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Death Penalty on Deathbed

By Donald E. Wilkes, Jr. Professor of Law, UGA School of Law

Capital punishment involves killing helpless prisoners. It is uncivilized. It is wrong for the same reasons torture is wrong.

Most Western nations have abolished the death penalty, usually at one fell swoop. But here in America capital punishment is destined to end with a whimper rather than a bang. It is dying the Long Death. Before our eyes, a barbarous anachronism is passing away due to multiple causes.

First, over the last 50 years the U.S. Supreme Court has chipped away at the death penalty. In 1972, because of their capricious enforcement, the Court struck down all death penalty laws then on the books, requiring the resentencing to life imprisonment of every one of the 629 inmates then on death row nationwide. In 1977, the Court prohibited use of capital punishment for rape or kidnapping; it barred executions of mentally retarded offenders in 2002 and of juvenile offenders in 2005; and in 2008 it invalidated the death penalty for child rape. These and numerous other decisions of the Court have decreased whatever respectability capital punishment once had.

Second, since 1973, 130 innocent persons sentenced to death in 26 states have been exonerated and released, most

after spending years on death row and some after escaping execution by only a few days. Anthony Porter, exonerated due to the efforts of a college journalism class, spent 16 years in prison and came within 2 days of execution in Illinois; Ron Williamson, whose tragic story is told in John Grisham's bestselling nonfiction book *The Innocent Man*, was imprisoned 12 years, and came within 5 days of being put to death in Oklahoma. The public knows that the risk of executing the innocent is far greater than previously imagined.

Third, the unacceptable financial costs of capital punishment—as opposed to life imprisonment without parole—are now evident. It is cheaper to imprison a murderer for his life than it is to execute him, and a criminal justice system without capital punishment is less expensive than one with it.

Other explanations for or indications of the decline in capital punishment include:

■ On Jan. 11, 2003, Ill. Gov. George Ryan commuted the death sentences of all 167 inmates on death row in that state, where between 1977 and 1999 there had been 12 executions and 13 death row exonerations!

■ On Dec. 17, 2007 the Governor of New Jersey signed a statute abolishing the death penalty, a few weeks ago

New Mexico followed suit, and other states are contemplating abolition.

■ Almost all executions are now in former Confederate states. In 2008, 95% of all executions occurred in the South, and 49% were in one state, Texas.

■ Capital punishment is for people without capital. Invariably the people put to death are the poor, the uneducated, and members of racial or ethnic minorities.

■ Capital punishment is enforced in a racially discriminatory manner, based on race of the victim, race of the defendant, or both. Blacks who murder whites are far more likely to be sentenced to death than whites who murder blacks, and whites who murder whites are far more likely to be sentenced to death than whites who murder blacks.

■ The number of executions has declined drastically since its all-time high of 199 in 1935, and has dropped steadily since its most recent high of 98 in 1999. There were 42 executions in 2007, 37 in 2008, and 18 so far in 2009.

■ The number of persons sentenced to death per year keeps declining.

Whereas there were around 300 death sentences per year in the 1990's, there were 140 death sentences in 2004, 138 in 2005, 121 in 2006, 115 in 2007, and 111 in 2008. Over 95% of the persons convicted of murder are not sentenced to death.

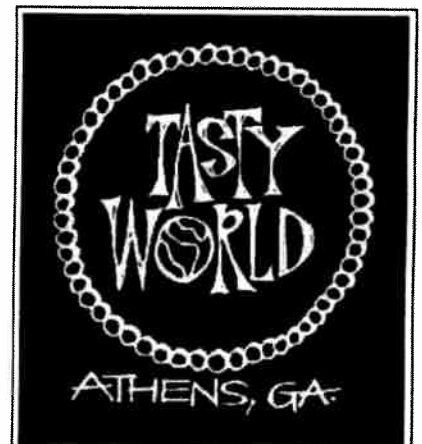
■ There is no evidence that the death penalty deters more than life without parole. Many of the 14 states without the death penalty have lower murder rates than states with capital punishment.

■ In a sure sign of waning public support for capital punishment, in December 2008 an Atlanta jury rejected a death sentence for courthouse shooter Brian Nichols.

Within 20 years we will look back at the death penalty as a bygone punishment as inexplicable and barbaric as burning witches or boiling poisoners.

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