A CRISIS OF CONFIDENCE:

Americans' Doubts About the Death Penalty

A Death Penalty Information Center Report
Based on A National Opinion Survey

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For many Americans, their patience with the death penalty is wearing thin. Rather than there being some light at the end of the tunnel after thirty years of experiment, the prospects for successful reform of the system seem less and less likely.

Introduction

According to a national public opinion poll conducted in 2007, the public is losing confidence in the death penalty. People are deeply concerned about the risk of executing the innocent, about the fairness of the process, and about the inability of capital punishment to accomplish its basic purposes. Most Americans believe that innocent people have already been executed, that the death penalty is not a deterrent to crime, and that a moratorium should be placed on all executions.

Many in America also believe they would be disqualified from serving on a jury in a capital case because of their moral objections. Among women and Catholics, nearly half believe they would be excluded. Two-thirds of blacks believe they would be disqualified. Even among those who support the death penalty and believe they would be qualified to serve on a capital jury, the risk of convicting or executing the innocent would make them less likely to vote for a death sentence.

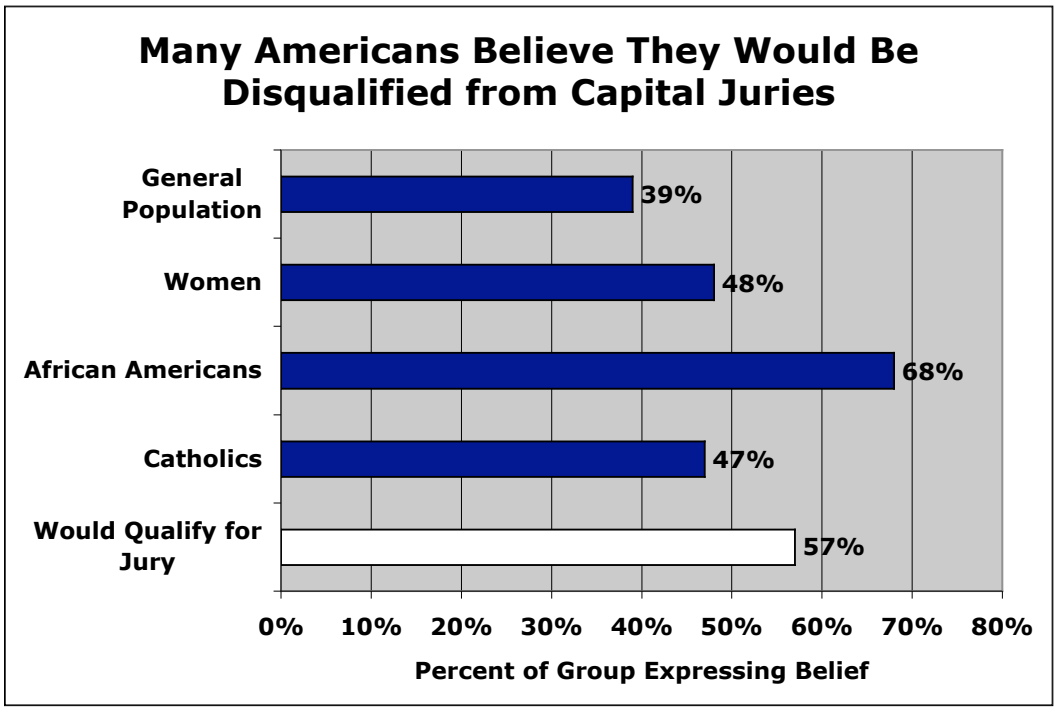
While a majority still support the death penalty in theory, it is becoming irrelevant to many Americans because it is rarely applied, and not always to the worst offenders. Life without parole sentences are becoming more attractive to many Americans, and it is the preferable choice over the death penalty for major subgroups of the population. Two-thirds of Americans do not believe that reforms of the death penalty system will eliminate its problems.

The public's lack of confidence in the death penalty is being echoed by representatives of victims' groups, by former supporters of the death penalty, and in the editorial pages of the nation's newspapers. Although the dissatisfaction with capital punishment has many roots, the common and principal concern heard throughout the country is the risk that innocent people may be caught up with the guilty.

Poll Results

The Supreme Court has said that the death penalty should reflect the "conscience of the community,"[1] and that its application should be measured against society's "evolving standards of decency."[2] In all states, a defendant is entitled to have a jury determine whether he or she is eligible for a death sentence.[3] In almost all states, the jury also makes the crucial decision on the actual sentence. But a recent National Omnibus Poll conducted by RT Strategies for the Death Penalty Information Center in early 2007 indicates that there is a deep divide in the community that is called upon to make such decisions.

Nearly 40% of the public believes that they would be disqualified from serving on a jury in a death penalty case because of their moral beliefs. Over two-thirds (68%) of African-Americans in this survey believe they would be excluded as capital jurors; 48% of women reached the same conclusion, and 47% of Catholics. While these latter numbers are based on sub-samples with a larger margin of error than the whole poll, they point to a problem of unrepresentative capital juries that do not reflect the country's true diversity.

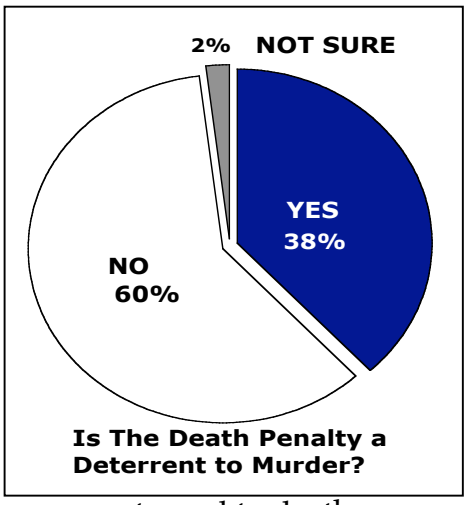


Jurors in capital cases must be interrogated about their positions on the death penalty. If they are opposed to it in all cases, they will not be permitted to serve. The resultant juries look different than society at large because they will have less minority members, less women, and none of those who represent one side on this divisive issue. If the percentage of those who would be excluded for their views were miniscule, it might not pose a serious problem. But when the numbers grow to represent nearly half, or even a majority, of significant groups in society, the system runs the danger of being undemocratic.

An Erosion of Confidence

Americans have endorsed the death penalty for generations because they believed it might contribute to saving lives. For a long time, deterrence was the principal reason that Americans gave for their support of capital punishment.[4] But today, few citizens believe that the death penalty serves as a deterrent. Only 38% of respondents in this recent poll believe that the death penalty is a deterrent; 60% said it was not.

But a larger problem has emerged to challenge the notion that the death penalty saves lives. By a wide margin, the American public believes that the most significant development in the death penalty in recent years has been the advent of DNA testing and the proof that many who



were sentenced to death were innocent. The availability of life-without-parole sentences and the exclusion of juveniles from execution were much less significant to the public.

Over 120 people have been freed from death row since 1973 after their convictions were overturned.[5] Many came close to execution before being cleared of all the charges that sent them to death row. In some cases, it was the fortuitous advance of DNA science that led to their exoneration. In other cases, it was the work of journalism students or others outside the legal system who re-investigated what appeared to be closed cases.

