Carolina	4.19
Idaho	4.16
Arkansas	3.84
Delaware	3.79
Louisiana	3.08
Tennessee	2.98
Missouri	2.64
Montana	2.50
Pennsylvania	2.30
Illinois	2.29
California	2.00
Virginia	1.82
Kentucky	1.67
Indiana	1.63
Utah	1.56
Nebraska	1.51
Maryland	1.34
Washington	0.90

Sources: DRCen; USCen

Table 16: Death Sentences Per 1,000 Prison Population, 1973-1995

State	Death Sentences per 1,000 prison pop.
Wyoming	37.57
Nevada	28.23
Alabama	27.31
Idaho	27.15
Florida	26.09
Mississippi	26.05
Arizona	25.29
Oklahoma	24.07
Montana	18.14
Georgia	17.74
Pennsylvania	17.47
Arkansas	17.21
Tennessee	16.18
North Carolina	15.73
Texas	15.33
Utah	14.23
Illinois	12.99
Missouri	12.70
Nebraska	12.35
South Carolina	11.37
Kentucky	9.52
Louisiana	9.33
Delaware	9.32
Indiana	9.18
California	8.59
Virginia	7.62
Washington	5.90
Maryland	4.45

Sources: DRCen; PrisCen

Table 17: Non-Consensual Executions Per 1,000 Homicides, 1973-1995

State	NC Executions per 1,000 homicides
National Composite (death states)	.68
Delaware	2.71
Virginia	2.46
Arkansas	2.03
Texas	1.97
Wyoming	1.95
Utah	1.75
Louisiana	1.56
Montana	1.41
Missouri	1.37
Florida	1.24
Georgia	1.18
Alabama	1.13
Nebraska	0.91
Oklahoma	0.89
South Carolina	0.66
Mississippi	0.58
Arizona	0.50
North Carolina	0.49
Illinois	0.23
Washington	0.21
Indiana	0.11
California	0.01
Idaho	0.00
Kentucky	0.00
Maryland	0.00
Nevada	0.00
Pennsylvania	0.00
Tennessee	0.00

Sources: Death Row, U.S.A., Winter 2000; UCRDB

Table 18: Non-Consensual Executions Per 100,000 Population, 1973-1995

State	NC Executions per 100,000 population
National Composite (death states)	0.15
Texas	0.59
Louisiana	0.52
Virginia	0.45
Arkansas	0.43
Georgia	0.33
Delaware	0.32
Florida	0.31
Alabama	0.30
Missouri	0.30
Wyoming	0.21
Mississippi	0.16
Oklahoma	0.16
South Carolina	0.15
Montana	0.13
Utah	0.13
North Carolina	0.11
Arizona	0.09
Nebraska	0.06
Illinois	0.05
Indiana	0.02
Washington	0.02
California	0.00
Idaho	0.00
Kentucky	0.00
Maryland	0.00
Nevada	0.00
Pennsylvania	0.00
Tennessee	0.00

Sources: Death Row, U.S.A., Winter 2000; USCen

Table 19: Non-Consensual Executions Per 1,000 Prison Population, 1973-1995

State	NC Executions per 1,000 prison pop.
Texas	1.99
Arkansas	1.93
Virginia	1.89
Louisiana	1.57
Missouri	1.43
Wyoming	1.25
Utah	1.14
Georgia	1.09
Alabama	1.06
Florida	1.05
Montana	0.91
Delaware	0.78
Mississippi	0.63
Oklahoma	0.55
Nebraska	0.51
North Carolina	0.41
South Carolina	0.41
Arizona	0.31
Illinois	0.30
Washington	0.15
Indiana	0.10
California	0.02
Idaho	0.00
Kentucky	0.00
Maryland	0.00
Nevada	0.00
Pennsylvania	0.00
Tennessee	0.00

Sources: Death Row, U.S.A., Winter 2000; PrisCen

Table 20: Average Homicides Per 100,000 Population, 1973-1995

State	Homicides per 100,000 Population
Louisiana	15.19
Texas	13.34
Georgia	12.50
Mississippi	12.40
Nevada	12.13
Alabama	11.75
California	11.46
Florida	11.20
South Carolina	10.76
Maryland	10.23
Tennessee	10.13
Illinois	10.06
North Carolina	10.01
Missouri	9.48
Arkansas	9.32
Arizona	8.54
Virginia	8.49
Oklahoma	8.23
Kentucky	8.10
Indiana	7.01
Pennsylvania	5.98
Delaware	5.52
Wyoming	5.11
Washington	4.94
Montana	4.02
Idaho	3.64
Nebraska	3.36
Utah	3.28

Sources : USCen; PrisCen

**Table 21: Average Percent of Population Non-White,
1973-1995**

State	Percent of Population Non-White
Mississippi	37
Louisiana	32
South Carolina	31
Georgia	29
Alabama	27
Maryland	27
California	25
North Carolina	24
Texas	24
Virginia	22
Delaware	20
Florida	19
Illinois	19
Arkansas	18
Arizona	17
Tennessee	17
Oklahoma	16
Nevada	15
Missouri	12
Pennsylvania	11
Washington	10
Indiana	9
Kentucky	8
Montana	8
Wyoming	8
Nebraska	6
Utah	6
Idaho	5

