

THE DEATH PENALTY IN 2011: YEAR END REPORT

Death Penalty Information Center
December 2011

Illinois Abolition, Oregon Moratorium, and Troy Davis Execution Highlight Growing Concerns About Death Penalty

Executions Decline, Death Sentences Fall Well Below 100

| Death Penalty Statistics | 2011 | 2010 | 2000 |
|--------------------------------------|-------------|-------------|-------------|
| Executions* | 43 | 46 | 85 |
| New Inmates Under Death Sentence** | 78 | 104 | 224 |
| Death Row population (as of Jan. 1)^ | 3,251 | 3,261 | 3,652 |
| Percentage of executions by region: | | | |
| South (32 executions) | 74% | 76% | 89% |
| TEXAS (13) | 30% | 40% | 47% |
| Midwest (6) | 14% | 17% | 6% |
| West (4) | 12% | 7% | 5% |
| Northeast (0) | 0% | 0% | 0% |
| Executions Since 1976 | 1,277 | | |
| Texas | 477 (37%) | | |
| Virginia | 109 (9%) | | |
| Oklahoma | 96 (8%) | | |
| TX, VA, & OK combined | 682 (53%) | | |
| Gallup: Death Penalty Support | 61% | 64% | 67% |
| States With Death Penalty | 34 | 35 | 38 |

*As of Dec. 15, 2011, with no more executions scheduled this year.
 **2000-2010 Bureau of Justice Statistics; 2011-DPIC research – as of Dec. 15, 2011 (some jury verdicts of death have not yet been imposed by the judge and are not counted)
 ^NAACP Legal Defense Fund, "Death Row USA" (2011)

The number of new death sentences dropped dramatically in 2011, falling below 100 for the first time in the modern era of capital punishment. Executions also continued to decline, while developments in a variety of states illustrated the growing discomfort that many Americans have with the death penalty. Illinois abolished the death penalty in 2011, the governor of Oregon declared a moratorium on all executions, and a national outcry was heard around the execution of Troy Davis in Georgia because of doubts about his guilt.

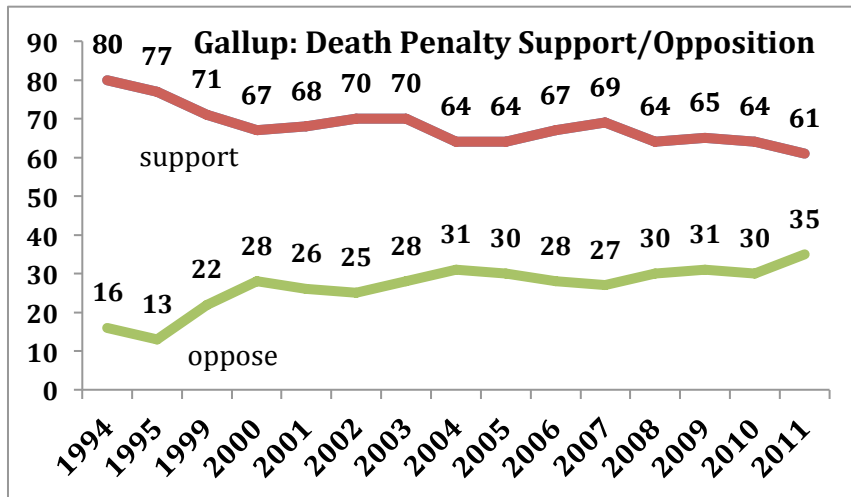
In January, the Illinois legislature voted to repeal the death penalty, replacing it with a sentence of life without parole. The legislation requires some of the money saved by this action to go to victims' services and crime prevention. Governor Pat

| Executions by State | 2011 | 2010 |
|---------------------|-----------|-----------|
| Texas | 13 | 17 |
| Alabama | 6 | 5 |
| Ohio | 5 | 8 |
| Georgia | 4 | 2 |
| Arizona | 4 | 1 |
| Oklahoma | 2 | 3 |
| Mississippi | 2 | 3 |
| Florida | 2 | 1 |
| Virginia | 1 | 3 |
| South Carolina | 1 | 0 |
| Missouri | 1 | 0 |
| Delaware | 1 | 0 |
| Idaho | 1 | 0 |
| Louisiana | 0 | 1 |
| Utah | 0 | 1 |
| Washington | 0 | 1 |
| TOTALS | 43 | 46 |