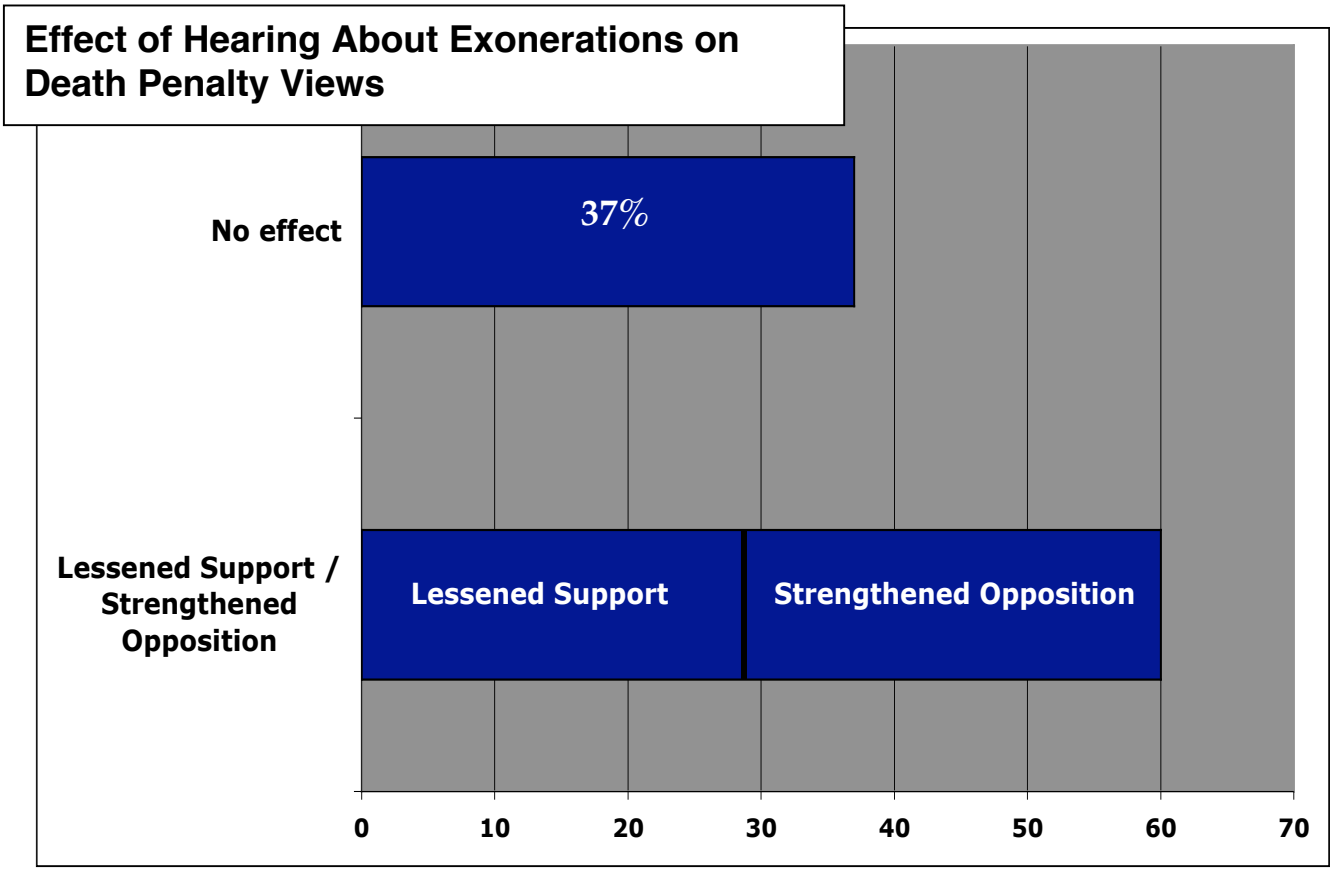
In addition to those freed from death row, many have recently been exonerated of non-capital crimes, putting the judicial system further on the defensive. Two hundred people have had their convictions dismissed because of DNA testing since 1989.[6] Frequently, the justice system resisted acknowledging the new evidence that was uncovered, even though it pointed to the

innocence of the original defendant.

Seeing these repeated mistakes in determining the underlying guilt of those facing execution has sharply eroded the public's confidence in the death penalty. Particularly in this area, the public wants much more assurance that the system works reliably. For many Americans, their patience with the death penalty is wearing thin. Only 39% of the public expressed either complete or "quite a bit" of confidence that the justice system sentences only the guilty to death.

A strong majority of 75% of those polled believe that we need a higher standard of proof for guilt in death penalty cases. The standard of "proof beyond a reasonable doubt" may be sufficient when an inmate will still be alive if new evidence overturns his conviction. But before the state should be allowed to execute an individual, a higher degree of confidence that it has charged the right person is required.

Unfortunately, the search for truth in death penalty cases is obscured by the fact that jurors are chosen from only certain segments of society. Research indicates that those who support the death penalty are also more likely to support the government's case, more likely to believe police testimony and witnesses for the prosecution.[7] While such sources are often credible, the errors that have occurred in capital cases where innocent people have been wrongly convicted often stem from erroneous identifications and other testimony offered by the state.[8] In capital cases it is



especially important that people with a wide range of viewpoints critically examine the evidence, but the exclusion of the citizens most likely to be skeptical of the state's evidence makes this goal harder to achieve.

Most Americans have been affected by the news of so many exonerations in death penalty cases. Only 37% said that such news had no effect on their position on the death penalty. Sixty percent (60%) of Americans said that these wrongful convictions had either lessened their support for the death penalty or strengthened their already existing opposition.

The Ultimate Error: Executing the Innocent

A similar question regarding the *execution* of possibly innocent defendants also indicated that such information lessens support for the death penalty. And the overwhelming majority of Americans (87%) already believes that the final tragedy has occurred: that innocent people have been executed in recent years.

Because courts do not typically provide a forum for determining the innocence of someone who has already been executed, and because states do not pay attorneys to pursue such claims, it is difficult to know how many innocent people have been put to death. Four cases in the past few years that were thoroughly re-investigated after execution indicated a strong likelihood that such mistakes have been made.[9] Larry Griffin was executed in Missouri, Ruben Cantu, Cameron Willingham, and Carlos de Luna (pictured) were executed in Texas. In all four cases, new evidence has emerged that has thrown considerable doubt on their original convictions.

In Griffin's case, the first police officer on the scene has now given a new account of the evidence. Willingham's case was exposed through an investigation by the *Chicago Tribune*. He had been convicted of murder by arson, but now new scientific analysis has questioned whether any arson (and hence any crime) ever occurred.

In de Luna's case, also investigated by the *Chicago Tribune,* another repeat offender now appears to be the likely killer. Ruben Cantu's case, the third of the cases from Texas, was investigated by the *Houston Chronicle*. The former District Attorney who oversaw the prosecution now believes that Cantu was probably innocent and he has apologized for what happened.[10] An investigation was opened by the new District Attorney in San Antonio.

However, this D.A. had served as a judge on Cantu's appeal and signed his death warrant.[11] This conflict of interest has clouded the investigation.

Of those who believe that an innocent person has already been executed, 55% say that has affected their opinion of the death penalty, either making them more skeptical of capital punishment or more opposed to it entirely. Less than a third (31%) of the respondents said that knowing an innocent person may have been executed has had no effect on their death penalty views.

Declining Use of the Death Penalty

One of the apparent results of the declining confidence in the death penalty has been a dramatic drop in death sentences over the past six years. This poll indicates that part of the decline in sentences may be due to less willingness to impose the death penalty because of the innocence issue. Although those chosen to serve on a death penalty jury are more conservative voters, even this group has been affected by the news of exonerations. Of those who believed they qualified for capital jury service, nearly 40% said they would be less likely to vote for a death sentence given what they have heard about exonerations.