Source: USCen

Table 22: Index of Political Pressure on State Courts

State	Index of Political Pressure
Alabama	8
Georgia	8
Idaho	8
Indiana	8
Maryland	8
Nebraska	8
Nevada	8
Oklahoma	8
Utah	8
Washington	8
Wyoming	8
Arizona	7
Arkansas	7
Florida	7
Kentucky	7
Montana	7
North Carolina	7
Texas	7
Pennsylvania	6
Tennessee	6
California	5
Illinois	5
Mississippi	5
Missouri	5
Louisiana	4
South Carolina	4
Delaware	3
Virginia	2

Source: PolPres

Table 23: State Expenditures Per Capita on Courts, 1973-95

State	Expenditures per Capita on Courts
Nevada	68.66
California	67.85
Wyoming	63.57
Delaware	58.37
Arizona	57.76
Florida	48.84
Maryland	46.24
Washington	40.40
Pennsylvania	40.17
Montana	37.43
Illinois	36.91
Louisiana	35.72
Utah	34.65
Virginia	34.60
Texas	33.22
Alabama	30.64
Idaho	30.63
Kentucky	30.62
Georgia	29.77
Nebraska	28.46
Missouri	27.49
Tennessee	26.92
North Carolina	25.50
Oklahoma	24.55
Indiana	24.29
South Carolina	22.82
Arkansas	19.13
Mississippi	18.43

Source: CtExpen

Table 24: State Court Criminal Cases Per 1,000 Population, 1973-95

State	State Court Criminal Cases per 1,000 Population
Idaho	76.97
North Carolina	55.62
Illinois	54.39
Virginia	47.32
Louisiana	41.85
Arkansas	41.70
South Carolina	38.49
Montana	38.42
Oklahoma	37.77
Arizona	36.69
Missouri	33.69
Texas	33.01
Delaware	32.89
Nebraska	32.67
Kentucky	31.64
Maryland	31.62
Alabama	30.56
Wyoming	26.67
Florida	26.61
Utah	26.28
Washington	19.47
Tennessee	16.51
California	15.43
Georgia	14.71
Indiana	14.14
Mississippi	13.49
Pennsylvania	13.40
Nevada	7.81

Source: CtCaLd

**Table 26: Death Sentences Per 100,000 Population
by Region, 1973-1995**

Circuit	Death Sentences per 100,000 Population
National Composite (death states)	3.90
Eleventh (AL, FL, GA)	7.09
Fifth (LA, MS, TX)	4.51
Tenth (CO, NM, OK, UT, WY)	3.09
Fourth (MD, NC, SC, VA)	2.89
Ninth (AZ, CA, ID, MO, NV, OR, WA)	2.60
Eighth (AK, MO, NE)	2.57
Seventh (IL, IN)	2.07
Sixth (KY, OH, TN)	2.03
Third (DE, NJ, PA)	1.70

Source: DRCen; USCen

**Table 27: Non-Consensual Executions Per 100,000 Population
by Region, 1973-1995**

Circuit	Non-Consensual Executions per 100,000 Population
National Composite (death states)	0.15
Fifth (LA, MS, TX)	0.53
Eleventh (AL, FL, GA)	0.32
Eighth (AK, MO, NE)	0.27
Fourth (MD, NC, SC, VA)	0.19
Tenth (CO, NM, OK, UT, WY)	0.08
Seventh (IL, IN)	0.04
Ninth (AZ, CA, ID, MO, NV, OR, WA)	0.02
Third (DE, NJ, PA)	0.01
Sixth (KY, OH, TN)	0.00

Source: Death Row U.S.A., Winter 2000; USCen

**Table 28: Percent of Death Sentences Carried Out (All Executions),
1973-1995**

State	Percent Death Sentences Carried Out
National Composite	5
Virginia	28
Delaware	21
Louisiana	17
Utah	16
Texas	15
Missouri	13
Arkansas	12
Georgia	6
Montana	5
Nevada	5
Washington	5
Alabama	4
Florida	4
Nebraska	4
South Carolina	4
Illinois	3
Indiana	3
North Carolina	3
Oklahoma	3
Wyoming	3
Arizona	2
Idaho	2
Maryland	2
Mississippi	2
Pennsylvania	1
California	0.4
Kentucky	0
Tennessee	0

Sources: DRCen; Death Row U.S.A., Winter 2000

**Table 29: Percent of Death Sentences
Carried Out (Non-Consensual Executions), 1973-1995**

State	Percentage Executed
National Composite	5
Virginia	25
Louisiana	17
Texas	13
Arkansas	11
Missouri	11
Delaware	8
Utah	8
Georgia	6
Montana	5
Alabama	4
Florida	4
Nebraska	4
South Carolina	4
North Carolina	3
Washington	3
Wyoming	3
Illinois	2
Mississippi	2
Oklahoma	2
Arizona	1
Indiana	1
California	0.2
Idaho	0
Kentucky	0
Maryland	0
Nevada	0
Pennsylvania	0
Tennessee	0

Sources: DRCen; Death Row U.S.A., Winter 2000

**Figure 36. Percent Death Sentences Carried Out
(Nonconsensual Executions), 1973-95**

