The Forgotten Population:

A Look at Death Row in the United States Through the Experiences of Women

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Prepared by the American Civil Liberties Union's Capital Punishment Project, Women's Rights Project and National Prison Project, with the National Criminal Justice Program of the American Friends Service Committee and the National Clearinghouse for the Defense of Battered Women.

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Cover Photo:
Rev. Jesse Jackson comforts Oklahoma Death Row inmate Wanda Jean Allen, shortly before her execution.

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"For six and a half years I've been telling EVERYBODY that I'm innocent, but no one wants to listen, nor do they care. The media have a horrible name for me – which is murderer. And which is all anyone knows me as. But God knows they are wrong."

"It's very hard to live day after day and not know what to do. When you see what I see and feel what I feel, there's no way out. My sorrow and loneliness are huge. To be forgotten is the worst."

— Voices of women on Death Row in the United States

THE FORGOTTEN POPULATION:

A Look at Death Row in the United States Through the Experiences of Women

Introduction

Many researchers and journalists have studied and written about the United States death penalty system in the last 30 years. Nearly all of their work has focused on the experiences of men. This is not surprising because men constitute the overwhelming majority of Death Row prisoners. Since 1973, 148 women have been sentenced to death in the United States. (*See Table 1*) As of Dec. 31, 2003, the 48 women on Death Row constituted 1.4% of the total Death Row population of about 3,500 people and less than 0.1% of the approximately 50,000 women in prisons in the United States.[1] The women on Death Row ranged in age from 22 to 73 years old and had been on Death Row for periods ranging from a few months to nearly 20 years.

To gain a more complete understanding of the death penalty system as it applies to women, the American Civil Liberties Union (ACLU) Capital Punishment Project, Women's Rights Project and National Prison Project undertook a project, with the National Criminal Justice Program of the American Friends Service Committee (AFSC) and the National Clearinghouse for the Defense of Battered Women (NCDBW), to look at the experiences of women on Death Row in the United States.[3]

To learn about the day-to-day lives of the women on Death Row, we sent questionnaires to the lawyers of 49 of the women who were on Death Row between April and November 2002 and asked them to administer the survey to their clients.[4] To learn about how they got to Death Row, we read court opinions and newspaper articles, interviewed defense attorneys, and reviewed research compiled by NCDBW. Our conclusions regarding the issues in these women's cases, therefore, are based on many sources, some of which were not independently verifiable. Altogether, we looked at the lives of 66 women, including 56 women who were on Death Row between April 2002 and December 2003 and ten women who have been executed since 1976.

Not surprisingly, we found that the women's experiences in the criminal justice system mirrored the problems that have been documented in the cases of men condemned to death, such as

Table 1[2]

Capital Sentences for Women

State-By-State Breakdown, Jan. 1, 1973, to June 30, 2004

Rank	Sentencing State	Race of Offender				Total Female Sentences
		White	Black	Latina	Native American	
1	**California**	8	3	6	0	17
2	**North Carolina**	10	4	0	2	16
	Texas	10	6	0	0	16
4	**Florida**	11	3	1	0	15
5	**Ohio**	4	6	0	0	10
6	**Alabama**	6	3	0	0	9
7	**Illinois**	1	4	2	0	7
	Mississippi	5	2	0	0	7
	Oklahoma	6	1	0	0	7
10	**Georgia**	5	1	0	0	6
	Pennsylvania	3	3	0	0	6
12	**Missouri**	4	0	1	0	5
13	**Indiana**	2	2	0	0	4
14	**Kentucky**	3	0	0	0	3
	Maryland	1	0	0	2	3
16	**New Jersey**	3	0	0	0	3
17	**Arizona**	2	0	0	0	2
	Arkansas	2	0	0	0	2
	Idaho	2	0	0	0	2
	Louisiana	1	1	0	0	2
	Nevada	1	1	0	0	2
	Tennessee	2	0	0	0	2
23	**South Carolina**	1	0	0	0	1
	Virginia	1	0	0	0	1
	Totals	**94**	**40**	**10**	**4**	**148**

Table 2[5]

Women Executed Since 1976

	Date of Execution	Name	Race	State	Execution Method
1	11/2/1984	Velma Barfield	W	NC	Lethal Injection
2	2/3/1998	Karla Faye Tucker	W	TX	Lethal Injection
3	3/30/1998	Judy Buenoano	W	FL	Electrocution
4	2/24/2000	Betty Lou Beets	W	TX	Lethal Injection
5	5/2/2000	Christina Riggs	W	AR	Lethal Injection
6	1/11/2001	Wanda Jean Allen	B	OK	Lethal Injection
7	5/1/01	Marilyn Plantz	W	OK	Lethal Injection
8	12/4/01	Lois Nadean Smith	W	OK	Lethal Injection
9	5/10/02	Lynda Lyon Block	W	AL	Electrocution
10	10/9/02	Aileen Wuornos	W	FL	Lethal Injection

Marilyn Plantz was executed on May 1, 2001 by the State of Oklahoma.

inadequate defense counsel and official misconduct, and social problems suffered by defendants such as poverty, alcoholism and drug abuse. This report focuses mainly on women, even though men suffer similar problems.

Many of the women whose cases we looked at identified themselves as having experienced abuse as children and as adults. In many cases, there was independent evidence available to verify these claims. Sometimes the abuse was not brought out at trial so the jury did not take it into account when it sentenced the woman to death.

Further study is needed on the role of abuse in capital cases. We urge researchers to study such issues as: How many women were in abusive relationships at the time of their crime and did that abuse play a role in the crime? How many women acted in self-defense or defense of another? How many batterers coerced women into criminal activity or falsely accused women of crimes?

Researchers should examine these questions in depth. Especially important would be

longitudinal studies documenting women's experiences of abuse throughout their lifetimes. Attorneys defending women in capital cases should be trained to investigate for abuse and to raise that issue at trial.

This report is divided into five sections, consisting of: an introduction, an overview of the modern death penalty, and examinations of procedural problems and obstacles faced by women in capital trials, social problems that affect women and may have an impact on who is sentenced to death and living conditions of women on Death Row.

Overview of the Modern Death Penalty

In the 1972 case *Furman v. Georgia,* the United States Supreme Court temporarily halted executions, finding that the states were administering the death penalty arbitrarily and unfairly.[6] States quickly revised their statutes to comply with the Court's ruling. Four years later, the Court upheld newly revised capital punishment statutes.[7] Thus, 1976 marks the beginning of the "modern era" of the death penalty, which continues today.

The newly revised death penalty statutes created a bifurcated process that separated the determination of guilt from the assessment of the penalty, known as the sentencing phase of the trial. Since the *Furman* Court invalidated an automatic death penalty, the punishment phase of the trial has become very important. During this phase, defense counsel is permitted to introduce any evidence that might be relevant to spare the client's life. Juries weigh all the evidence and determine if there are aggravating factors – those factors that argue in favor of a death sentence – or mitigating factors – those factors that argue against a death sentence.[8] In some of the women's cases it appeared that the lawyers may not have presented evidence of the physical or sexual abuse their clients had suffered. Such evidence would have given the jury a fuller picture of the defendant and perhaps convinced it to spare her life.

Although there are many stages of death penalty litigation, it is difficult on appeal to raise new issues that were not raised in the original trial. (*See Table 3, outlining the death penalty appellate process.*) After conviction and sentencing, state appellate courts review the trial and sentencing on direct appeal. At this stage, the courts review only issues and evidence presented at the trial. Moreover, if a lawyer fails to raise an issue at trial it will usually not be considered on direct appeal. If the conviction and sentence are affirmed in state court, a defendant may seek review in the United States Supreme Court, although this review is rarely granted.

Next, issues that were lost or did not get raised at trial – because the defense attorney failed to raise them or because new evidence was discovered after the trial was over –may be raised in post-conviction litigation (sometimes called habeas corpus), first in state court, then in federal court. However, many state laws place severe procedural limitations on when and how new issues and evidence may be considered, even with respect to evidence that the person may be innocent. Also, federal courts review only for violations of federal law and, except in rare cases, do not substitute their judgment for that of the state courts. Another difficulty faced by individuals sentenced to death is that many states do not provide indigent prisoners with court-appointed counsel during post-conviction proceedings.

Table 3

The Death Penalty Appellate Process

Direct Appeal	State Post-Conviction	Federal Habeas Corpus
State trial court	State Post-Conviction	United States District Court
State's highest court	State's highest court	United States Court of Appeals
Petition for writ of certiorari to U.S. Supreme Court	Petition for writ of certiorari to U.S. Supreme Court	Petition for writ of certiorari to U.S. Supreme Court

Problems of the Death Penalty System

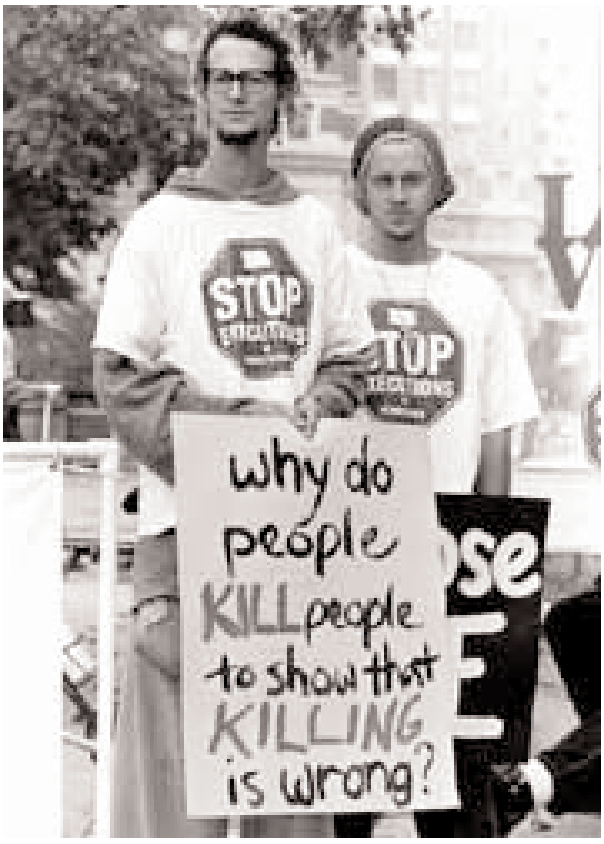
Errors are Common in Death Penalty Cases and Have Tragic Consequences

Americans expect the death penalty to be applied fairly, but often it is not. Capital cases are plagued with errors, too many of which have led to the wrong person being convicted. Since 1973, 117 people have been released from Death Row based on evidence of innocence.[9] Systemic deficiencies in the death penalty system risk executing the innocent.