Death sentences averaged close to 300 per year during the 1990s. Since then, the number of death sentences per year has dropped about 60%. According to the Bureau of Justice Statistics, there were 128 death sentences in the country in 2005,[12] and DPIC has determined that the number of death sentences in 2006 was lower again, approximately 102, the lowest number of sentences since the death penalty was reinstated over 30 years ago.

Other indicators are consistent with the decline in death sentences. There were 98 executions in the country in 1999. In 2006, there were 53 executions--47% fewer.[13] That number will likely decline further in 2007, with executions dropping into the 40s for the first time in over a decade. The recent number of executions has been directly affected by the controversy surrounding the lethal injection process. But even if that problem should be resolved and executions resume in greater numbers, the decline in death sentences will eventually mean that the number of executions will likely stay below that of the late 1990s.

The size of death row increased every year from the reinstatement of the death penalty in 1976 until 1999. Since then, the size of death row has decreased every year, despite the fact that fewer people are being executed. In many states, the death penalty has reached a virtual stalemate. Few people are sentenced to death; even fewer, if any, are executed. Some cases are overturned or inmates die of other causes, leaving death row about the same size. (The costs of maintaining this stagnant system, however, continue to mount.)

Life Without Parole

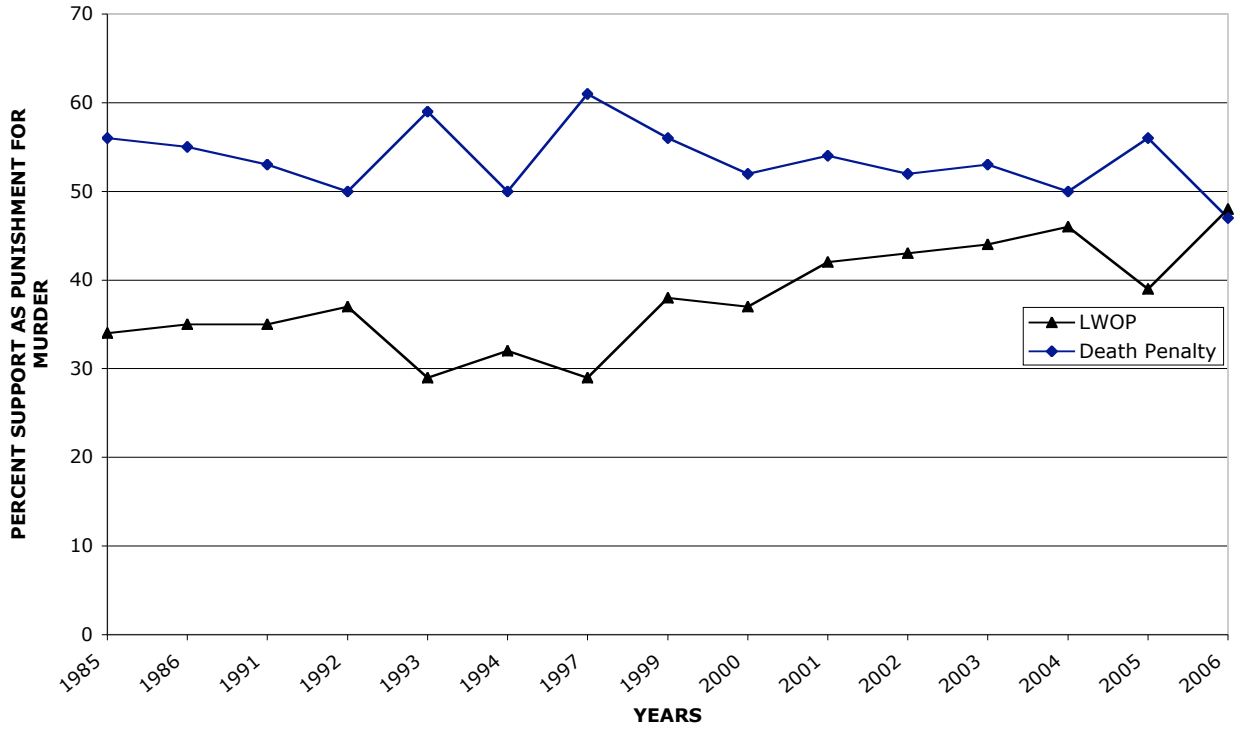
Americans are nearly evenly split when the death penalty is compared with life without parole (LWOP) as a punishment for murder. In the most recent Gallup Poll in 2006, 48% of the general population chose LWOP and 47% chose a death sentence, marking the first time in 20 years of posing this question that the Gallup Poll showed the death penalty in second place.[14] In the poll for this report, 47% would choose the death penalty and 43% life without parole (LWOP) as the proper sentence for first degree murder. Many subgroups, such as Democrats, women, African Americans, Hispanics, college graduates, and Catholics preferred LWOP over the death penalty.

However, those who believe they would be qualified as capital jurors were less moved by having the option of a life-without-parole sentence than they were by the innocence issue. Only 37% said having this choice would make them less likely to vote for death.

Life without parole is a relatively new alternative in American criminal sentencing. When the death penalty was overturned by the Supreme Court in 1972, there were about 600 people on death row. All of their sentences were reduced to life sentences and almost all of them became eligible for parole at some point.[15] Today, 37 of the 38 death penalty states have a sentence of life without parole for at least some defendants.[16] Texas, the leading execution state, was the most recent state to adopt this

PUBLIC NOW EVENLY SPLIT ON DEATH PENALTY

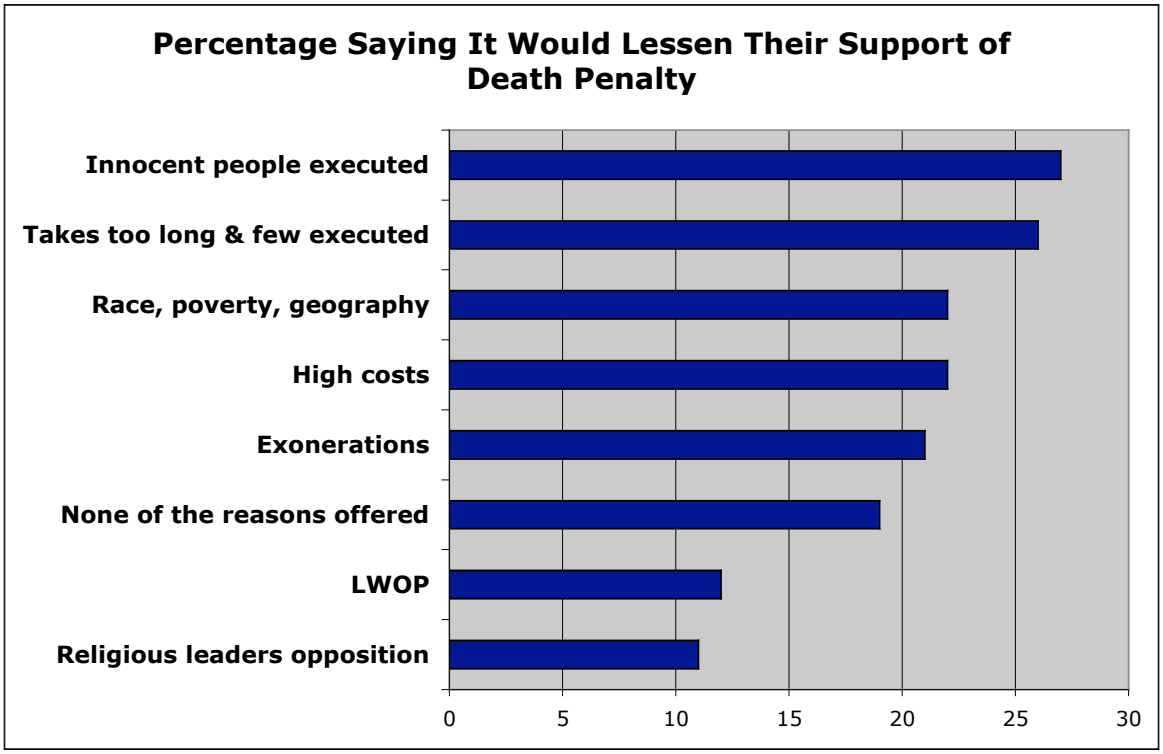
(Gallup Poll Results)



option for jurors, having done so in 2005.[17] If the death penalty were removed as a sentence today, many of the defendants would still have to serve the rest of their life in prison with no chance of parole. And for future defendants, that sentence would be available for virtually all cases.