Quinn signed the bill, making Illinois the fourth state in four years to abandon capital punishment. A state commission reported \$100 million had been spent on assisting counties with death penalty prosecutions over the past 7 years, while the state's deficit had become one of the largest in the country. Illinois had not had an execution in 12 years.

In Georgia, a very different scenario played out, but it also exposed deep concerns about the use of the death penalty. On September 21 Georgia executed Troy Davis, despite significant doubts about his guilt and urgent requests from national and international leaders to spare his life. Davis had been convicted principally on the basis of eyewitness testimony, a form of evidence that has recently come under increasing scrutiny. Years after his trial, 7 of the 9 state witnesses against Davis changed their stories. A federal judge in Savannah conducted a hearing to review this new evidence, but in order to grant Davis a new trial the judge required not only that he establish reasonable doubt of his guilt, but that he provide clear proof of his innocence, which he was unable to do to the judge's satisfaction.

A former head of the FBI, along with former judges, prosecutors, and elected leaders from around the country urged the Board of Pardons and Paroles to intervene to prevent a miscarriage of justice. Citizens protested in front of the White House, the Supreme Court, and the Georgia prison where the execution took place. Similar demonstrations occurred in cities around the world. People were shocked that in the U.S. someone could be executed despite so much doubt about his guilt. When Davis was denied clemency, former U.S. Rep. Bob Barr of Georgia said, "Imposing a death sentence on the skimpiest of evidence does not serve the interest of justice." Even former supporters of the death penalty found the process so inflexible and unresponsive that they were convinced the system is not working. President Jimmy Carter said, "If one of our fellow citizens can be executed with so much doubt surrounding his guilt, then the death penalty system in our country is unjust and outdated."



Finally, in Oregon on November 22 Governor John Kitzhaber halted a pending execution and declared that no additional executions would occur during his tenure. He urged the legislature and the people of the state to seek a more sensible way to address serious crime: "I am convinced we can find a better solution that keeps society safe, supports the victims of crime and their families and reflects Oregon values," he stated. "I refuse to be a part of this compromised and

inequitable system any longer; and I will not allow further executions while I am Governor." Although he acted within the singular powers accorded to the governor, he echoed the objections of many to a death penalty system that had resulted in two executions over 33 years, and only of inmates unwilling to fight for their own life.