Professor James Liebman and colleagues at Columbia University analyzed all 4,758 death sentences imposed in the United States from 1973 to 1995 and found that in 68% of the cases, the conviction or sentence was overturned.[10] Because of their small number, Liebman did not break out women as a separate category. However, Professor Victor Streib of Ohio Northern University, who studies women on Death Row, calculated an error rate of 58%[11] in women's capital cases, which is also impermissibly high.[12]

These numbers indicate that more than half of the death sentences for men and women are the result of serious mistakes.[13] Serious mistakes can mean that the wrong person ends up convicted of the crime or that someone is sentenced to death who should have received a less severe punishment.

Despite what people may think, reviewing courts do not readily reverse criminal convictions or sentences, even when there has been a serious mistake. Appellate judges reverse only if they are convinced that the error made a difference in the outcome of the case; that is, that the person was convicted or sentenced because of the error. Errors that *might* have affected the outcome of the case are not reversed. Additionally, many jurisdictions have strict procedural rules that make it difficult to raise serious errors, including a claim



of innocence. As a result, many people have been and continue to be sentenced to death without being able to raise serious claims of wrongful conviction, including claims of innocence, in the court system. The fact that it is so difficult to obtain a reversal in a criminal case underscores how extraordinary it is that so many death penalty convictions and sentences are reversed, and emphasizes how widespread problems are in the administration of the death penalty.

One way to address questions of innocence and unfairness that are not corrected by the court system is through executive clemency. The executive branch – usually the governor of a state but sometimes a pardons or parole board – has the authority to commute death sentences to another type of sentence, usually life in prison. Clemency may be granted for reasons such as doubts about the defendant's guilt, questions of fairness regarding the process, the prisoner's efforts at rehabilitation, or the governor's desire to show mercy.

For women, as for men, clemency represents the last hope of avoiding execution. Clemency appeals are also an important means of calling attention to the unfairness of the death penalty system. From 1976 until the end of 2003, 12 of the 146 women sentenced to death have been granted clemency.[14]

Of these 12 grants of clemency, at least eight were prompted by concerns about unfairness. In 1991, Ohio Governor Richard Celeste granted clemency to four African-American women – Debra Brown, Rosalie Grant, Beatrice Lampkin and Elizabeth Green — shortly before he left office. Governor Celeste cited disturbing evidence of racial bias as the reason for his action. In 2003, the retiring governor of Illinois, George Ryan, commuted the sentences of all prisoners on Death Row to life imprisonment, after a thorough study of the Illinois death penalty system persuaded him that he could not rely on the validity of the death sentences. Four of those commutations were given to women: Dorothy Williams, Latasha Pulliam, Jacqueline Williams and Bernina Mata. All were women of color.

Appendix cases 1 and 2 provide the case histories of Sabrina Butler, an innocent woman who was wrongfully convicted and sentenced to death, and of Frances Newton, who won a 120-day reprieve on Dec. 1, 2004, two hours before her scheduled execution.

Ineffective Assistance of Counsel is Pervasive in the Death Penalty System

In a capital case, as in all criminal prosecutions, those who cannot afford private counsel are appointed an attorney at public expense. Some states or counties provide indigent

defense counsel through public defender agencies, legal organizations whose only job is to represent poor people. Many states, however, do not have public defender services. In those states, judges appoint counsel who may or may not have criminal law experience. Sometimes judges use lists of qualified lawyers, but sometimes they simply appoint a lawyer who happens to be in court that day, even if he or she is not a criminal defense lawyer.

A 2002 report based on a study of the post-conviction system in Texas found that judges frequently appointed unqualified counsel. The report reached the following conclusions about appointed counsel: "[T]heir work product is perfunctory, demonstrating that all too often, no investigation into the case is performed. No oversight is exercised to prevent the same errors from being repeated; indeed, the current appointment and compensation scheme encourages them." The report also found that judges tend to appoint lawyers skilled at moving cases through the system, rather than lawyers who zealously represent their clients.[15]

Even when a defendant is fortunate enough to receive a properly trained lawyer, that lawyer is likely to be hampered by a lack of resources. Lawyers representing defendants in capital cases often carry heavy caseloads, leaving them with little time to spend on each client. They seldom have enough funds to conduct an independent investigation of the case or to hire expert witnesses necessary to provide a competent defense. Stephen Bright, a capital litigator and death penalty expert, often represents on appeal clients who were not properly represented at trial. He notes, "While some jurisdictions provide competent representation through a public defender or an assigned counsel program, many fail to fund them adequately, leaving underpaid lawyers with staggering caseloads and insufficient resources for investigation and experts. Some states pay assigned counsel such low rates that attorneys make less than the minimum wage in some cases."[16]

Bright has concluded that many Death Row prisoners are there not because they committed the worst offense, but because they had the worst lawyers. A disturbingly high percentage of lawyers representing indigent capital defendants have been the subject of disciplinary actions. For example, lawyers who were later disbarred or suspended from practice had represented at trial four of the 13 innocent people released from Death Row in Illinois between 1987 and 2000.[17] In the state of Washington "one-fifth of the 84 people who faced execution [in the 20 years before 2001] were represented by lawyers who had been, or were later, disbarred, suspended or arrested."[18] Most people on trial for their lives get less competent representation than a middle-class person would get in a run-of-the-mill civil case such as a divorce.

Betty Lou Beets was executed by the State of Texas on Feb. 24, 2000. See appendix for further details.

Betty Lou Beets' attorney knew that his client had not killed her husband for pecuniary gain, a key factor necessary for the jury to impose a death sentence, but failed to present that evidence at trial.[19]

Carolyn King, currently on Death Row in Pennsylvania, was represented at trial by a lawyer who practiced family law at a small firm. The lawyer had handled only one previous trial – a drug case – and was not familiar with the death penalty statute. He conducted no mitigation investigation and was unaware that the sentencing hearing would be held immediately after the guilty verdict was returned. In post-conviction proceedings, Carolyn challenged the constitutionality of her representation

based on the fact that the trial judge had appointed a civil practitioner with no relevant experience or training as trial counsel and the county had failed to provide adequate standards and resources for appointed counsel.[20] Her case is currently under consideration.

In some cases attorneys did not raise issues of abuse at trial, even when there was independent evidence that such abuse had taken place. Carolyn King's current lawyer alleged that her trial attorney had failed to discover or present evidence of a history of sexual abuse.[21] Judy Haney, who was charged with having her husband murdered, was represented by a court-appointed lawyer who was so drunk during the trial that he was held in contempt and sent to jail. The next day, both client and attorney came out of the cellblock and the trial resumed. Her lawyer failed to present hospital records showing that Haney was a battered spouse, a key factor in her defense. Judy Haney was sentenced to death and spent eight years on Death Row before her sentence was reversed and she was re-sentenced to life in prison without parole.[22]

See Appendix numbers 3 and 4 for the case histories of Judy Haney and Betty Lou Beets.

Official Misconduct[23] is a Major Problem

Official misconduct is a pervasive problem in death penalty cases.[24] It goes hand in hand with ineffective assistance of counsel because prosecutors and police can take advantage of an inexperienced lawyer who is not likely to discover and litigate instances of misconduct.

Official misconduct is a key factor in producing wrongful convictions. The Death Penalty Information Center (DPIC)[25] provides information about innocent people released from Death Row. Official misconduct including false testimony, coerced confessions, secret deals with key witnesses, and prosecutors withholding

Sunny Jacobs was released from prison in Florida on Oct. 9, 1992, after spending 17 years in prison for a crime she did not commit. See appendix for further details.

exculpatory evidence was documented in 31 of the innocence cases.[26] A striking example of prosecutorial misconduct involves the case of Sonia "Sunny" Jacobs, who was wrongfully convicted and sentenced to death, along with her partner, Jesse Tafero, for killing two Florida Highway Patrol officers. The only evidence against Sunny consisted of two statements – one from a co-defendant and one from a cellmate. The prosecutor had evidence that the co-defendant had failed a polygraph test and had recanted his testimony several times, saying that Sunny and Jesse had not done the shootings. The prosecutor also knew that the cellmate had been offered a reduced jail sentence in exchange for testifying against Sunny. None of this evidence was provided to Sunny's attorneys.[27] *See Appendix case number 6 for details of Sunny's case.*

Sexual Orientation is an Improper Factor in Death Sentencing

Prosecutors engage in unethical behavior when they use gender and sexual stereotypes to prejudice juries. In at least three of the 66 cases of women on Death Row that we looked at, prosecutors appeared to use the woman's sexual orientation to prejudice the jury against her; bias may have made a difference in the outcome.

Wanda Jean Allen killed her female lover in the heat of passion and claimed to have acted in self-defense. This is not the type of homicide that typically results in a death sentence. In order to prove that Wanda Jean was dangerous, the prosecutor called the victim's mother, who testified that Wanda Jean had been abusive toward her partner. However, according to appellate briefs filed by the defense, attempts to show the extremely violent nature of the victim's character were largely held inadmissible by the trial court, at the prosecutor's urging.[28] Additionally, the prosecutor went to great lengths to show that Wanda Jean had been the "man" in their relationship, reinforcing the idea that Wanda Jean was the dominant partner in a lesbian relationship. Besides being potentially inaccurate, this portrayal of Wanda Jean may have biased the jury against her by emphasizing her sexual orientation, influencing their decision to convict and sentence her to death.

In the trial of Aileen Wuornos, the prosecution called Aileen a "lesbian whose hatred of men caused her to murder again and again." Lesbianism was brought up as an "aggravating circumstance" during the sentencing phase of her trial.[29] Issues of sexual orientation and stereotyping should play no role in the courtroom, for they have no bearing on proof of innocence or guilt.