Pragmatic Problems Cited by Those Who Support the Death Penalty

Besides the possibility of executing innocent people, what other problems raise doubts in the minds of those who favor the death penalty? What factors might weaken their support? Respondents who favored the death penalty were given a list of factors and asked which ones (if proven true) would reduce their support. Policy issues such as the rarity of executions and high costs ranked not far behind the possibility of executing the innocent. While 27% said that the execution of innocent people would lessen their support for the death penalty, 26% would be similarly affected by the fact that "it takes too long to go through the whole appeals process in death penalty cases and only a few of those sentenced to death are actually executed." The high costs of the death penalty were cited by 22% as lessening their support. A similar 22% cited the fact that receiving the death penalty often depended on race, economics and geography. Only 11% indicated that statements from leaders in their religious denomination would have a similar effect on their views.



The Costs of Innocence

The problem of innocence has had a cascading effect on all aspects of the death penalty. After studying the risks of sentencing innocent people to death, many states have introduced reforms. Although the quality of capital representation is still grossly inadequate in many areas,[18] some states are requiring defense counsel to meet higher standards for capital representation and other states have raised the fees available for such representation. Many states now allow DNA evidence to be tested and introduced on appeal, despite barriers to late-filed challenges in death penalty cases. A few states are requiring that pre-trial interrogations of suspects be recorded to avoid abuses.[19]

Many of these changes are long overdue, but one result could be that the costs of the death penalty will increase compared to what they were when standards were more lax. As executions decline and the costs for each prosecution go up, the cost per execution (including all the legal and custodial costs of all the cases in the death penalty system) has become a concern in many states. In Florida, a 1988 study by the *Miami Herald* concluded that the extra costs associated with the death penalty amounted to $3.2 million per execution.[20] Since then, costs have increased and executions have slowed down. A similar study by the *Palm Beach Post* in 2000 found that the cost per execution was now costing taxpayers $24 million.[21]

Likewise in California, the *Sacramento Bee* had estimated that the state was spending an extra $90 million per year on the death penalty, with no executions to show for it.[22] A more recent study by the *Los Angeles Times* indicated that the costs were now more like $124 million per year. With an average of less than one execution every two years, that meant the state was paying *$250 million* per execution.[23]

States like New York and New Jersey, where the death penalty is in suspension, spent enormous sums of money with no executions resulting. Hearings in New York cited costs of over $160 million over 7 years with no death sentences carried out and no cases affirmed on appeal.[24] In New Jersey, the costs were about $250 million over 22 years with no executions.[25] In both states, such economic concerns were cited in votes that have brought the death penalty to a halt.[26]

Prospects for the Future

With the use of the death penalty declining and becoming more isolated in a few states, and with the costs of cases increasing and the time between sentencing and execution not getting any shorter, it is not surprising that the majority of the public is convinced that this government program needs to be halted and studied to see if it is worth continuing. A significant majority of 58% responding in this poll believed it was time for a

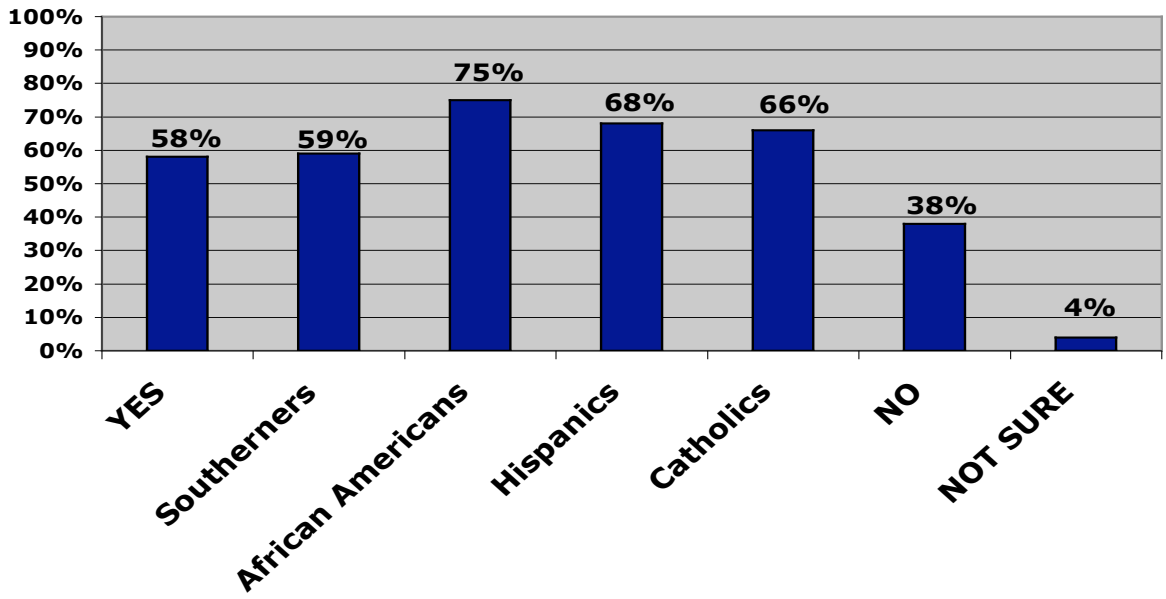
moratorium on the death penalty while the process undergoes a careful review.

Support for a moratorium was widespread among subgroups: 59% of southerners, 75% of African Americans, 68% of Hispanics, and 66% of Catholics supported such a halt to executions. This support reflects the reality that in practice such a moratorium already exists in much of the country. Most states with the death penalty carried out no executions in 2006 or the first 5 months of 2007. This year only a handful of states have carried out an execution, and Texas, alone, has been responsible for two-thirds of all executions. Even in the most active years of the death penalty, about 80% of the executions in the country have been in just one geographical area, the South. A national suspension of executions would hardly change the reality in most of the country.

Executions this year have been impeded by the challenges to the lethal injection process. In eleven states, stays of executions were in place for many months, and the controversy over lethal injection is far from being resolved. Although this debate was not the result of a public outcry, a number of states appear resigned to letting it run its course. North Carolina, which temporarily arrived at a compromise that allowed some executions to go forward, has returned to a stand down position and the governor has said the courts should decide the issue.[27]

In other states like California, Maryland and Missouri, it also appears that executions will remain on hold for a considerable period while solutions are explored. Florida, which previously had resisted any challenges to both its faulty

Support for a Halt to Executions: Generally and Subgroups



electric chair and its lethal injection process, voluntarily halted all executions late last year. Angel Diaz's execution in December 2006 took over 30 minutes, with the drugs being at first injected into his muscles rather than his veins. A complete second series of lethal drugs was administered after he writhed and spoke while on the gurney. Governor Jeb Bush immediately declared a moratorium and appointed a study commission. The new governor, Charlie Crist, has continued the process.[28]

Weariness with the Death Penalty

The lethal injection issue is not likely to end the death penalty. By itself, it remains probably a temporary hurdle to more executions. But this issue has not arisen in a vacuum. In the past six years, the American public has seen the U.S. Supreme Court place further restrictions on the use of the death penalty.[29] Some state courts have also made the execution of a defendant unpredictable, with stays due to lethal injection challenges and sentences overturned because of inadequate representation. Many family members of homicide victims are realizing that accepting a life sentence for a defendant gives them a far greater chance of achieving a resolution to the legal case than holding out for a tenuous death sentence.