Use of Death Penalty Falls Markedly

Death Sentences

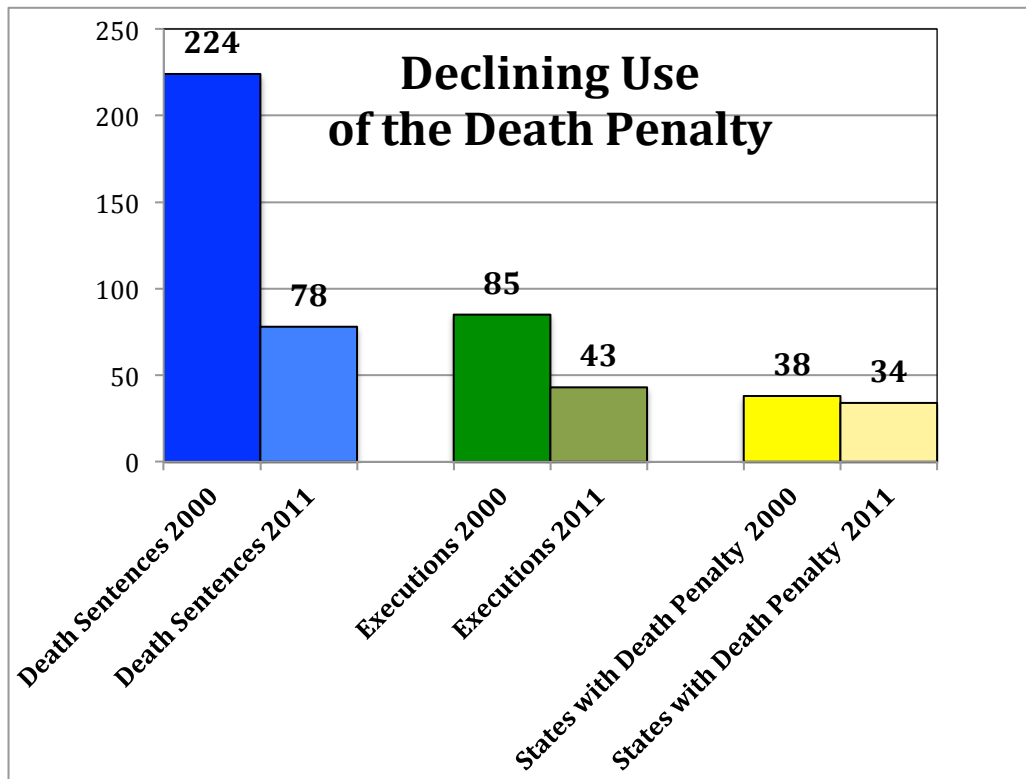
Death sentences continued their sharp decline since the 1990s. The number of new death sentences imposed in 2011 stands at 78, a decline of about 75% since 1996, when 315 inmates were sentenced to death. This is the lowest number of death sentences in any year since the death penalty was reinstated in 1976. Texas, which had 48 new death sentences in 1999, had only 8 this year.

California, the state with the largest death row, saw its death sentences drop by more than half this year--10 compared with 24 in 2010 (at least 2 other cases resulted in a jury verdict of death, but the judge has not imposed the sentence). Many death penalty states, such as Maryland, South Carolina, Missouri and Indiana had no new death sentences in 2011. The South and West combined for 87% of the death sentences, while the Midwest and Northeast had 12%.

The annual number of death sentences began declining after 1998. In the 1990s there were close to 300 death sentences annually. Since then, the number has dropped steadily, as the risks of executing the innocent grew more apparent and life without parole sentences became more common. In every region of the country, death sentences have declined, which eventually will affect the number of executions.

Executions

Executions also decreased in 2011. There were 43 executions in 13 states, a 56% decline since 1999, when there were 98. Texas, which had 24 executions in 2009 and 17 in 2010, had 13 in 2011, a drop of 46% in two years. Ohio, which recently experienced a rise in executions, saw its numbers drop by



38% from 2010 to 2011, in part because of more problems with its lethal injection process. Similar to the pattern in other years, 74% of the executions were in the South.

Public Opinion and Legislation

The 2011 Gallup Poll, which annually tracks America's abstract support for the death penalty, recorded the lowest level of support, and the highest level of opposition, in almost 40 years. Only 61%

supported the death penalty, compared to 80% in 1994; 35% were opposed, compared to 16% in 1994. In a more in-depth CNN poll this year that gave respondents a choice between the death penalty and a sentence of life without parole for those who commit murder, 50% chose a life sentence, while 48% chose death. This echoes a 2010 DPIC poll showing that a majority of Americans favor alternatives to the death penalty.