Professor Joan Howarth of the University of Nevada School of Law believes that women who do not fit into stereotypes of femininity are at greater risk of being sentenced to death. Executing women who transgress feminine norms, including women who are lesbians, Howarth contends, reaffirms our society's traditional norms of femininity.[30]

Professor Howarth's theory might in part explain why Wanda Jean and Aileen were sentenced to death: They transgressed traditional notions of femininity – by being "the man" in a lesbian relationship or by being a prostitute who killed johns. At the very least, the finding that the prosecutors emphasized the fact that Wanda Jean Allen and Aileen Wuornos were lesbians likely made them less sympathetic to their juries.[31] *See Appendix numbers 6 and 8 for the case histories of Wanda Jean Allen and Aileen Wuornos.*

Social Factors in Death Penalty Cases

Women Are Convicted of Killing Family Members or People They Knew

Nearly two-thirds of the women on Death Row were convicted of killing family members or people they knew—19 (29%) spouses, 10 (15%) children, three (4.5%) both spouse and children, three (4.5%) other family members, and six (9%) friends or acquaintances — bringing the total number of women who had killed people they knew to 41 (62%). Twenty-five (38%) of the women had killed strangers. No one has calculated how many of the men on Death Row are there for killing family members, but from what we know from government homicide statistics, women who are in prison are more likely than men to have killed family members or intimates.[32]

One death penalty scholar, Professor Elizabeth Rapaport, has theorized that there are fewer women than men on Death Row because most women commit "domestic homicide" – killing close kin or a sexual intimate – which is less likely to be prosecuted as a death penalty case than are homicides against strangers.[33]

If Rapaport is correct, how can her theory be reconciled with the fact that most women on Death Row are there for killing family members? Perhaps because in the cases of the

women on Death Row, the state alleged that other factors such as kidnapping, rape, burglary, or killing for pecuniary gain made the case an aggravated homicide, and therefore eligible for the death penalty.

Most often a prosecutor charged a domestic killing as a death-eligible case based on the belief that the woman had plotted the murder and had done so for monetary gain. Many of the women and their lawyers maintained that the real motive for the killing was the woman's need to escape abuse. Although we cannot definitively establish this, it is worth considering that abuse may play a large role in domestic homicides and that juries may not be getting the full story when they sentence a woman to death in such a case.

More Culpable Co-Defendants May Have Been Treated More Leniently

In cases with multiple defendants, the state often attempts to use the testimony of co-defendants against each other. One defendant may make a deal with the prosecutor for a reduced sentence in return for his or her testimony at trial. There are many reasons why the prosecution makes a deal with one defendant and not with another. Sometimes the prosecutor makes a deal with the person who has the most evidence necessary to prove the state's case; sometimes it is the first person who agrees to cooperate with the prosecutor. As a result the person most culpable for the crime may end up with the least severe punishment.

In half of the cases we reviewed, the women acted with at least one other person. Of those cases, 22 (67%) resulted in the co-defendant receiving a sentence other than death – even in cases where children were killed. In one case the charges against three co-defendants were dropped in exchange for their testimony against the woman. In another, a son, the co-defendant of his mother, was acquitted at trial for the murder of his father, while the mother received the death penalty. In four of the cases involving two co-defendants, the woman and one co-defendant received a death sentence while the other received a life sentence. In two of those cases, additional people involved in the case were not charged with any crime.

Nearly one third of the 66 women on Death Row were accused of committing homicide by an intimate partner, usually a man (16 were accused by a man, one was accused by a woman), whose self-interest was served by blaming the woman for the crime.

Additionally, nearly one-fifth (17%) of the women were sentenced to death for a homicide that they claimed to have committed under threat of coercion by a male perpetrator in order to protect themselves or their children.

We looked only at cases in which women were sentenced to death, not at co-defendant cases where women may have made deals and received less severe punishment. Therefore, although these women received more severe sentences than their male co-defendants, we cannot say that women are treated less fairly than men in similar situations. This is, however, an issue for further study.

At Least Half of the Women Sentenced to Death Said They Had Been Victims of Childhood Abuse, Partner Abuse or Both

Twenty (30%) of the women reported that spouses or partners had regularly battered them, seven (11%) claimed they had been severely beaten as children, and nine (14%) claimed to have been abused as both children and adults. Thus, 36 (55%) of women on

Death Row said they had suffered regular, ongoing abuse. Because in most cases more information will be revealed as the cases proceed through the appeals process and the records are fully developed, we believe this number likely does not reflect the full extent of the problem.

These figures are corroborated by information published by the Department of Justice's Bureau of Justice Statistics (BJS), which reported that nearly half of all women in prisons or jails had been abused before being incarcerated.[34] Another study showed that 75% of 150 incarcerated women reported physical violence by intimate partners in adulthood.[35] These researchers attributed the lower rate in the government study to the fact that the term "abuse" was poorly defined, and so stigmatizing that respondents did not answer truthfully.

Women, more often than men, are charged with plotting murder for hire. Many of the women convicted of murder for hire claimed that they were not aware of the plan to kill their husbands. In many instances the women were abused and claimed they had confided in another man, sometimes a boyfriend or relative. To protect her, this other man killed or arranged for someone else to kill the abuser without the woman's knowledge. Despite the woman's assertion that she was unaware of the plan to kill, the jury found her guilty. *Louise Harris, whose story is described in Appendix 7, fits this profile.*

Many Death-Sentenced Women Were Addicted to Drugs or Alcohol or Suffered from Mental Illness

Based on self-reporting and other information, 23 (35%) of the 66 death-sentenced women had substance abuse problems and 15 (23%) suffered from mental illness. Some of these problems were self-reported. In fact, the number of women on Death Row with substance abuse problems may be greater. Substance abuse is often underreported because women may be in denial or may not want to tell others they have a problem. Mental illness also is frequently undiagnosed and undocumented, in part because defense counsel do not have sufficient resources to hire an expert to conduct a thorough psychological evaluation. Statistics from the Department of Justice estimate that 80% of the women in prison have a substance abuse problem and one-quarter suffer from mental illness.[36] *Appendix case number 8, the case of Aileen Wuornos, illustrates this problem.*

Mental illness and/or substance abuse can lessen one's culpability. It is imperative that these issues be raised in mitigation in the sentencing phase of a capital trial.

Mental Retardation Is Often a Factor in Death Penalty Cases

In 2002, the United States Supreme Court ruled unconstitutional the execution of someone who is mentally retarded.[37] The Court held that under the "evolving standards of decency" test it was no longer socially or constitutionally acceptable to execute mentally retarded persons because, by definition, they are less culpable than those of normal mental capacity. However, most women on Death Row were sentenced for committing crimes that occurred before that decision, so the issue of mental retardation may not have been thoroughly considered in their cases.

Several of the women's cases involved issues of mental retardation that were not fully litigated at trial. The most notable of these is the case of Wanda Jean Allen, whose defense counsel failed to introduce well-documented evidence of her retardation.[38] Wanda Jean was executed shortly before the Supreme Court agreed to reconsider the constitution-

ality of the death penalty for mentally retarded persons. (At the time of Wanda Jean's execution, it was not unconstitutional to execute a mentally retarded defendant. However, it was common practice for defense attorneys to raise the fact of their clients' retardation because juries were allowed to, and frequently did, consider it a mitigating factor that justified a sentence of life instead of death.) Wanda Jean's defense counsel had tried repeatedly to be removed from the case or to have an additional attorney appointed to assist him because he believed that he was unqualified to represent defendants in capital cases.

Teresa Lewis was convicted of hiring someone to kill her husband Julian and her stepson C.J. The hit man got a life sentence and Teresa was sentenced to death. Teresa claimed her motive was to escape an abusive relationship, not to obtain money, and that the hit man, not she, had planned the crime. Testimony from a defense psychiatrist that Teresa had an IQ of 72, which means she is borderline mentally retarded, strengthens her assertion that the hit man had planned the crime.[39] Her low IQ and history of abuse raise concerns about the appropriateness of sentencing her to death.

Latasha Pulliam was sentenced to death for kidnapping, abusing and killing her neighbor's 6-year-old child along with her boyfriend, Dwight Jordan. Although they shared equal responsibility for the crime, Dwight Jordan was sentenced to life in prison, while Latasha received a death sentence. Defense experts testified that Latasha's IQ was 69. She had mild mental retardation, which made her more likely to be a follower than a leader. Latasha had a long history of abuse. Besides being abused by Jordan, Latasha was sexually and physically abused as a child, and as a teenager she bore children by two of her mother's boyfriends.[40]

Life on Death Row

In addition to enduring the otherwise harsh conditions of prison life, most women on Death Row live in almost complete isolation, rarely leaving their cells, and most of their infrequent human contact involves sometimes-hostile guards.

Death Row prisoners, like all prisoners, have constitutional and human rights. For example, the Eighth Amendment, which prohibits subjecting prisoners to cruel and unusual punishment, requires prisons to meet basic human needs, such as the need for food, shelter, sanitation, medical care, reasonable safety, and out-of-cell exercise. Prison conditions vary from state to state, but women in our survey reported being denied many of these basic rights. However serious the crimes of which they are accused, prisoners, whether male or female, deserve to be treated with dignity and humanity, and should be provided safe and sanitary housing.

Isolation and Mistreatment by Prison Guards

While dangerous and unhealthy conditions of confinement affect both men and women on Death Row, women frequently face additional deprivations. Because of their small numbers, women sentenced to death are often in effect sentenced to solitary confinement as well. Seven states' Death Rows hold only one woman each. Many death-sentenced women have almost no interaction with other prisoners, and very limited interaction with other human beings.

Comments from lawyers for survey participants describe their clients' profound isolation from human contact:

> My client is held in a small area isolated from the rest of the prison. She is only allowed to see one prisoner, her prisoner substitute counsel. She is allowed out of her cell for a 15-minute shower each day and one hour outside (alone) five days per week, weather permitting. … [T]wo guards sit in front of her cell 24 hours each day, seven days a week. There also is a video camera on her at all times.
>
> Although the law does not require mandatory segregation, the women on Death Row are kept outside of the general population. Lack of peer interaction is detrimental psychologically. Prisoners need jobs; something to keep their minds busy and mentally alert.