A weariness about the death penalty has emerged among some former supporters of the death penalty. If it is not going to be carried out in a short period of time, if many cases are overturned and then receive a life sentence anyhow, and if the costs of the whole process are getting out of hand, then some have concluded that it may not be worth the effort. In this poll, such sentiments ranked as high as innocence in lessening support of the death penalty among its proponents.

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>
> **-Richard Pompelio, New Jersey Crime Victims Law Center**

In 2006, New Jersey appointed a blue-ribbon commission to study the state's death penalty. The commission concluded by a vote of 12-1 that the death penalty should be abolished. But it was not simply that the members were morally opposed to capital punishment. Rather, their report examined statements from victims' advocates, such as Richard Pompelio, founder of the New Jersey Crime Victims' Law Center and father of a murder victim. According to the commission's report:

> He (Mr. Pompelio) testified that the death penalty is the greatest failing of the justice system in the State and that it re-victimizes victims. He stated that the death penalty should be abolished in favor of

> life in prison without parole, and that the funds spent on the death penalty be used for services for homicide victims and funding for law enforcement. "I have absolutely no doubt that there will never be an execution in the State of New Jersey. . . . We are just sitting here playing with words and playing with taxpayers' dollars."[30]

Some prosecutors have echoed these sentiments. Samuel Milsap, former District Attorney of Bexar County, Texas, said: "I've come to the conclusion . . . that the system as it relates to capital murder is simply broken. It's my view in fact that because it's driven by human beings and decisions that are made by human beings, it can't be fixed, and that as a result what has to happen is that the option to put people to death has to end."[31]

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His words were similar to those of Justice Blackmun before retiring from the Supreme Court in 1994. Blackmun had voted to uphold the death penalty when it was struck down in 1972, and he voted in favor of its constitutionality when it was reinstated in 1976. But years of exposure to the way the death penalty worked in practice led him to withdraw even his legal judgment that it should be allowed to continue:

> In recent years, I have grown increasingly skeptical that 'the death penalty really can be imposed fairly and in accordance with the requirements of the Eighth Amendment,' given the now limited ability of the federal courts to remedy constitutional errors. . . . I am more optimistic, though, that this Court eventually will conclude that the effort to eliminate arbitrariness while preserving fairness "in the infliction of [death] is so plainly doomed to failure that it--and the death penalty--must be abandoned altogether."[32]

For Some, A Conclusion That It Cannot Be Fixed

One reason that Americans believe a moratorium may be needed is that they lack confidence that the problems of the death penalty have been fixed. An overwhelming 69% of the public believes that the reforms will not eliminate all wrongful convictions and executions. This sentiment is also reflected by

major national newspapers which formerly supported the death penalty for decades, but have now changed their positions.

The *Chicago Tribune* recently pronounced that the revelations about innocence and other problems had shaken "the foundation of support for capital punishment:"

> *One of the core tenets of this newspaper since its founding has been that the extraordinary power of government must be wielded carefully and sparingly--particularly when that power weighs on the life and liberty of citizens.*
>
> *It has, as well, long been the position of this editorial page that the government should have the legal right to impose capital punishment--the death penalty.*
> . . .
> *We have learned much, particularly with advances in DNA technology, about the criminal justice system's capacity to make terrible mistakes. These revelations--many stemming from investigations by this newspaper--shake the foundation of support for capital punishment.*
> . . .
> *The evidence of mistakes, the evidence of arbitrary decisions, the sobering knowledge that government can't provide certainty that the innocent will not be put to death--all that prompts this call for an end to capital punishment. It is time to stop killing in the people's name.*[33]

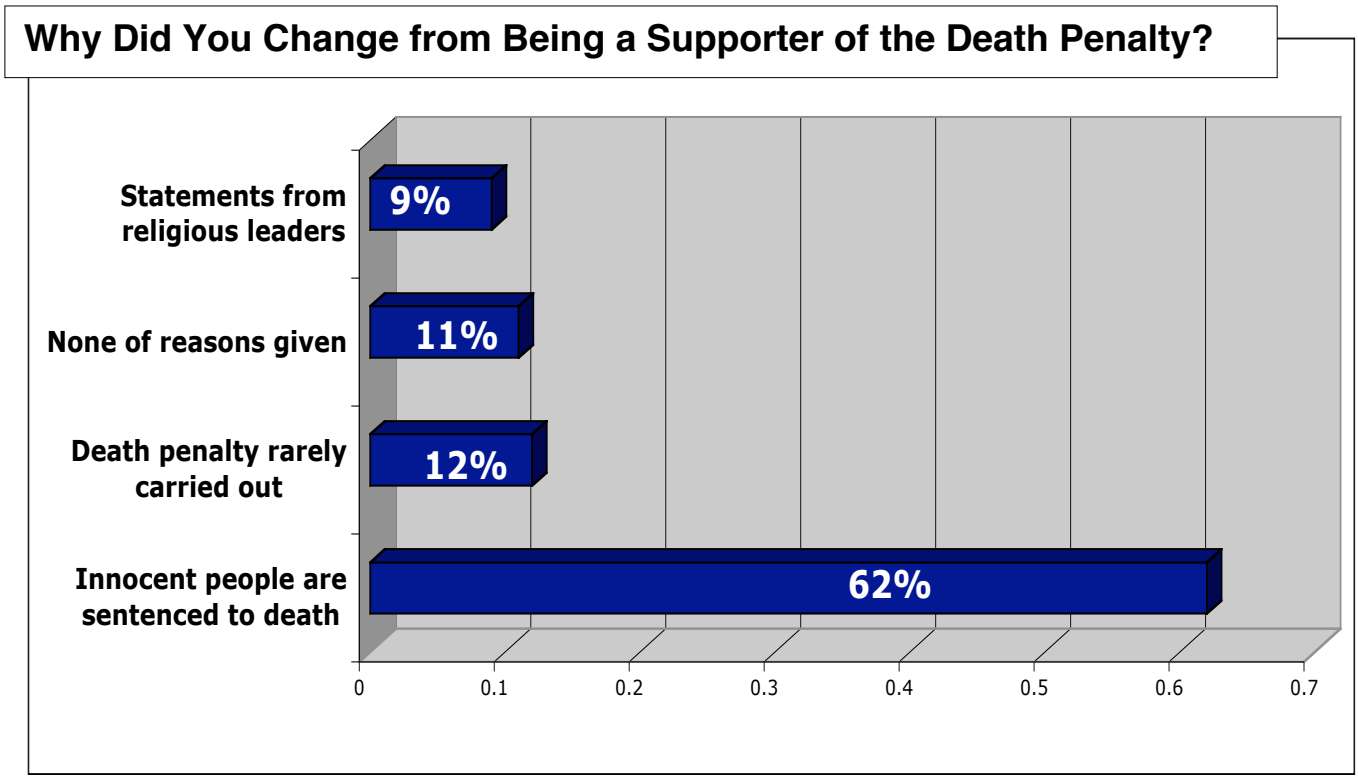
> ***This board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder. We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder.***
> **-Dallas Morning News Editorial, April 15, 2007, changing its position on the death penalty**