One clear sign of increasing discomfort with the death penalty has been the decline in the number of states with capital punishment in effect. Illinois joined New Mexico, New Jersey, and New York in abandoning the death penalty, marking an 11% decline in death penalty states since 2007.

| DEATH ROW INMATES BY STATE (Jan. 1, 2011) | |
|---|-----|
| California | 721 |
| Florida | 398 |
| Texas | 321 |
| Pennsylvania | 219 |
| Alabama | 206 |
| N. Carolina | 165 |
| Ohio | 159 |
| Arizona | 138 |
| Georgia | 103 |
| Tennessee | 87 |
| Louisiana | 86 |
| Nevada | 81 |
| Oklahoma | 77 |
| S. Carolina | 63 |
| U. S. Government | 61 |
| Mississippi | 60 |
| Missouri | 50 |
| Arkansas | 43 |
| Kentucky | 36 |
| Oregon | 34 |
| Delaware | 20 |
| Idaho | 16 |
| Illinois* (now 0) | 16 |
| Indiana | 14 |
| Nebraska | 12 |
| Virginia | 11 |
| Connecticut | 10 |
| Kansas | 9 |
| Utah | 9 |
| Washington | 9 |
| U.S. Military | 6 |
| Maryland | 5 |
| Colorado | 4 |
| South Dakota | 3 |
| Montana | 2 |
| New Mexico* | 2 |
| New Hampshire | 1 |
| Wyoming | 1 |
| Total death row 3,251 | |
| (7 inmates in the national total received two death sentences in different states.) | |
| *Abolished death penalty for future cases. | |

In Ohio, the Chief Judge of the state’s Supreme Court convened a 21-person commission to study the problems with the death penalty. In Pennsylvania, with the fourth-largest death row in the country, a Justice of the Supreme Court characterized the appellate work being done in many capital cases as marked by "disarray and inconsistencies" and called "for immediate reform." In California, a citizens group has begun the process of gathering signatures to put repeal of the death penalty on the 2012 ballot.

Continuing Problems with Lethal Injection

The shortage of sodium thiopental, an anesthetic used in executions, and the difficulty in importing it from overseas caused many states to switch to pentobarbital for their executions in 2011. The last 32 executions were carried out with pentobarbital, even though Lundbeck, Inc., its sole manufacturer for the U.S., has condemned its use in executions and taken steps to prevent its sale for that purpose, stating, "Lundbeck adamantly opposes the distressing misuse of our product in capital punishment." If the current supply of this drug runs out, states will again face the prospect of trying new protocols with untested chemicals. In California, which has not had an execution since January 2006, despite having the largest death row in the country, no executions are likely to be scheduled until 2013 because of lethal injection challenges. Executions in Maryland are similarly on hold. Other states, like Kentucky, Nebraska, Arkansas and North Carolina, have not fully resolved controversies surrounding the need to provide careful execution protocols that avoid severe pain.

The Persistent Problem of Arbitrariness, 35 Years After Gregg

The U.S. Supreme Court stopped the death penalty in *Furman v. Georgia* (1972) because death sentences were being infrequently applied in an unpredictable and arbitrary way. Four years later, in *Gregg v. Georgia* (1976), the Court permitted executions to resume when some states revised their death penalty statutes in an attempt to limit the haphazardness of the death penalty. Since then, three of the Justices in the 7-2 majority changed their opinions on whether the death penalty meets constitutional standards. At various times Justices Harry Blackmun, Lewis Powell, and John Paul Stevens publicly announced they had come to believe the death penalty was unconstitutional. Combined with the two dissenters in *Gregg*, these Justices would have constituted a majority to ban the death penalty entirely. Justice Stevens, who retired in 2010, recently expressed his

regret for upholding Texas’s death penalty statute in 1976. Earlier, in *Baze v. Rees* (2008), he wrote, "[T]he imposition of the death penalty represents 'the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes.'" (quoting *Furman v. Georgia* (1972)).