Donna Marie Roberts, who was sentenced to death in Ohio in June 2003, is housed in conditions that have been described in an Ohio newspaper as medieval:

> Roberts' cell measures six feet by eight feet 10 inches, the size of a closet. Until recently, she had no hot water in her cell and had a light shining on her 24 hours a day that was so bright that "I see spots when I close my eyes."
>
> Unlike the 209 men awaiting execution at the Mansfield Correctional Institution whose cells measure eight feet, nine inches by 10 feet, 10 inches, Roberts does not have a window in her cell or a working television.
>
> So complete is her sensory deprivation that even when she is allowed to leave her cell for one hour of recreation, five days a week, she is cloistered in the recreation yard by herself.
>
> "Because I am back in this corner, I must bang on my door like an animal to get my tray, turn in trash and even for the nurse to bring me meds," Roberts wrote.[41]

Noted author Phyllis Chesler, who developed a relationship with Aileen Wuornos before her 2002 execution in Florida, reported in the *New York Times* that Aileen was physically and psychologically abused while she was held in Volusia County Branch Jail in Daytona Beach. Chesler wrote:

> [S]he spent long periods of time in solitary confinement, freezing and naked.
>
> She has been deprived of daylight and exercise and is often forbidden to phone her lawyer. Ms. Wuornos cannot hear or see very well, but her frequent requests for a hearing aid and glasses have all been denied, as has permission for her to see a gynecologist for her almost continual heavy bleeding. She has lost 40 pounds.[42]

Before her execution, Wournos wrote a 25-page letter to the judge detailing problems with four guards at the Broward Correction Institution in Pembroke Pines:

> Guards spitting in food trays brought hours late, tampering with air conditioning and water pressure, unnecessarily peering into the cells and talking about sexually assaulting her on the way to her execution.[43]

An attorney for a woman in our survey described what happened to her when the prison chaplain came to tell her that her son had been brutally murdered:

> She was put in chains and then the chaplain told her that her son had been

> murdered. The body language of the officers made her afraid to show any emotions or react in a way that would make them strip her down or put her in confinement. She asked to see the psychiatrist; she was told that the psychiatrist had no time in her schedule for her.[44]

The woman's concern about being placed in even more isolated confinement is soundly based: Prisoners subjected to isolated confinement are at serious risk of developing mental illness, or exacerbating existing mental illness. An expert on mental health in prisons describes the effects of isolated confinement:

> Even prisoners who do not become frankly psychotic report a number of psychosis-like symptoms, including massive free-floating anxiety, hyperresponsiveness to external stimuli, perceptual distortions and hallucinations, a feeling of unreality, difficulty with concentration and memory, acute confusional states, the emergence of primitive aggressive fantasies, persecutory ideation, motor excitement, violent destructive or self-mutilatory outbursts, and rapid subsidence of symptoms upon termination of isolation.[45]

Sexual Harassment and Assault

Ironically, while women on Death Row suffer from isolation, it is too often the isolation of a fishbowl. One in five women in our survey reports that she has been assaulted or sexually harassed while in prison. A third of the respondents said that corrections officers observed them when they used the toilet, showered, or dressed. Respondents described their experiences:

> We are fully strip-searched each and every time we leave our rooms. We must walk out backwards and the officers grab onto our arms and hold on to us as we are walking to wherever we need to go. They are always touching us.
>
> There is lots of verbal abuse from the officers; there are times when I am afraid of them. There have been times where male officers have watched me bathe and made sexual comments.
>
> One thing you never get used to is the lack of privacy. This is one of the hardest things. They check through the peephole every hour, or anytime they want. You think you're sitting there alone and in private, but this isn't always the case. And we're talking about men guards, too. I'm not supposed to, but when I use the bathroom I put a piece of paper over the window of my cell.[46]
>
> Sexual abuse of prisoners by staff is a perennial problem in women's prisons.[47] In its ground-breaking report on the sexual abuse of women prisoners, Human Rights Watch stated that the "United States has almost completely abdicated its responsibility to guarantee in any meaningful way that the women held in its state prisons are not being abused by those in authority over them."[48] Although the problem of sexual abuse of women prisoners has received more attention in recent years, there is much more to be done.

Unfortunately, it is extremely difficult for a prisoner who has been subjected to sexual harassment or abuse to seek redress, in large part because, in 1996, Congress passed the Prison Litigation Reform Act (PLRA). One provision of PLRA has been interpreted to bar prisoners from filing civil rights cases seeking redress for violations of their rights if the

prisoner has not suffered a physical injury. As a result of PLRA, prisoners have been prevented from challenging body-cavity strip searches; strip searches by guards of the opposite sex; and being routinely subjected, while nude, to viewing by guards of the opposite sex.[49]

Another provision of PLRA bars prisoners from filing civil rights lawsuits unless they have first presented their complaints to the prison's grievance systems. This requirement presents another serious obstacle for prisoners who have been sexually assaulted by guards. Many prison systems require, as a prerequisite to filing a grievance, that the prisoner attempt to resolve the issue informally with staff.[50] Such requirements increase the ever-present possibility of retaliation against the prisoner for writing a grievance.[51] Moreover, the grievance systems frequently have deadlines as short as a week or 10 days, and a prisoner who misses the deadline, for any reason, can permanently lose the right to sue.[52]

Medical Care

Prisoners as a group have significantly greater health-care needs than the general population.[53] The prevalence of HIV infection, tuberculosis, Hepatitis B and C, major mental illness, and asthma are all higher in prisons and jails than in the general population; indeed, the prevalence rates for some infectious diseases are higher by an order of magnitude.[54] Unfortunately, as a recent report to Congress by the National Commission on Correctional Health Care concluded, many prisons fail to provide adequate medical and mental health care.[55]

The federal courts have frequently found shocking deficiencies in the treatment of the unique medical needs of women.[56] Failures to treat serious mental illness among women prisoners are also common. While male prisoners who are seriously mentally ill also suffer from inadequate treatment, the problems of mentally ill women in need of in-patient treatment are exacerbated because their small numbers result in states failing to develop treatment programs for women at different security levels.[57] Obviously, mentally ill women confined on Death Row are particularly at risk of being barred from treatment programs because of their security level. Indeed, women in our survey reported not having access to mental health services as a result of their death sentences as described in the section below.

Decent and Sanitary Living Conditions

The women in the survey also reported significant issues regarding their living conditions. A majority of women responding to the survey indicated that they were exposed to uncomfortably hot or cold temperatures in their cells. Nearly half reported that their cells lacked adequate ventilation, and most reported the presence of rodents or insects in their cells. A majority also reported that the showers they used were infested with insects or rodents. While the survey lacked sufficient detail to explore the seriousness of these complaints, the responses are troubling, and the reported conditions may include violations of the Eighth Amendment.[58]

Restricted Visits and Phone Calls

For some of the women on Death Row, their sense of isolation is magnified by the difficulty in receiving visits from family and friends. Rules about visitation and phone calls vary from state to state. For those women permitted visitors, visits last, on average, two hours. Inflexible rules regulate the days and times family members may visit, and those rules often do not correspond to times when family

members are able to visit. For example, family members who live out of town may only be able to visit on weekends but the visits might only be permitted during the week. More than one-third of the survey respondents have children under the age of 18, but only two of them were allowed physical contact with their children during visits. Although the United States Supreme Court has generally approved restrictions on family visits for prisoners, it has suggested that a lifetime ban on prisoners' visits from family members would pose serious Constitutional questions.[59] For women on Death Row, those who are barred from visits with their families are, in effect, suffering a lifetime ban.

Some of the women are not allowed to make or receive any telephone calls. Others are permitted to do so a few times a month. Fourteen women surveyed have an unlimited number of phone calls or can make or receive a daily phone call. Most calls can last between 10 and 15 minutes. Prisoners must call collect when making long-distance calls. Because the prison usually contracts with a single long-distance provider the charges are often exorbitant. One respondent said her phone calls were limited to 10 minutes at a cost of $25 per call. This greatly restricts the number of times a woman can call her children, other family members or an (approved) acquaintance.

Access to Programs and Services

Women prisoners often are denied access to programs and activities because they are on Death Row. Several women in our survey reported that they did not have access to religious services, even though prison rules permitted them to worship, simply because they were on Death Row. Although the Supreme Court once ruled that prison officials have wide discretion to deny prisoners access to religious services,[60] in 2000, Congress passed the Religious Land Use and Institutionalized Persons Act,[61] which requires a "compelling state interest" for state restrictions on the religious rights of prisoners.

Many women reported that they did not have access to recreation, programs, and services even when prison rules explicitly granted access. Some respondents believed they were treated more severely because they were on Death Row.

Although nearly all of the women who responded to our survey reported that they had been addicted to drugs or alcohol at the time of their arrest, two-thirds said that no drug or alcohol treatment was available at their facility. In addition, although more than half reported that they had been victims of physical or sexual abuse, fewer than half of the facilities offered any counseling for sexual, physical, or emotional abuse.

We are not suggesting that Death Rows should resemble hotels. At the same time, everyone, regardless of criminal history, deserves living conditions that do not induce psychosis, and all should be afforded sanitary living environments, necessary health care and protection from sexual abuse. Abusive and degrading conditions have no legitimate place in our criminal justice system.

Conclusion and Recommendations

Conclusion

Many of the women on Death Row suffered from poverty, abuse, and addiction, as well as from ineffective legal assistance, prosecutorial bias and official misconduct (as have many death-sentenced men).

The high number of death sentences reversed because of serious errors is evidence that many people do not receive a fair trial. Because the system is so deeply flawed, we cannot know whether those on Death Row, or those executed, committed the worst murders, or were simply the most marginalized and vulnerable.

Abuse is an important issue among women who are convicted of homicides. At least half the women whose cases we reviewed reported or presented evidence of being victims of abuse as children or as adults. In fact, the actual number is likely to be much higher as such evidence may not have been presented due to inadequately trained and funded defense counsel failing to raise the issue of abuse.

The conditions of confinement for women on Death Row are harsh. Many experience severe isolation, and most lack necessary services.

Although we recommend further study of women on Death Row, we believe it is not possible to develop an error-free capital punishment system. While we may be able to improve the system, our country has had 30 years to experiment and the result has been that the death penalty is still as arbitrary and unfair as it was in 1972, when the Supreme Court rejected it. Ultimately, we believe, the public will come to agree with Justice Blackmun, who wrote, "[The] 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."[62]

Recommendations

To ensure that every woman receives fair and adequate defense, we recommend:

Establishment of Programs to Train Defense Counsel in Litigating Issues of Abuse in Women's Cases

Lawyers who represent women in capital cases should be educated about abuse and domestic violence so that they can adequately represent their clients. Training should include instruction in how to raise evidence of abuse as part of a self-defense claim and in how to raise abuse as a mitigating factor at sentencing hearings.

To improve conditions and opportunities for women on Death Row, we recommend:

A Department of Justice Study of Women on Death Row

The Department of Justice should undertake a study of the women on Death Row throughout the United States to ensure that they are protected and safe.