Around the same time, the *Dallas Morning News* shifted from its long-term support for the death penalty because it had "lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder." The editorial board wrote:

> *That is why we believe the state of Texas should abandon the death penalty – because we cannot reconcile the fact that it is both imperfect and irreversible.*
>
> *This board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder. We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder.*
> . . .
> *The state holds in its hands the power of life and death. It is an awesome power, one that citizens of a democracy must*

> *approach in fear and trembling, and in full knowledge that the state's justice system, like everything humanity touches, is fated to fall short of perfection. If we are doomed to err in matters of life and death, it is far better to err on the side of caution. It is far better to err on the side of life. The state cannot impose death – an irrevocable sentence – with absolute certainty in all cases. Therefore the state should not impose it at all.*[34]

Other papers, such as *The Sentinel* of Pennsylvania, were more succinct, simply calling the death penalty "useless."[35] The *Rocky Mountain News* of Colorado said that, in their state, "for all practical purposes the penalty no longer exists in any meaningful sense at all," and hence it should be taken off the books.[36] The *Los Angeles Times* called on the state study commission to make a death penalty moratorium its first order of business. The *Houston Chronicle* likewise advocated for a Texas moratorium. National papers such as the *New York Times*, the *Washington Post*, and *USA Today* have had long term editorial positions against the death penalty.[37]



An Emerging Trend

The death penalty is deeply ingrained in American history and politics. In this poll, 62% supported the death penalty for persons convicted of murder. Even with all that has been revealed about this practice in recent years, the majority of respondents said that their position had not changed in the past ten years. But among those who had shifted their position, more people became opponents of the death penalty than proponents, by a margin of 3 to 2. And the overwhelming reason given by those who have changed from supporters to opponents of the death penalty was the issue of innocence: 62% of those who changed to opposing the death penalty did so because of the risk that innocent people could be sentenced to death.

The problem of innocence can be lessened but never completely eliminated. The chance of human error will be present in the investigation of the crime, the testing of evidence, in expert testimony, and in the opinions of jurors and judges passing judgment. When the former governor of Massachusetts, Mitt Romney, claimed to have devised a mistake-proof death penalty, the state legislature strongly rejected his proposal as unrealistic.[38]

The implications of the realization that the "innocence problem" cannot be fixed are profound: there is less talk now of eliminating appeals or cutting back on defense services. The death penalty for the foreseeable future will be time consuming, more expensive, and still unpredictable.

The public is very aware of these developments and many are becoming resigned to the fact that, in the long run, the death penalty is unsustainable. Support for the death penalty drops to less than 50% when compared with the sentence of life-without-parole. Capital punishment is seen as an outmoded government policy that no longer meets its intended uses.

Politicians may still continue to offer a patched-up death penalty as a panacea to the public's fear of crime. But rather than there being some light at the end of the tunnel after thirty years of experiment, the prospects for a "successful" death penalty seem to be rapidly receding.

Poll Specifications

RT Strategies of Washington, D.C., conducted this National Omnibus Poll on March 8-11, 2007 for the Death Penalty Information Center. The sample was 1,000 adults nationwide, and the margin of error was $\pm$3.1%. DPIC is a non-profit organization specializing in research and information on capital punishment in the United States.

Endnotes

[1] . Witherspoon v. Illinois, 391 U.S. 510, 519 (1968).

[2] . Trop v. Dulles, 356 U.S. 86, 101 (1958) (evolving standards interpretation of the Eighth Amendment).

[3] . Ring v. Arizona, 536 U.S. 584 (2002).

[4] . See Stuart Banner, *The Death Penalty: An American History*, 10 (Harvard Univ. Press 2002) ("the main purpose of the death penalty was conceived to be its deterrent effect").

[5] . See Death Penalty Information Center's list of exonerations at http://www.deathpenaltyinfo.org/article.php?scid=6&did=110, visited May 3, 2007.

[6] . See D. Fears, *Exonerations Change How Justice System Builds a Prosecution: DNA Tests Have Cleared 200 Convicts,* Washington Post, May 3, 2007, at A3.

[7] . C. Haney & D. Logan, "Broken Promise: The Supreme Court's Response to Social Science Research on Capital Punishment," 50 Journal of Social Issues 75, 91 (1994).

[8] . See, e.g., Charles A. Morgan III, M.D., *Yale Medicine*, Fall/Winter 2004, at p.9 (false eyewitness testimony); Symposium, *Judicature*, Journal of the American Judicature Society, September-October, 2002 (issue devoted to causes of wrongful convictions).

[9] . See National Coalition to Abolish the Death Penalty, *Innocent and Executed: Four Chapters in the Life of America's Death Penalty* (2006).

[10] . Pew Forum on Religion and Public Life, Event Transcript, July 21, 2006, at <http://pewforum.org/events/index.php?EventID=122>.

[11] . See Editorial, *Mistrust: Court's decision to leave a wrongful execution inquiry with a tainted DA clouds Texas justice*, Houston Chronicle, Sept. 5, 2006.

[12] . Bureau of Justice Statistics, *Capital Punishment 2005* (U.S. Dept. of Justice 2006).

[13] . See Death Penalty Information Center, *The Death Penalty in 2006: Year End Report* (2006).

[14] . See Gallup News Service, June 1, 2006 (press release).

[15] . J. Marquart & J. Sorenson, *A National Study of the* Furman-*Commuted Inmates: Assessing the Threat to Society from Capital Offenders,* 23 Loyola of Los Angeles L. Rev. 5 (1989).

[16] . New Mexico is the only death penalty state that does not have a LWOP sentence.

[17] . Governor's Office, Press Release, "Governor Perry Signs Life Without Parole Bill," June 17, 2005.

[18] . See, e.g., series on representation in 4 southern states, North Carolina News & Observer, January 20, 2007.

[19] . For a review of reforms that have been passed, see Campaign for Criminal Justice Reform at http://www.thejusticeproject.org/state/legislation.html.

[20] . D. Von Drehle, *Bottom Line: Life in Prison One-sixth as Expensive*, The Miami Herald, July 10, 1988, at 12A.

[21] . S. V. Date, *The High Price of Killing Killers*, Palm Beach Post, Jan. 4, 2000, at 1A.

[22] . S. Maganini, *Closing Death Row Would Save State $90 Million a Year*, Sacramento Bee, March 28, 1988, at 1.

[23] . See R. Tempest, *Death Row Often Means a Long Life,* Los Angeles Times, March 6, 2005.

[24] . *Costly Price of Capital Punishment—Case Shows Effort Expended Before the State takes a Life*, Albany Times-Union, Sept. 22, 2003 (over $160 million spent in 7 years).

[25] . See *Report: Death penalty cost $253M and executed no one in NJ*, New Jersey Policy Perspectives report, Newsday, Nov. 21, 2005 ($253 million spent since 1983).

[26] . See discussion of New Jersey Death Penalty Study Commission's report in Associated Press, Jan. 2, 2007 (citing costs); see Press Release, New York State Assembly, "Assembly Releases Death Penalty Report," April 4, 2005 (citing costs).

[27] . See A. Weigl, *Execution impasse unlikely to end soon,* News & Observer (North Carolina), April 6, 2007 ("'The legislature isn't going to be able to move in any direction, really, until it gets some final ruling from the federal and state courts,' Gov. Mike Easley said.").