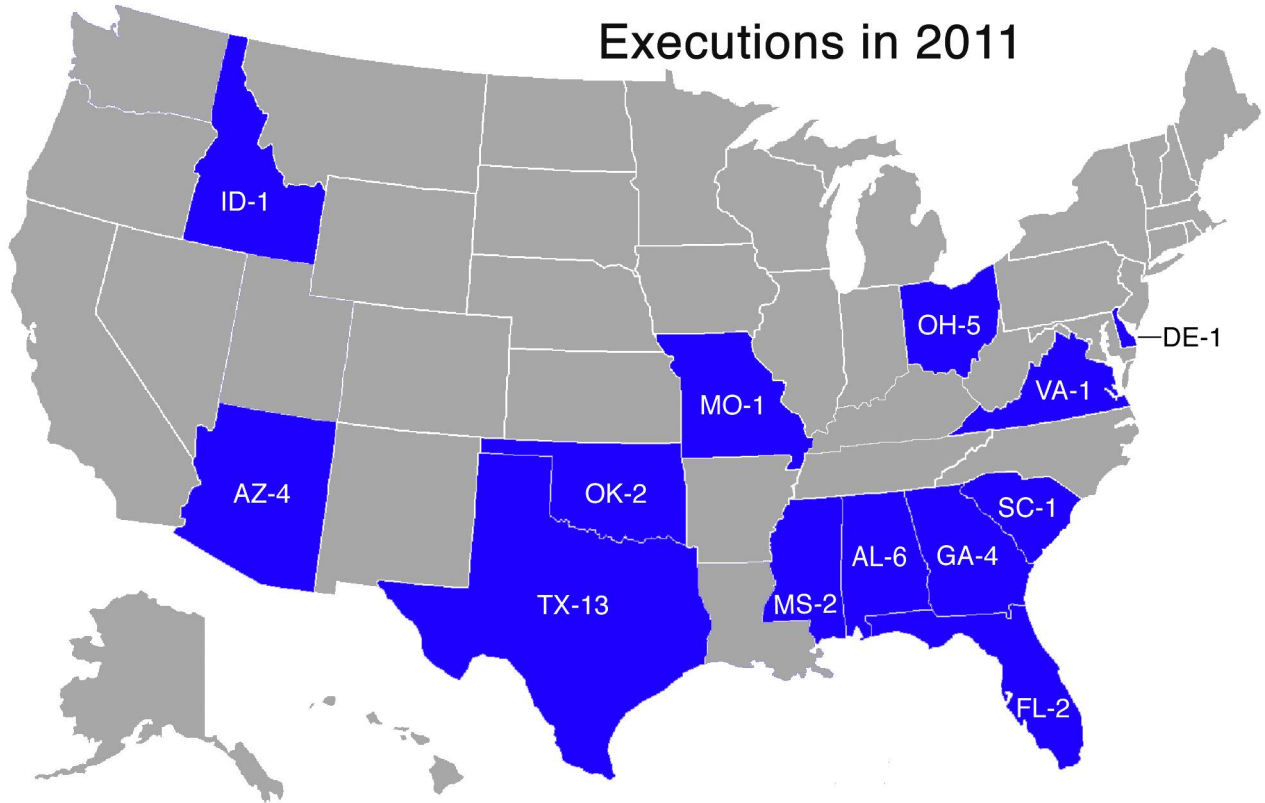
In many ways the death penalty today resembles the system struck down in 1972, when the Court could find no justification for the small number of death sentences and executions chosen arbitrarily from so many eligible cases. The new system approved in 1976 was supposed to carefully guide prosecutors, juries, and judges in administering a more rational system. Today, the promise of a fair, sensible, and effective system of capital punishment has proven false. As distrust of the system has grown, the death penalty is again infrequently applied, and a host of arbitrary factors still strongly influences who lives and who dies.

Arbitrariness in Executions

Many of the executions in 2011 illustrate the continuing problems in the way the punishment is applied.