Provision of Adequate Support and Assistance to Abused Women

Many women on Death Row have suffered horrendous abuse during their childhoods. Many of the women on Death Row also were battered as adults and many of the crimes for which they were convicted were directly or indirectly related to that abuse. Counseling programs to address child abuse and domestic violence are critical. Other support services, such as programs to address alcohol and drug

dependency, should also be readily available to women in prison.

Consideration of Integrating Women on Death Row into Regular Prison Units
In states with very low numbers of women sentenced to death, the states should consider integrating those women into a regular prison unit. Because isolated confinement heightens the risk that mental illness will develop or that existing mental illness will be exacerbated, women under the emotional strain of a death sentence should not be placed in isolated confinement.

Provisions by Prisons of Work Opportunities
Opportunities should be made available for women on Death Row to do something meaningful such as paid or volunteer work. Part of any money they earn can be contributed to victims' restitution funds.

Adoption of Prison Staffing Policies to Prevent Abuse
Prison policies should provide that, absent emergencies, intrusive body searches should be conducted only by female staff. The duties of male staff should not include routine observation of women showering or using the toilet. Prisons should adopt effective mechanisms for preventing sexual abuse of prisoners, including a means for prisoners to report complaints of sexual abuse confidentially.

Amendment of the Prison Litigation Reform Act
In order to provide victims of sexual abuse with a means of redress in the courts, Congress should amend the PLRA by repealing or modifying the provision that limits prisoners' ability to file civil-rights claims that do not involve physical injuries (42 U.S.C. § 1997e(e)). In addition, the provision of PLRA that bars prisoners from filing suit until they have pursued their complaint in the prison grievance system (42 U.S.C. § 1997e (a)) should be modified to exempt victims of sexual abuse.

In light of the serious systemic problems that led to the conviction and sentences of many of the women and men on Death Rows throughout the country we recommend:

Immediate Suspension of Executions and Establishment of Study Commissions
Due to rampant problems with the capital punishment system, executions – of both women and men – must be halted immediately. States should establish commissions to study the death penalty and make recommendations for appropriate changes. Special attention should be paid to women sentenced to death, in particular where ineffective assistance of counsel and the failure to raise issues specific to the woman's situation, such as domestic violence, may be responsible for her death sentence.

Provision of Effective Counsel in All Jurisdictions
Every jurisdiction that imposes capital punishment should create an independent authority to screen, appoint, train and supervise lawyers to represent defendants charged with capital crimes. It should set minimum standards for these lawyers' performance. An existing public defender system may comply with this recommendation if it implements the proper standards and procedures. Capital defense lawyers should be adequately compensated, and the defense should be provided with sufficient funding for experts and investigators.[63] States should follow the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.[64]

Training to Identify Mental Retardation and Mental Illness for All Persons Involved in the Process
Defense attorneys must be provided with adequate access to expert witnesses and mitigation specialists to help them identify mental retardation and mental illness and raise these claims at trial and/or sentencing. Judges, prosecutors, and

police officers should also be trained in working with people who have these conditions. This is especially true of police officers, because mentally retarded or mentally ill people may easily be persuaded to give false confessions.

Instituting Meaningful Checks on Prosecutorial Power

Prosecutors should provide "open-file discovery" to the defense in death penalty cases to lessen the likelihood of innocent people being convicted. Prosecutors' offices in jurisdictions with the death penalty must develop effective systems for gathering all relevant information from law enforcement and investigative agencies. Prosecutors should establish internal guidelines on seeking the death penalty in cases that are built exclusively on types of evidence particularly subject to human error — such as eyewitness identification by strangers, and statements by informants or co-defendants.[65] Prosecutors who violate the law should be sanctioned appropriately by the responsible bar association.

Elimination of Judicial Override

If the jury imposes a life sentence, the judge in the case should not be allowed to override the jury's recommendation and replace it with a sentence of death.[66]

Institution of Proportionality Review

Every state should adopt procedures for ensuring that death sentences are meted out in a proportionate manner to make sure that the death penalty is administered in a rational, non-arbitrary and even-handed fashion, to provide a check on broad prosecutorial discretion, and to prevent discrimination from playing a role in the capital decision-making process.[67] Special attention should be paid to examining whether women receive disproportionate sentences compared to male co-defendants and men charged with similar crimes.

Appendix – Case Histories of Some of the Death-Sentenced Women

1. Sabrina Butler (Mississippi)

Sabrina Butler, an African-American woman, spent five years on Death Row in Mississippi after being convicted of killing her infant son, Walter, in 1990. During the trial, the prosecution claimed that Sabrina killed the child with a blow to the stomach. According to the defense, Sabrina, who was 18 at the time and was borderline mentally retarded, discovered the child not breathing and, after attempting to resuscitate him, took him to a hospital emergency room. Walter was pronounced dead on arrival. The state charged and convicted Sabrina of child abuse and murder – a capital offense.

Sabrina gave conflicting versions of what happened to the authorities, possibly because of her shock and panic over her son's death, compounded by the effects of her borderline mental retardation and inability to explain herself clearly. These contradictions were used against her at trial.

Defense attorneys contended that the child's injuries were caused by Sabrina's attempts to resuscitate him, but failed to provide adequate evidence to support this theory.

The Mississippi Supreme Court overturned Sabrina's conviction and sentence in 1992.[68] At her second trial in 1995, a leading death penalty defense lawyer represented Sabrina. The lawyer called different witnesses, including a neighbor who had tried to help Sabrina revive her son and who corroborated Sabrina's version of events. The lawyer also got the physi-

cian who conducted the autopsy to admit that his work had been inadequate. After a very brief jury deliberation, Sabrina was acquitted.

Authorities now believe that the baby died of cystic kidney disease or sudden infant death syndrome, not as a result of any criminal behavior.[69]

2. Frances Newton (Texas)

Frances Newton, an African-American woman, was convicted of the 1988 shooting of her husband and two children, allegedly to collect a $100,000 life insurance policy. Frances has maintained her innocence from the very beginning and asked repeatedly for her court-appointed attorney, Ron Mock, to be removed from her case. Mock has represented 10 percent of the people that Harris County – the county that executes more people than any other in the country – has sent to Death Row. When the family finally scraped together enough money to retain a private lawyer, several days before the trial was set to begin in 1988, the lawyers asked for additional time to prepare but the trial court denied their request. The lawyers requested a hearing in which they questioned Mock as to whether he had interviewed any of the witnesses involved in the case and he answered that he couldn't remember interviewing any of them.[70]

The state's case against Frances was based almost entirely on ballistics evidence processed at the Harris County Crime Lab. That lab is currently the subject of widespread investigation because in August 2004, police found 280 boxes of mislabeled and improperly stored evidence from 8,000 cases dating back more than a decade.[71] The validity of the ballistics tests introduced at Frances' trial has never been litigated in court. Frances' attorneys tried to raise the issue but courts denied Harris County prisoners facing execution the opportunity to litigate this issue because of strict limits on how many claims could be raised.[72] Frances won a 120-day reprieve Dec. 1, 2004, two hours before she was scheduled to be executed.

3. Betty Lou Beets (Texas)

Born in extreme poverty, Betty Lou Beets, a white woman, suffered physical and emotional abuse at the hands of her alcoholic father and then by five husbands.

The state of Texas charged Betty Lou with capital murder based on the state's argument that she had killed her husband to get his death benefits. However, Betty Lou did not learn of her potential death benefits until after her husband's death when, during discussions with her attorney, E. Ray Andrews, on a separate matter, he mentioned to her that she might be entitled to death benefits from the insurance company. After Betty Lou was charged with her husband's murder she retained Andrews, agreeing to give the book and movie rights to her story to Andrews's son in lieu of payment. This arrangement became a problem later when the state alleged that Betty Lou had killed her husband for pecuniary gain and Andrews became a potentially life-saving witness because he knew that Betty Lou had not even been aware of the insurance policy. Andrews, however, decided not to recuse himself, and instead continued to represent Betty Lou. Bob Miller, Commander of the local VFW Post, said that Andrews frequently spoke with him about the case. Miller was quoted as saying, "He said how he was going to get rich on all this, and the case was going to be the biggest thing that ever happened to him, and what not. He said the case was going to turn into a big movie, and he had all the rights to it. It was something he talked about pretty often."[73]

Andrews had other problems as well. He admitted that he had a drinking problem and witnesses stated that they saw him drinking

every day and night of Betty Lou's trial, on average between a half and three-quarters of a fifth of Wild Turkey per night. Some time after Betty Lou's trial, Andrews, who by that time had become an elected prosecutor, was convicted of soliciting a $300,000 bribe in another murder case, and was disbarred.[74]

After the jury convicted Betty Lou of murder, her attorney failed to raise any evidence of her extensive history of abuse. During post-conviction litigation, Betty Lou's new attorney hired an expert on domestic violence who ascertained that Betty Lou had suffered a lifetime of horrendous abuse as well as brain damage from a bout with childhood measles encephalitis, which had been aggravated by the battering and by an injury sustained in a serious car accident. None of this, however, was told to the jury that condemned her to death.

Following Betty Lou's death sentence, a federal judge threw out the conviction based on Andrews' conflict-of-interest in continuing to represent her. A federal appellate court, however, reinstated the conviction and sentence.[75] Betty Lou Beets was executed by the state of Texas on Feb. 24, 2000.

4. Judy Haney (Alabama)

Judy Haney, a white woman, was charged with hiring her brother-in-law to kill her husband after he had abused her and her children for years. Judy's court-appointed lawyer was so drunk that the trial had to be delayed a day after he was held in contempt of court and sent to jail to "dry out."[76] He also failed to present hospital records showing that Judy's husband had abused her. Judy was sentenced to death.

After a post-conviction hearing at which Judy's history of abuse was presented, the state agreed to a life sentence.[77]

5. Sunny Jacobs (Florida)

In 1976, Sunny Jacobs, a white woman, was sentenced to death for killing two police officers in Florida. She spent five years in isolation on Florida's Death Row and 17 years in a maximum-security prison before her conviction was overturned and she was finally released.

Sunny, her partner Jesse Tafero, and their two children were on vacation when they had car trouble and accepted a ride home from Walter Rhodes, who was on probation.[78] While they were at a rest stop on the Florida Interstate, two police officers approached the car to do a routine license and registration check and someone in the car shot them. Sunny stated that she was in the back seat of the car shielding her children and did not see what had happened.