[28] . See P. Davis, *Panel: Crist should review death drugs,* Associated Press, March 1, 2007 (discussing Florida Lethal Injection Commission Report).

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[29] . See, e.g., Atkins v. Virginia, 536 U.S. 304 (2002) (no death penalty for the mentally retarded); Wiggins v. Smith, 539 U.S. 510 (2003) (requiring investigation of mitigating evidence); Roper v. Simmons, 543 U.S. 551 (2005) (no death penalty for juveniles).

[30] . See New Jersey Death Penalty Study Commission Report (January 2007) at http://www.njleg.state.nj.us/committees/njdeath_penalty.asp.

[31] . See *Pew Forum on Religion and Public Life*, note 10 above.

[32] . Callins v. Collins, 510 U.S. 1141 (1994) (Blackmun, J., dissenting from denial of cert.).

[33] . Editorial, Chicago Tribune, March 25, 2007.

[34] . Editorial, Dallas Morning News, April 15, 2007.

[35] . Editorial, The Sentinel (Pennsylvania), April 3, 2007.

[36] . Editorial, Rocky Mountain News (Colorado), Feb. 12, 2007.

[37] . See Death Penalty Information Center, Editorials Web page, at http://www.deathpenaltyinfo.org/article.php?did=189&scid=43.

[38] . See S. Helman, *Death penalty bill fails in House: Romney initiative roundly defeated*, Boston Globe, November 16, 2005.

Appendix A

National Omnibus Poll
RT Strategies
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Interviewing: March 8-11, 2007
Sample: 1,000 adults nationwide
Margin of error: ± 3.1

822 registered voters nationwide
Margin of error: ± 3.4

RT Strategies National Omnibus Poll
Thomas Riehle, Partner

Death Penalty Poll

All numbers represent percentages unless otherwise labeled.

DEMOGRAPHICS

DP-1. Do you **(ROTATE:)** favor or oppose the death penalty for persons convicted of murder?

Favor	62
Oppose	28
Not sure	10

DP-2. Which penalty do you prefer for people convicted of murder, **(ROTATE:)** the death penalty, or life in prison with no chance of parole?

Death penalty	47
Life in prison with no chance of parole	43
Not sure	10

DP-3. Do you have **(ROTATE, START FROM BOTTOM EVERY OTHER INTERVIEW:)** complete confidence, quite a bit of confidence, only some confidence, very little confidence, or no confidence at all that the criminal justice system always sentences only guilty people to death?

Total Complete/Quite A Bit	**39**
Total Only Some/Very Little/No Confidence	**59**
Complete confidence	10
Quite a bit of confidence	29
Only some confidence	31
Very little confidence	18
No confidence at all	10
Not sure	2

DP-4. As you may know, in recent years many people who had been convicted of murder and sentenced to death have been released from death row after new evidence, such as DNA testing, shows they could not be guilty of the crime. They have been exonerated of all charges. For example, so many people on death row in Illinois were found to be not guilty

that the state put a moratorium on carrying out the death penalty until the problem could be thoroughly investigated. Having heard that, which ONE of the following comes CLOSEST to describing your opinion about the death penalty: **(ROTATE, START FROM BOTTOM EVERY OTHER INTERVIEW:)**

I support the death penalty, but hearing this makes me feel less strongly in favor of it	32
Hearing this does not affect my opinion of the death penalty	37
I oppose the death penalty, and hearing this makes me feel more strongly opposed to it	28
Not sure	3

Initial Favor Death Penalty	
Favor death penalty and hearing this does not affect my opinion	28
Favor death penalty but hearing this makes me feel less strongly in favor of it	28
Initial Oppose Death Penalty	
Oppose death penalty and hearing this does not affect my opinion	5
Oppose death penalty and hearing this makes me feel more strongly opposed	21
Other/not sure	**18**

DP-5. As you may know, in the court cases where the death penalty is one possible punishment, most courts require jurors to say they do NOT have a moral objection to imposing the death penalty if the evidence supports it, in order to qualify as a juror in a death penalty case. Someone who has a moral objection to the death penalty in all cases would be excluded from a jury in a death penalty case. Suppose you were in the jury pool for a death penalty case, would you qualify on those grounds, or would you be disqualified because you have a moral objection to the death penalty?

Would qualify	57
Would be disqualified because of moral objection	39
Not sure	3

(ROTATE ORDER OF QUESTIONS DP-6a and DP-6b.)
(ASKED ONLY OF THOSE WHO SAY THEY QUALIFY AS A JUROR IN A DEATH PENALTY CASE.)

DP-6a. Would having heard that in many recent cases, juries have incorrectly sentenced people to death who were subsequently found to be not guilty and released from death row: **(ROTATE, START FROM BOTTOM EVERY OTHER INTERVIEW:)**

Make you much less likely to vote for the death penalty	6
Make you somewhat less likely to vote for the death penalty	16
Make no difference in your willingness to impose the death penalty	33
(Disqualified, Morally opposed to the death penalty from DP5.)	43
Not sure	2

(ASKED ONLY OF THOSE WHO SAY THEY QUALIFY AS A JUROR IN A DEATH PENALTY CASE.)

DP-6b. In most states, jurors have the option of imposing as a sentence either **(ROTATE:)** the death penalty, or life in prison without any possibility of parole. Would having the option of sentencing a convicted person to life in prison without any possibility of parole: **(ROTATE, START FROM BOTTOM EVERY OTHER INTERVIEW:)**

Make you much less likely to vote for the death penalty	7
Make you somewhat less likely to vote for the death penalty	15
Make no difference in your willingness to impose the death penalty	32
(Disqualified, Morally opposed to the death penalty from DP5.)	43
Not sure	3

(ASK EVERYONE.)

DP-7. Should cases in which the prosecutor seeks the death penalty on conviction require a higher degree of proof that the defendant is guilty than other criminal cases where the death penalty is not an option?

Yes	75
No	20
Not sure	5

DP-8. Do you think there is a **(ROTATE, START FROM BOTTOM EVERY OTHER INTERVIEW:)** good chance, some chance, or no real chance that at least one innocent defendant or more has actually been put to death in error over the past 15 years or so? **(IF GOOD/SOME CHANCE, ASK:)** As a result of that, which ONE of the following comes CLOSEST to describing your opinion about the death penalty: **(ROTATE, START AT THE BOTTOM EVERY OTHER INTERVIEW:)**

Total Good/Some Chance	**87**
I support the death penalty, but knowing there is a (good/some chance) an innocent defendant has been put to death in error makes me feel less strongly in favor of it	29
Knowing there is a (good/some chance) an innocent defendant has been put to death in error, this does not affect my opinion of the death penalty	31
I oppose the death penalty, and knowing there is a (good/some chance) an innocent defendant has been put to death in error makes me feel more strongly opposed to it	26
No real chance	**9**
Not sure	**4**

(ASKED ONLY OF THOSE WHO SAY THEY SUPPORT THE DEATH PENALTY IN Q.DP-1.)