- Before trial, prosecutors offered **Leroy White** a plea bargain to life without parole, but White's trial lawyer misunderstood the law and incorrectly told White he could not be convicted of capital murder. The jury in White's case then recommended a life sentence, but Alabama is one of the few states that allow the judge to override the jury, and White was sentenced to death. One of White's appellate attorneys, who practiced corporate law and had never argued in a courtroom, withdrew from the case without telling him and later admitted he caused his client to miss a critical appeal deadline, thereby shortening the appeals process and expediting his execution. White was executed in **Alabama** in January.
- **Jerry Jackson** suffered extreme abuse as a child. The protective services agency described his parents' attacks on him as "planned, calculated beatings," which a clinical psychologist equated with "terror and torture." A federal judge, noting how little of this evidence was brought to the jury, said Jackson's representation at trial was a travesty of justice that "invited a death sentence." The judge overturned his death sentence, only to have it reinstated by a higher court. Jackson was executed in **Virginia** in August.
- As discussed above, **Troy Davis** was executed in **Georgia** in September, despite widespread doubt about his guilt after most of the state witnesses recanted their trial testimony. Many people were shocked to learn nothing could stop such a potential miscarriage of justice.
- **Humberto Leal** in **Texas** and **Manuel Valle** in **Florida** were executed, even though they were not informed of their right, as citizens of foreign countries, to seek assistance from their respective consulates at the time of their arrests. State Department leaders, former military officials, journalists, and representatives of international bodies urged a halt to these executions, noting that Americans' safety abroad depended on the U.S. respecting the treaty rights of those arrested in this country. Solicitor General Donald Verrilli appealed unsuccessfully to the U.S. Supreme Court for a stay, noting Leal's execution "would place the United States in irreparable breach of its international-law obligation to afford (Leal) review and reconsideration of his claim that his conviction and sentence were prejudiced by Texas authorities' failure to provide consular notification and assistance under the Vienna Convention on Consular Relations."
- One of the last executions for the year occurred in **Ohio**. Almost 30 years after the crime, **Reginald Brooks** was executed at age 66 for the murder of his 3 sons after his wife divorced him. His attorneys presented evidence he continued to suffer from paranoid schizophrenia and was mentally ill at the time of the crime, believing his co-workers were trying to poison him. Although the prosecution acknowledged that Brooks was mentally ill, it maintained he was competent to be executed.

- In a number of cases the frequently heard rationale that the death penalty is necessary as retribution for victims' families was contradicted by the families themselves. In the cases of **Timothy Adams**, **Lawrence Brewer**, and **Mark Stroman** in Texas, victims' family members urged the state not to carry out the executions, but their requests were denied.



Notable Quotes and New Voices

Many of those who have analyzed the system of capital punishment, including leaders in law enforcement, former supporters of the death penalty and victims' families, have concluded the system is seriously flawed. Among those who spoke out this year were:



Dr. Allen Ault, a retired **Georgia** prison warden, underscored the difficult issues prison officials face when participating in an execution: "You're killing somebody. And there's no denying that, especially when we know that several people have been declared innocent with the new scientific techniques, and we're not real sure if the individual we're executing this evening or next week is really guilty - that in itself, that kind of doubt. The other thing most of us know [is] all the research which indicates that capital punishment does not deter . . . it seems so illogical to say to the public we do not want you to kill, and to demonstrate that, we're going to kill individuals."



Kathryn Gaines, **Rita Shoulders**, **Victoria Cox** and **Ruth Lowe** (l. to r.) had someone in their family murdered but believe a death sentence for the killers would only deepen their personal wounds. Shoulders lost her sister to murder; Cox lost her brother; Lowe also lost her brother; and Gaines her eldest grandchild. Ruth Lowe said of the man who killed her brother, "I'm learning to forgive. And even if I had the chance, I wouldn't want him

executed. It would do nothing for me; it would do nothing for the rest of my family. To take his life would make no sense." Kathryn Gaines said, "You cannot bring a life back by taking away another life. It hurts a whole family." Together they made videos to express their concerns.



Former **New York** Governor **Mario Cuomo** advocated for a sentence of life without parole to replace the death penalty: "There is a punishment that is much better than the death penalty: one that juries will not be reluctant to impose; one that is so menacing to a potential killer, that it could actually deter; one that does not require us to be infallible so as to avoid taking an innocent life; and one that does not require us to stoop to the level of the killers."