The state charged all three adults with the murders. Gunpowder tests showed that Rhodes had fired a weapon; tests of Sunny and Jesse were inconclusive. Rhodes told the prosecutors that Sunny and Jesse had killed the officers and agreed to testify against them in exchange for a life sentence. Rhodes took a polygraph test, which the prosecutor claimed he passed, and this was used as the basis for giving Rhodes the deal.

Sunny had never been in trouble with the law and was shocked when she was charged with murder. She was terrified as she watched the state take away her children and in her first police statement she lied and said she didn't know the two men, who had picked her and her children up hitchhiking. The prosecutor later used this lie to impeach Sunny's claim that she had not shot the officers.

At her trial, the prosecutor presented Rhodes' testimony, Sunny's lie and the testimony of a jailhouse informant, in prison on drug charges, who claimed that Sunny had told her that she

was "glad she had killed those cops," to convince the jury of Sunny's guilt.

The jury convicted both Jesse and Sunny. They sentenced Jesse to death but sentenced Sunny to life. However, the judge, a former Florida State Trooper who wore his old patrol hat to work and kept a miniature electric chair that gave off sparks on his desk, overrode the jury's recommendation and sentenced Sunny to death. On appeal, Sunny's death sentence was changed back to life imprisonment.

During the next several years, Rhodes recanted his testimony three times and admitted that he, not Sunny or Jesse, had shot the officers, but this evidence was not made available to Sunny, Jesse, or their lawyer (an underpaid court-appointed attorney). Sunny and Jesse's convictions continued to stand.

In 1990, Sunny's childhood friend, filmmaker Micki Dickoff, obtained the results of Rhodes' polygraph test, which showed that Rhodes had failed the test, but more importantly, that he had given an explanation of the crime that contradicted his trial testimony. Had the defense had this information, they could have used his inconsistent statements to impeach him. Micki also tracked down the jailhouse informant who admitted that she had lied about Sunny's "confession" in order to get a deal in her own case.

With this new information Sunny's conviction was finally reversed. Yet the state of Florida was unwilling to dismiss the case altogether. Sunny wanted to get out of prison as soon as possible and did not want to wait for another trial so she entered into an agreement with the state in which she pleaded guilty to second-degree murder, with the proviso that she could maintain her innocence. On Oct. 9, 1992, she walked out of jail a free woman. Unfortunately, Jesse never had a chance to prove that his conviction and sentence should have been reversed as well. On May 4, 1990, the state of Florida strapped Jesse into the electric chair. It took three jolts of electricity to kill him. During that time his head caught on fire and two witnesses observed him breathing for several minutes before he died.

6. Wanda Jean Allen (Oklahoma)

Wanda Jean Allen, an African-American woman, was born the second of eight children to an alcoholic mother who drank during her pregnancy and was, according to her mother's husband Bill, "very slow mentally." After Bill left the family, Wanda Jean became responsible for the care of her younger siblings. To get food and clothing, she resorted to stealing, which led to her arrest and juvenile detention. Wanda Jean did not perform well in school and had little time for studies. At age 15, she scored 69 on a standard IQ test, placing her within the upper range of mental retardation.

In 1981, Wanda Jean was convicted of manslaughter, for which she was sentenced to a four-year prison term. While in prison she met and befriended Gloria Leathers. After their release from prison, they became lovers and moved in together. The two had a tumultuous relationship marked with violence. On Dec. 1, 1988, they fought over a welfare check. Gloria packed her bags, threatened to move out, and drove to the police station to file a complaint. Wanda Jean followed Gloria, hoping to talk to her. They got into another argument and Wanda Jean stated that she shot Gloria after Gloria attacked her with a rake.[79]

At trial the prosecutor argued to the jury that Wanda Jean had not acted in self-defense when she killed Gloria. The prosecutor condemned Wanda Jean for being a lesbian and characterized her as the "male" and therefore dominant partner in the relationship.[80] Besides trying to incite prejudice, the characterization of Wanda Jean as the

dominant partner was inaccurate. According to others who knew the couple, both Wanda Jean and Gloria were physically abusive with each other. However, when the defense lawyer tried to bring up evidence of Gloria's violent past to support Wanda Jean's self-defense claim, the judge denied the request. The jury was left with the impression that Wanda Jean was the dominant partner who posed a danger to Gloria. This impression encouraged the jury to decide that Wanda Jean had committed an intentional murder deserving of a death sentence instead of a heat-of-passion killing or a killing in self-defense, as Wanda Jean had claimed.

Besides the inappropriate remarks by the prosecutor, Wanda Jean failed to receive adequate legal representation. Her family had hired a lawyer who took the case for $5,000, believing that it would be settled with a plea agreement. The family was able to come up with only $800, all the payment the lawyer ever received. When the lawyer learned that the state was seeking a death sentence he asked to be removed from the case because he had never handled a capital case and was not competent to handle one. The court denied his request. Next, he asked for the appointment of a public defender to help defend Wanda Jean. This request was also denied.

Additionally, the defense attorney failed to investigate and present Wanda Jean's history of mental retardation to the jury. Wanda Jean's IQ score of 69 was within the range of mental retardation and she had flunked out of school after repeating multiple grades. Had Wanda Jean's execution date been just a few months later, she likely would have survived. Shortly after her execution, the Supreme Court accepted a case to consider the constitutionality of executing mentally retarded people and subsequently decided it was unconstitutional to do so. Because Wanda Jean had a valid claim of mental retardation, the Court likely would have granted her a stay of execution. Subsequently courts might have decided that Wanda Jean was not eligible for execution. Unfortunately, despite worldwide advocacy on her behalf, including Reverend Jesse Jackson's civil disobedience to protest her execution, the state of Oklahoma killed Wanda Jean Allen on Jan. 11, 2001.[81]

7. Louise Harris (Alabama)

Louise Harris, an African-American woman, was convicted of masterminding her husband's murder. Although the jury sentenced her to life in prison, an Alabama judge overrode that decision and sentenced her to death.

After several years of a failing marriage with Isaiah Harris, who regularly beat her, Louise developed a relationship with Lorenzo McCarter and confided in him about the abuse. He arranged with Michael Sockwell and Alex Hood to kill Harris on his way to work. When the prosecutor charged McCarter with a capital crime, he agreed to testify against Louise to save his life.[82] Louise claimed she had not known about the plan to kill Harris.

Louise had a long history of abuse and trauma: She had been sexually assaulted at age 11; she had witnessed her older sister die suddenly of a seizure in her arms, leaving Louise, at age 14, to raise her younger siblings; she had seen her younger brother being pulled from a lake after he drowned, and she had been the one to discover the body of her father, who was murdered. She had also been beaten severely and regularly by her first husband, John Wesley Robinson; she had been abused for years by her common-law husband Jesse Lee Hall and then by her husband Isaiah Harris, resulting in multiple trips to the hospital; and she was also abused by the man from whom she had sought comfort, Lorenzo McCarter. This abuse and trauma resulted in Louise suffering from Post-Traumatic Stress Disorder, Battered Women's Syndrome and Dissociative Disorder. None of this evidence was presented at her trial.[83]

Hood and McCarter were sentenced to life without parole and Sockwell, the person who actually shot Harris, was sentenced to death. In October 2004, Louise's death sentence was reversed and she awaits re-sentencing.[84]

8. Aileen Wuornos (Florida)

Aileen Wuornos, a white woman, who claimed to have been sexually assaulted as a child and as an adult, was convicted of murdering six middle-aged men, clients killed during acts of prostitution. Her case has spawned two movies – including the Academy Award-winning *Monster,* an opera and several books.[85]

According to Aileen, she killed the first man after he tied her up and sodomized her. She escaped, naked and bleeding, and shot him to death in self-defense. One explanation for her subsequent murders was that she re-experienced the trauma of this attack when she was with other clients and perceived herself to be in danger from them.

Many experts believed that Aileen was mentally ill. One psychologist asserted in affidavits, which were never filed in court, that Aileen "has suffered and continues to suffer a constellation of quite serious symptoms of profound mental illness."[86] Glenn Ross Caddy, a psychologist, concluded that Aileen "is almost definitely suffering from a long-standing delusional process."[87] Jethro W. Tommer, a Miami psychologist who examined Wuornos in 1992, wrote that her medical record "is consistent with a diagnosis of borderline personality disorder."[88] Attorney Raag Singhal, who spoke with Wuornos shortly before her execution, said that she "exhibits bizarre behavior, laughing and crying at inappropriate times and obsessing on points that have no importance to her case. I am firmly convinced of Ms. Wuornos' mental illness."[89]

The state of Florida executed Aileen on Oct. 9, 2002 after she dropped her legal appeals.

Endnotes

1 Four states have sentenced the most women to death: California (17), North Carolina (16), Florida (15) and Texas (16). The states with the largest number of women currently on death row are California with 14 and Texas with eight. In the past, North Carolina required prosecutors to seek the death penalty every time they prosecuted anyone for certain offenses. Since that law was changed, the number of death sentences sought and imposed has dropped precipitously. S.L. 2001-81, sec. 3 (codified at N.C.G.S.A. sec. 15A (2004)).

2 Information obtained from Victor L. Streib, *Death Penalty For Female Offenders, Jan. 1, 1973 through June 30, 2004*. Some states are not given a numerical designation because there are multiple states with the same number of women sentenced to death.

3 The American Civil Liberties Union is the nation's largest non-profit legal organization dedicated to protecting and preserving individual rights and freedoms. The ACLU has many projects that have specific areas of focus. The three involved in this report are: the Capital Punishment Project, which is committed to abolishing the death penalty by educating the public about its problems and injustices; the National Prison Project, which engages in litigation and public education on behalf of prisoners' rights and sound criminal justice policy; and the Women's Rights Project, which works to protect and advance the rights of women. The American Friends Service Committee (AFSC) is a Quaker social justice organization that includes people of various faiths who are committed to social justice, peace, and humanitarian service. Its work is based on the Religious Society of Friends' (Quaker) belief in the infinite worth of every person and faith in the power of love to overcome violence and injustice. AFSC's Criminal Justice and Anti–Death Penalty Program works for the abolition of the death penalty, the protection of the human rights of prisoners, and greater understanding of the role of the criminal justice system in perpetuating violence and injustice. Its criminal justice project works to change the criminal justice system by advocating for Quaker values of fairness and equality. The National Clearinghouse for the Defense of Battered Women (NCDBW) is a resource and advocacy center that works on behalf of battered women charged with crimes, including incarcerated battered women. It provides information and technical assistance to battered women defendants and people defending them, and educates the public about their situation.