DP-9. I will read you a list of reasons people might give for OPPOSING the death penalty, and I will read the list twice. At the end, tell me which statements, if proven true, would make you less strongly in favor of the death penalty? **(ACCEPT AS MANY AS APPLY. PROBE FOR MORE ANSWERS.) (RANDOMIZE ORDER:)**

The death penalty is shown to be much more costly to taxpayers than the cost of keeping people in prison for life without any possibility of parole	22
It is shown that today, prisoners with life sentences are never given a chance of ever being paroled	12
100 prisoners on death row waiting for executions have been cleared of all charges and freed over the past 25 years	21

5 defendants who were executed under the death penalty over the past 15 years have been shown by evidence to have been actually innocent	27
Leaders of your religious denomination speak out strongly for abolishing the death penalty	11
It is shown that the death penalty is unfair, because often it is factors such as race, poverty or geography that determine why one person is given the death penalty and another is not	22
It takes too long to go through the whole appeals process in death penalty cases and only a few of those sentenced to death are actually executed	26
None of the above	19
Not sure	5

DP-10. Which ONE of the following has been the MOST SIGNIFICANT change regarding the death penalty in recent years? **(RANDOMIZE:)**

The Supreme Court ruling that juvenile defendants must be exempt from the death penalty	8
The official opposition of the Catholic Church and other religious groups to the death penalty	5
The improvements in DNA testing that have led to evidence that some death row inmates are innocent	69
The emergence of “life without any possibility of parole” as an alternative to the death sentence in death penalty cases	12
Not sure	6

DP-11. Do you think the prospect of receiving the death penalty is likely to prevent potential murderers from committing murder?

Yes	38
No	60
Not sure	2

DP-12. From what you have heard about mistakes in the criminal justice system, do you believe there is a **(START FROM BOTTOM EVERY OTHER INTERVIEW.)**

Total Near Certain/Moderately Good Chance	**51**
Total Minimal/Almost No Chance	**48**
A near certain chance an innocent person will be executed in the future	19
A moderately good chance	32
A minimal chance	36
Almost no chance at all that an innocent person will be executed in the future	12
Not sure	1

DP-13. Would you support a national halt to all death penalty executions while the problems that lead to wrongful convictions and wrongful death sentences are thoroughly investigated by a blue-ribbon commission?

Yes	58
No	38
Not sure	4

DP-14. Some states are considering reforms such as requiring better legal representation for defendants in death penalty cases. Thinking about what we have discussed about the number of people who have been wrongfully convicted and sentenced to death in recent years, do you think that reforms will totally eliminate wrongful convictions and wrongful death sentences?

Yes	26
No	69
Not sure	5

DP-15. I am going to read you a list of reasons people give for opposing the death penalty, and I will read the list twice. Regardless of whether you favor the death penalty or not, which of the following, if proven true, would be the MOST VALID reason for opposing the death penalty?

Racial bias affects who is sentenced to death and who is not	13
Inexperienced lawyers represent many people who face the death penalty if convicted	22
Innocent people are sometimes sentenced to death	32
Within any state, the county where the crime occurs strongly affects whether the prosecutor will seek the death penalty or not	6
The cost of death penalty, with all the special rules and appeals required, costs far more than a system that uses only sentences of life without any possibility of parole	16
Not sure	11

DP-16. Has your opinion about the death penalty changed over the past ten years?

Yes, I used to oppose the death penalty, but now I support it	8
Yes, I used to support the death penalty, but now I oppose it	12
No shift	76
Not sure	4

(ASKED ONLY OF THOSE WHO SAY THEY SUPPORTED, BUT NOW OPPOSE THE DEATH PENALTY IN Q.DP-16.)

DP-17. If you changed from being a supporter of the death penalty to an opponent, which of the following contributed the most to your change in opinion?

Statements about the death penalty from religious leaders	9
Evidence that innocent people are sometimes sentenced to death	62

The availability of life without parole sentences are evidence that the death sentences are rarely applied, frequently overturned, and take a long time to carry out	12
None of the above	11
Not sure	6

DEMOGRAPHICS

NOTE: Results for demographic questions represent all adults unless otherwise indicated.

Finally, just a few questions for statistical purposes only:

D1. Are you currently registered to vote at this address, or not?

	ALL ADULTS
Yes, registered at this address	*82*
(VOL) Do not need to register in order to vote	*1*
No, not registered at this address	*17*
Not sure/ refused	*1*
Total Registered/ No need to register	***82***

D2. (ASK ONLY REGISTERED VOTERS.) **In national politics do you consider yourself** (RANDOMIZE:) **a Democrat, a Republican, an Independent, or none of these?** (IF DEMOCRAT/REPUBLICAN ASK:) **Do you consider yourself strongly (Democratic/Republican) or only moderately (Democratic/Republican).** (IF INDEPENDENT/NONE OF THESE, ASK:) **Do lean more toward the** (ROTATE:) **Democratic or Republican Party?**

	REGISTERED VOTERS
Republican	**29**
Independent	**31**
Democrat	**32**
Republicans with leaners	*39*
Democrats with leaners	*44*
Strongly Republican	13
Moderately Republican	16
Independent/neither/lean Republican	9
Independent/neither/do not lean	10
Independent/neither/lean Democrat	12
Moderately Democrat	16
Strongly Democrat	17
Refused/not sure	8

D4. Into which of the following categories does your age fall?

18-29	18
30-34	10

35-39	9
40-44	11
45-49	10
50-54	9
55-59	7
60-64	7
65 and older	18
Refused/not sure	1
Mean	*46.5*

D5. What is the last year of school you completed?

High School or less	**33**
Some college	**31**
College Graduate	**34**
Grade school or some high school	8
Graduated high school	25
Some community college or university but did not finish	18
Graduated from a community college, technical or vocational school or two-year college degree	14
Completed a four-year college or university degree	23
Completed post-graduate degree, such as a Master's or Ph.D or professional school such as law or medicine.	11
Refused/not sure	1

D7. How important is religion in your daily life?

Total Extremely/Very Important	**62**
Total Somewhat/Not Too Important	**37**
Extremely important	28
Very important	34
Somewhat important	22
Not too important	7
Not important at all	8
Not sure	1

D8a. Would you describe yourself as a born again or evangelical Christian or not?

Yes	36
No	61
Refused/not sure	3

D8b. What is your religious preference? Is it Protestant, Catholic, Mormon, Jewish, Muslim, some other religion, or don't you belong to any religious denomination? *(IF "SOME OTHER RELIGION," ASK:)* ***Is that a Christian denomination, or not?*** *(IF YES, CODED AS "PROTESTANT.")*

Protestant	33
Catholic	25
Mormon	3
Jewish	2
Muslim	1

Some other religion	16
None of these	19
Refused/not sure	2

(ASKED OF ALL RESPONDENTS.)

D9. Are you of Hispanic ethnicity? **(IF NOT HISPANIC, ASK:)** Is your ethnicity white, black, Asian, or some other race?

(RESULTS SHOWN IN SUMMARY BELOW.)

White	78
Black	10
Hispanic	9
Asian	1
American Indian	*
Other	1
(VOL) Mixed	*
Refused	1

D10. Could you please tell me your household income from all sources in 2006?

(ASK ONLY IF RESPONDENT DOES NOT VOLUNTEER INCOME.)

Is that **(ROTATE:)** above or below $50,000? (**IF BELOW $50,000, ASK:)** Is that **(ROTATE:)** above or below $25,000? **(IF ABOVE $50,000, ASK:)** Is that **(ROTATE:)** above or below $75,000? **(IF ABOVE $75,000:)** Is that **(ROTATE:)** above or below $100,000?

Under $25,000	16
$25,000 to less than $50,000	22
$50,000 to less than $75,000	17
$75,000 to less than $100,000	10
$100,000 or more	14
Refused/not sure	21

REGION:

NORTHEAST	New England	5
	Mid Atlantic States	16
MIDWEST	Great Lakes	13
	Farm Belt	8
SOUTH	Deep South	15
	Outer South	20
WEST	Mountain	10
	Pacific	13

METROPOLITAN STATUS:

Urban	32
Suburban	48
Rural	20

GENDER:

Male	48
Female	52