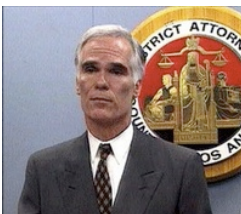
Jeanne Woodford, former Warden of San Quentin prison in California, said of the death penalty, "[M]y experience at San Quentin allowed me to see it from all points of view. I had a duty to carry [it] out, and I tried to do it with professionalism. The death penalty serves no one. It doesn't serve the victims. It doesn't serve prevention. It's truly all about retribution." She added, "There comes a time when you have to ask if a penalty that is so permanent can be available in such an imperfect system. The only guarantee against executing the innocent is to do away with the death penalty."



Don Heller, a Republican former prosecutor and author of the 1978 ballot initiative that greatly expanded **California's** death penalty law, now says, "I never contemplated the staggering cost of implementing the death penalty: more than \$4 billion to date and approximately \$185 million projected per year in ongoing costs. . . . It makes no sense to prop up such a failed system."



Governor John Kitzhaber of **Oregon** put a halt to executions in 2011, stating, "Oregonians have a fundamental belief in fairness and justice – in swift and certain justice. The death penalty as practiced in Oregon is neither fair nor just; and it is not swift or certain. It is not applied equally to all. It is a perversion of justice that the single best indicator of who will and will not be executed has nothing to do with the circumstances of a crime or the findings of a jury. The only factor that determines whether someone sentenced to death in Oregon is actually executed is that they volunteer."



Gil Garcetti, the former district attorney of Los Angeles who pursued numerous death sentences, said **California's** death penalty is dysfunctional and the resources spent on it should be diverted to more pressing needs.

"California's death penalty does not and cannot function the way its supporters want it to. It is also an incredibly costly penalty, and the money would be far better spent keeping kids in school, keeping teachers and counselors in their schools and giving the juvenile justice system the resources it needs. Spending our tax dollars on actually preventing crimes, instead of pursuing death sentences after they've already been committed, will assure us we will have fewer victims." Garcetti said the death penalty causes ongoing torment to the family members and friends of murder victims: "The living victims of a particular crime might think that a death verdict provides closure, but for most, there was no such closure."

Conclusion

I have concluded that our system of imposing the death penalty is inherently flawed. The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.

-Gov. Pat Quinn of Illinois (signing the bill abolishing the death penalty, March 9, 2011)

In 2011, the use of the death penalty continued to decline. Executions, new death sentences, public support, and the number of states with the death penalty dropped from previous years. Even when executions did occur, as with the execution of Troy Davis in Georgia, or with Mexican citizen Humberto Leal in Texas, they often were marked by controversy and dissents at the highest levels. In several egregious cases, international leaders pleaded for stays or commutations.

Death sentences reached a record low, dropping below 100 for the first time in the modern era of capital punishment. Executions declined by 7% compared to 2010. Four states in the past four years (Illinois, New Mexico, New Jersey, and New York) have abandoned the death penalty altogether, bringing the number of non-death penalty states to 16. In Oregon, the governor declared a halt to all executions. Public support for the death penalty dropped to its lowest level in almost 40 years.

Many of those challenging the death penalty now had defended it in the past, including people who introduced death penalty legislation or presided over executions. The multitude of problems associated with the death penalty is gradually convincing Americans that it can no longer be sustained.

Death Penalty Information Center

Washington, D.C.

(202) 289-2275 • dpic@deathpenaltyinfo.org

www.deathpenaltyinfo.org

The Death Penalty Information Center is a non-profit organization serving the media and the public with information and analysis on capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion, and serves as a resource to those working on this issue. Richard Dieter, DPIC's Executive Director, wrote this report with assistance from DPIC staff. **Further sources for facts and quotations in it are available upon request.** The Center is funded through the generosity of individual donors and foundations, including the Roderick MacArthur Foundation, the Open Society Institute, and the European Union. The views expressed in this report are those of DPIC and should not be taken to reflect the opinion of its donors. *Slight modifications were made in this version of the report to reflect 2010 data from the Bureau of Justice Statistics (Dec. 20, 2011).*