4 We were not able to contact all of the women on Death Row because they did not all have lawyers. In some cases, public defenders were willing to administer the questionnaire even though they were not representing the woman. Twenty-eight out of 49 (57%) of the women responded. To protect the women against potential repercussions from prison authorities, we have not used their names in Section V, the discussion of living conditions.

5 Death Penalty Information Center.

6 Furman v. Georgia, 408 U.S. 238 (1972).

7 Gregg v. Georgia, 428 U.S. 153 (1976).

8 Examples of aggravating factors include: The defendant had a prior history of violent conduct, the defendant killed more than one person, or the facts of the case were particularly heinous or cruel. Some exam-

ples of mitigating factors are: The person acted under the influence of another person who was primarily responsible for the crime, the person did not have a history of violent conduct, the person cooperated with authorities to solve the case.

9 This number is accurate as of Oct. 25, 2004. See Death Penalty Information Center.

10 James Liebman, J. Fagan, and V. West*, A Broken System: Error Rates in Capital Cases, 1973-1995, available at* http://www2.law.columbia.edu/instructionalservices/liebman. Liebman counted as errors all cases in which the conviction or death sentence was reversed.

11 Victor L. Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433, 439 (2002).

12 One of the differences in their findings may be that Liebman counted as errors all cases in which the conviction or death sentence was reversed, even if the defendant ultimately ended up back on Death Row. He did not include commutations, where a governor or board of pardons changed a sentence from death to life in prison. Streib did include commutations and based his calculation on the ultimate outcome of the case, so if a woman's conviction or death sentence was reversed but she was ultimately re-sentenced to death, her case would not be included in Streib's calculation.

13 The mistakes most prevalent in capital cases are: inadequate lawyers failing to raise key points in their client's defense; prosecutors or police officers withholding evidence favorable to the defense; constitutional violations in jury selection, such as unfairly disqualifying people of color from serving on the jury; unfair or coercive interrogation techniques – especially against vulnerable defendants such as mentally retarded people and juveniles – that result in inaccurate "confessions"; and either intentional or negligent errors in testing of physical evidence by the prosecution. See, for instance, April Witt, *Allegations of Abuses Mar Murder Cases* (first of four articles), WASH. POST, June 3-6, 2001, and Steven Weinberg, *Breaking the Rules, Who Suffers When a Prosecutor is Cited for Misconduct*?, Center for Public Integrity (June 26, 2003).

14 Since 1976, 227 of the roughly 4,600 men who have been sentenced to death have had their sentences commuted.

15 Texas Defender Service, *Lethal Indifference: The fatal combination of incompetent attorneys and unaccountable courts in Texas death penalty appeals,* (2002).

16 Stephen B. Bright, *Turning Celebrated Principles Into Reality*, The NACDL Champion, 6 (Jan./Feb. 2003).

17 Anthony Lewis, *The Silencing of Gideon's Trumpet*, NEW YORK TIMES, April 20, 2003.

18 Lisse Olsen, *Uncertain Justice,* SEAT. POST-INTEL, Aug. 6, 2001.

19 Paul Duggan, *Texas-Sized Case of Injustice*, WASH. POST*,* Feb. 22, 2000, at A03.

20 Commonwealth v. King, 839 A.2d 237, 238 (Pa. 2002)

21 Jeff Blumenthal, *Adequacy of Counsel, Funding in Capital Cases is Argued,* LEG. INTELL., July 23, 2001.

22 DeWayne Wickham, *It's Time to Stop Killing the Innocent*, USA Today, Feb. 25, 2000; Jeb Phillips, *Talladega: Death Row Country. Is Fairness Missing From the State's Use of Capital Punishment?*, BIRM. POST-HERALD, Dec. 2001; *see also* "The Justice Project's Profiles of Injustice."

23 The term "official misconduct" refers to actions by a government official, usually a police officer or prosecutor that violate ethical or legal standards such as perjury, witness tampering, coerced confessions, planting false evidence, or failing to provide to the defense evidence that might prove a defendant's innocence.

24 See for example, Ken Armstrong and Steve Mills, *The Failure of the Death Penalty in Illinois. Part 1: Death Row Justice Derailed,* CHI. TRIB., (Nov. 14, 1999); Steve Weinberg, *Breaking the Rules; Who Suffers When a Prosecutor is Cited for Misconduct?* Center for Public Integrity, (June 26, 2003), *available at* http://www.publicintegrity.org/pm/default.aspx?sID=main; Richard Dieter, *The Future of the Death Penalty in the U.S.: A Texas-Sized Crisis,* (May 1994)*;* and Michael Kroll, *Killing Justice: Government Misconduct and the Death Penalty.*

25 Death Penalty Information Center.

26 Exculpatory evidence is evidence that tends to prove a defendant may be innocent.

27 Peter Marks *Inseparable; Sunny Jacobs and Micki Dickoff were Decades and Worlds Apart When Murder, a Death Sentence and the Essence of Friendship Brought Them Back Together.* NEWSDAY, 48, (Pt. II, Sept. 8, 1992).

28 Information provided by Wanda Jean Allen's appellate trial counsel.

29 Kathleen A. O'Shea, Women and the Death Penalty in the United States, 1900-1998, 130 (Praeger 1999).

30 Joan Howarth, *Executing Caucasian Masculinities: Learning from Karla Fay Tucker*, 81 OR. L. REV. 183 (2000).

31 Professor Streib also looked at the question of whether a woman's lesbianism might increase the likelihood of her death sentence. He wrote, "While one hopes the jury would not decide upon death because she is a lesbian, it seems unlikely the jury would vote to save her life because she is a lesbian." See Victor Streib, *Death Penalty for Lesbians*, 1 NAT'L J. OF SEX. ORIENT. LAW 105, 114 (1995).

32 Violent women are more than twice as likely as violent men to commit the offense against someone close to them and women in prison for homicide were almost twice as likely to have killed an intimate than men in prison for homicide. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Bulletin, "Women in Prison."

33 Elizabeth Rapaport, *Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-Furman Era*, 49 SMU L. REV. 1507, 1510-1512 (1996).

[34] US DOJ., Natl. Inst. Of Corrections, *Research, Practice, and Guiding Principles for Women Offenders, Gender-Responsive Strategies*, 5, (June 2003). The report shows that 48% of women in jails but only 13% of men, and 48% of women in state and federal prisons but only 12% of men, had been abused.

[35] Angela Browne, Brenda Miller, and Eugene Maguin, *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women,* INT'L J. LAW AND PSYCH., (May 1999). The authors also found that 59% reported sexual abuse during childhood or adolescence; 53% reported that a partner had threatened to kill them; and 62% reported they had been injured by an intimate partner during adulthood.

[36] US DOJ., Natl. Inst. Of Corrections, *Research, Practice and Guiding Principles for Women Offenders, Gender-Responsive Strategies,* 6-7, (June 2003).

[37] Atkins v. Virginia, 528 U.S. 304 (2002).

[38] Adam Buckley Cohen, *Who was Wanda Jean?,* THE ADVOCATE, (March 13, 2000), at 31. *See also* Affidavit of defense counsel, Bob Carpenter, in case of *Wanda Jean Allen v. State of Oklahoma,* filed on Feb. 21, 1991.

[39] *Va. Woman Sentenced to Death,* (June 4, 2003), CBSNEWS.COM.

[40] State of Illinois v. Pulliam, 680 N.E. 2d 343, 349 (Ill.1997).

[41] Ted Wendling, *Death Row Inmate Reveals Inequities; Ohio's Only Woman Awaiting Execution is Isolated*, THE PL. DEAL., Nov. 1, 2003, at B1. The article quotes from a letter Roberts wrote, Oct. 13, 2003, to OHIOSORT, a prisoner advocacy organization.

[42] Phyllis Chesler, *A Double Standard for Murder*, NEW YORK TIMES, Jan. 8, 1992.

[43] *Death Row Complaints Cite Four Guards*, MIAMI HERALD, July 13, 2002.

[44] Comment by the attorney for one of the survey participants.

[45] Terry Kupers, *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It,* (1999) at 57 (describing and endorsing the findings of studies of the effects of isolated confinement on prisoners).

[46] Comments by survey participants.

[47] *See e.g.,* U.S. v. Turlington, 87 Fed. App. 999 (5th Cir. 2004) (noting that the defendant had sexual encounters with six different female prisoners while he was a prison guard); Escalara v. Lunn, 361 F.3d 737, 740-42 (2d Cir. 2004) (noting that during the investigation of the sexual abuse of one female prisoner by a male guard, staff learned that another male officer had forced a second female prisoner to expose her breasts to him in order to receive medication and had threatened her for speaking with staff); Riley v. Olk-Long, 282 F.3d 592, 595-97 (8th Cir. 2002) (describing how a prison guard verbally abused, harassed and raped a female prisoner); Daskalea v. District of Columbia, 227 F.3d 433, 438-40 (D.C. Cir. 2000) (describing a female prisoner subjected to verbal abuse, attempted assault, and forced strip-teasing by correctional officers. The court observed that "[t]his is not the first time the federal courts have reviewed charges of sexual abuse by D.C. correctional officers against female inmates."); Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia, 877 F. Supp. 634, 639-40 (D.D.C. 1994) (finding that there were "many incidents of sexual misconduct between prison employees and female prisoners in all three of the women's facilities in this case," including sexual assaults to which the prisons responded inadequately), *vacated in part, mod. in part on other grounds,* 899 F. Supp. 659 (D.D.C. 1995), *remanded on other grounds,* 93 F.3d 910 (D.C. Cir. 1996); Jordan v. Gardner, 986 F.2d 1521, 1526-29 (9th Cir. 1993) (holding unconstitutional under the Eighth Amendment a policy of male guards conducting random, non-emergency, suspicionless "pat down" clothed-body searches of female prisoners, including their breasts and crotch, and concluding that the searches were a wanton and unnecessary infliction of pain).

[48] Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. Prisons* (1996) at 14.

[49] *See* Mem. Op. and Order, Moya v. City of Albuquerque, (No. 96-1257 DJS/RLP), (D.N.M., Nov. 17, 1997); (dismissing a claim by two female prisoners that they were strip-searched by male guards because of a lack of a claim of physical injury, although one of the women subsequently attempted suicide as a result of the strip-search, and had to have her stomach pumped); Ashann Ra v. Virginia, 112 F. Supp. 2d 559, 566 (E.D. Va. 2000), (dismissing a claim that a prisoner was routinely viewed in the nude by staff of the opposite sex despite finding that the claim violated clearly established constitutional rights); Adnan v. Santa Clara Co. Dep't of Corrections, WL 32058464 (2002) at 3, (N.D. Cal., Aug. 15, 2002) (dismissing damages claim where prisoner alleged that he was kept in solitary confinement, his hands and feet were shackled, he was subjected to body-cavity searches, and he was allowed out of his cell only three hours a week, because the prisoner did not allege any physical injury); Seaver v, Manduco, 178 F. Supp. 2d 30 (D. Mass. 2002) (dismissing a claim by prisoners that they had been subjected to retaliatory strip and body-cavity searches by guards).

[50] For example, the Texas prison grievance forms indicate that grievances will be rejected if the prisoner cannot show that he or she attempted to resolve the problem with staff prior to filing.

[51] Courts have frequently made factual findings that staff retaliated when prisoners attempted to file grievances. *See, e.g.,* Walker v. Bain, 257 F.3d 660 (6th Cir. 2001) (noting jury verdict for prisoner whose property had been confiscated in retaliation for filing grievances); Gomez v. Vernon, 255 F.3d 1118 (9th Cir. 2001) (affirming injunction for prisoners who were the subject of staff retaliation for filing grievances and litigation); Trobaugh v. Hall, 176 F.3d 1087 (8th Cir. 1999) (ordering award of compensatory damages for prisoner who was placed in isolation for filing grievances); Hines v. Gomez, 108 F.3d 265 (9th Cir. 1997) (affirming jury verdict for prisoner subjected to retaliation for filing grievances).

[52] *See, e.g.,* Gauntt v. Miracle, 2002 WL 1465763 (N.D. Ohio, 2002) (dismissing prisoner lawsuit for missing five-day grievance deadline); Chelette v. Harris, 229 F.3d 684 (8th Cir. 2000) (affirming dismissal of prisoner's case because of failure to go through the grievance system when the prisoner had been told by the warden that he would "take care of" the prisoner's medical problem, leading the prisoner not to file a formal grievance); Ford v. Johnson, 362 F.3d 395 (7th Cir. 2004) (dis-

missing a prisoner's claim that he had been subjected to a brutal beating by staff and had been denied medical care for his injuries when, after six months of waiting for a decision from the prison grievance system, the prisoner attempted to file in court); Ferrington v. Louisiana Dep't of Corrections, 315 F.3d 529 (5th Cir. 2002) (holding that a prisoner's near-blindness did not excuse his failure to use the prison grievance system); Steele v. New York Dep't of Corrections, 2001 WL 777931 (S.D.N.Y., June 19, 2001) (dismissing a prisoner's lawsuit because of failure to go through the grievance system even though the prisoner had been out of the prison for the entire period during which he could have filed a grievance; he had filed a grievance upon his return, but the grievance system refused to process it because it was untimely); Jackson v. District of Columbia, 254 F.3d 262 (D.C. Cir. 2001) (dismissing a lawsuit for failure to use the grievance system when the prisoner had complained to the warden regarding the denial of his right to practice his religion, and the warden said that he should go to court).

53 National Commission on Correctional Health Care, *The Health Status of Soon-to-be-Released Inmates: A Report to Congress* (2002) at 3.

54 *Id.* at 18-27. The rate for HIV infection in prisons is eight to 10 times the rate in the community; the rate for Hepatitis C is nine to 10 times the community rate; and the rate for active tuberculosis in prisons is an astounding 17 times the rate in the community. *Id.* at 18.

55 *Id.* at 29-32.

56 *See, e.g.,* Morales Feliciano v. Calderon Serra, 300 F. Supp. 2d 321, 324-25 (D.P.R.) (no gynecological services; mammogram appointments routinely missed because of lack of transportation), *aff'd,* 378 F.3d 42 (1st Cir. 2004); Ruiz v. Johnson, 37 F. Supp. 2d 855, 900-01 (S.D. Tex. 1999) (prisoner with severe pain and vaginal bleeding waited six months for gynecological appointment; she eventually passed a mass of tissue "about the size of a tennis ball" and had her uterus and ovaries removed), *rev'd on other grounds,* 243 F.3d 941 (5th Cir. 2001), *adhered to on remand,* 154 F. Supp. 2d 975 (S.D. Tex. 2001); Women Prisoners of the District of Columbia v. District of Columbia, 877 F. Supp. 634 (D.D.C. 1995) (finding Eighth Amendment violation based on jail's failure to provide prenatal care for detained women, confining in lock-up women waiting to see doctor during pregnancy emergency, and shackling woman in labor) *vacated in part, mod. in part on other grounds by* 899 F. Supp. 659 (D.D.C. 1995), *remanded on other grounds by* 93 F.3d 910 (D.C. Cir. 1996); *Casey v. Lewis,* 834 F. Supp. 1477, 1493 n.176 (D. Ariz. 1993) (prisoner who was referred for gynecological appointment for severe pain "ASAP" had not been seen six weeks later; psychiatrist testified that the pain aggravated the prisoner's mental health problems, causing her to become psychotic).

57 Human Rights Watch, *Ill-Equipped: Prisons and Offenders with Mental Illness* at 38-44 (2003).

58 For federal court decisions evaluating conditions similar to those reported in the survey, *see* Gates v. Cook, 376 F.3d 323, 340 (5th Cir. 2004) (overheated conditions exposed prisoners to unconstitutional risk of heat-related illness; pest infestations also constituted Eighth Amendment violation); Gaston v. Coughlin, 249 F.3d 156, 164-65 (2d Cir. 2001) (prisoner's exposure to "freezing" temperatures set forth a colorable Eighth Amendment claim; his claim of unsanitary conditions including rodent infestation also stated a claim); Palmer v. Johnson, 193 F.3d 346, 352-53 (5th Cir. 1999) (failure to protect prisoners from cold temperatures constituted Eighth Amendment violation); Dixon v. Godinez, 114 F.3d 640, 642-44 (7th Cir. 1997) (inadequate heating in prisoner's cell was sufficient to overcome summary judgment motion); Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996) (inadequate ventilation and air flow violates the Eighth Amendment if it undermines health and sanitation); Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992) (prisoner's claims of unsanitary conditions including roaches, rodents and worms that turned into small black flies, if true, satisfy the objective test for cruel and unusual punishment); Foulds v. Corley, 833 F.2d 52, 54 (5th Cir. 1987) (prisoner's claim of extremely cold cell with rats, if proven, would violate the Eighth Amendment); Ramos v. Lamm 639 F.2d 559, 569-70 (10th Cir. 1980) (states must provide adequate ventilation to prisoners); Reece v. Gragg, 650 F. Supp. 1297, 1304 (D. Kan. 1986) ("oppressive heat" in the jail contributed to finding of constitutional violations).

59 Overton v. Bazzetta, 539 U.S. 126, 137 (2003), *on remand sub nom.* Bazzetta v. McGinnis, 79 Fed. Appx. 161, 2003 WL 22434575 (6th Cir. 2003) (remanding for trial question of constitutionality of regulation allowing indefinite withdrawal of visitation rights, as applied to individual claims).

60 O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987).

61 The Supreme Court has accepted certiorari in a case that struck down RLUIPA as being unconstitutional. *Cutter v. Wilkinson,* 349 F.3d 257 (6th Cir. 2003), *cert. granted*, October 12, 2004 (No. 03-9877).

62 Callins v. Collins, 510 U.S. 1141, 114 S. Ct. 1127, 1138 (1994) (Blackmun, J., dissenting from denial of certoriari) (internal quotation marks, brackets omitted).

63 The Constitution Project, *Mandatory Justice: Eighteen Reforms to the Death Penalty,* xiii, (2001).

64 *See* 31 HOFSTRA L. REV. 913 (2003).

65 *See* note 63 at xiv.

66 *Id.*

67 *Id.*

68 Butler v. Mississippi, 608 So.2d 314 (Miss. 1992).

69 Amnesty International USA, *Fatal Flaws: Innocence and the Death Penalty in the USA.*

70 Andrew Tilghman, *Woman Awaits Appeals in Family's Deaths*, HOUSTON CHRONICLE, (July 7, 2004).

71 Rhea Davis, *Condemned Inmate's Attorneys File Lawsuit: A Federal Court is Asked to Stop the Execution Until Boxes of Evidence Can Be Checked*, HOUSTON CHRONICLE, (Oct. 22, 2004).

72 Rhea Davis, *Execution Ends Week of Pleas: DNA Lab Worries are Not Enough to Spare Green,* HOUSTON CHRONICLE, (Oct. 27, 2004).

73 Paul Duggan, *Texas-Sized Case of Injustice*, WASH. POST, (Feb. 22, 2000), at A03.

74 *Id.*

[75] Beets v. Collins, 986 F.2d 1478 (5th Cir. 1993).

[76] Jeb Phillips, *Talladega: Death Row Country. Is Fairness Missing From the State's Use of Capital Punishment?* BIRMINGHAM POST-HERALD, (Dec. 2001).

[77] DeWayne Wickham, *It's Time to Stop Killing the Innocent*, USA TODAY, (Feb. 25, 2000); *See also* The Justice Project, *Profiles of Injustice*.

[78] *See* note 27. *See also* Lane Kelley and Barbara Walsh, *Woman Freed After 17 Years, Guilty Plea,* FT. LAUD. SUN-SENTINEL, (Oct. 10, 1992).

[79] Trial Transcript from *State v. Wanda Jean Allen.* At 394, 446. Case No. CRF-88-6621. District Court of Oklahoma County, Oklahoma. Cited in Wanda Jean Allen v. State, 1994 OK CR 13.

[80] *Id.* at 58, 86.

[81] *See* note 38.

[82] Harris v. Alabama, 513 U.S. 505, 506 (1995).

[83] Post-Hearing Reply Brief in Opposition to the State's Proposed Memorandum Opinion, 22, (CC-88-1237.60), Circuit Court for Montgomery County of Alabama, Nov. 12, 1999.

[84] Phillip Rawls, *Alabama woman on death row gets new sentencing hearing,* Ledger-Inquirer.com, (Oct. 29, 2004).

[85] Deborah Sharp, *Damsel of Death Trial Starts in Florida*, USA TODAY, (June 13, 1992).

[86] Jackie Hallifax, (Oct. 9, 2002).

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