# Detailed Table of Contents

## INTRODUCTION .................................. 6

## UNIT 1: CRIME .............................. 9

### Chapter 1: Crimes
- The Basics of Crime ....................... 10
- Elements of a Crime ...................... 11
- Murder Most Foul ......................... 13
- No Honor Among Thieves ............... 16
- Hate Crimes ................................ 18
- Cybercrime ................................ 23

### Chapter 2: Defenses
- An Overview of Defenses ............... 26
- Self-Defense ................................ 29
- The Insanity Defense ................... 31
- Entrapment ................................ 34

### Chapter 3: Criminals
- History of Violent Crime in America .. 36
- How Much Crime Is There? ............ 41
- Youth, Gangs, and Violence .......... 43
- White-Collar Criminals ................. 50
- Swindlers and Con Artists ............ 53

### Chapter 4: Crime Victims
- Who Are the Victims? ................... 56
- Victims of Violent Crimes ............ 56
- Victims of Property Crimes .......... 59
- Helping Victims of Crime .............. 61
- The Push for Victims’ Rights ......... 64

## UNIT 2: THE POLICE ...................... 67

### Chapter 5: Police and Society
- From Volunteers to Professional .... 68
- Police ........................................ 68
- Local Police ............................... 70

### Chapter 6: Methods and Investigations
- Community Policing ..................... 76
- Criminal Investigations ............... 79
- Crime Labs ................................ 82

### Chapter 7: Police and the Law
- Criminal Procedure ..................... 86
- The Law of Search and Seizure ........ 87
- Has a Search or Seizure Taken Place? 87
- Is the Search or Seizure Reasonable? 90
- Motor Vehicle Exception ............... 93
- The Stop and Frisk Exception ......... 94
- Other Exceptions ......................... 98
- Interrogation and Confessions ....... 102
  - Miranda’s Aftermath ................. 104
  - The Exclusionary Rule ............... 109

### Chapter 8: The Limits of Police Authority
- Racial Profiling ......................... 113
- Police Corruption ....................... 116
- Use of Force ............................... 119
- Policing the Police ...................... 123
- You and the Police ...................... 129

## UNIT 3: THE CRIMINAL CASE ......... 131

### Chapter 9: Courts and the Case Process
- The Two Systems of Criminal Courts .. 132
- Judges and Judicial Independence .... 133
- Criminal Lawyers ....................... 135
- The Rights of Criminal Defendants ... 138
- The Criminal Case Process .......... 143
- Using This Unit ......................... 146

### Chapter 10: Investigation and Arrest
- Arrest ....................................... 148
- Police Crime Investigation Report .. 148
- State Criminal Code ..................... 150
- In the Defense of Thomas Evans .... 151

### Chapter 11: Pretrial
- First Appearance Before a Judge ..... 153
- The Question of Bail .................... 153
- Prosecutorial Review .................... 155
- Plea Bargaining .......................... 159
- Probable Cause Hearing ............... 161
- Evans’ Probable Cause Hearing ..... 162
- Arraignment .............................. 162
- An Issue at the Arraignment .......... 163
History of the Death Penalty in America

“Capital punishment” is another expression for the death penalty, or the legal execution of a criminal. The word capital comes from the Latin word for head. In ancient times, capital punishment was often carried out by beheading. This method has never been used in America. But criminals have been put to death by shooting, hanging, electrocution, poison gas, and lethal injection. Today, the most common method is lethal injection, followed by electrocution. Some states, however, allow one of these other methods as an option.

Once a person is sentenced to death in America, most states follow a similar procedure. The sentenced criminal is normally held in a maximum-security prison’s special section known as death row. Usually, prisoners on death row have little contact with other prisoners. Each occupies a small cell alone, and each takes meals and exercises alone. This life may continue for years during appeals of the sentence. An appeal hearing for a death sentence is automatic in every state except Arkansas.

In the American colonies, legal executions took place as early as 1630. As in England, the death penalty was imposed for many different crimes, even minor ones such as picking pockets or stealing a loaf of bread. During the 1800s in England, for example, 270 different crimes were capital offenses, or crimes punishable by death. Thousands of people sometimes attended public hangings. Gradually, however, England and America reduced the number of capital offenses, until the main focus was on first-degree murder—murders showing deliberation, willfulness, and premeditation. They also moved executions within the walls of prisons to eliminate the spectacle of public executions.

In the 1800s, many people in America and Europe began to oppose the death penalty altogether. Michigan abolished it in 1845 and Wisconsin entered the Union in 1848 without a death penalty in its statutes. The movement against the death penalty grew stronger after World War II, especially in Europe, where many were weary of so much killing during the war. One by one all the Western European nations and Canada did away with capital punishment, until the United States was the last Western democracy that still executed criminals. Twelve American states, mainly clustered in the Midwest and Northeast, have also banned executions. New York, which had banned the death penalty 30 years before, reinstated it in 1995.

Public opinion on the death penalty has varied over time. In the 1930s, opinion polls showed strong support for capital punishment. From that time, support gradually declined. By the mid-1960s, it had fallen to less than 50 percent. But then support started to rise again. By the 1990s, following decades of widespread anxiety over crime and violence, some states such as California were showing almost 80 percent of the population in favor of executing criminals. Other polls showed that 62 percent of the population felt that the death penalty deterred crime, and 51 percent said they would support it even if it did not deter crime.

In 1991, researcher Robert M. Bohm did an analysis of 21 different polls on the death penalty. He found that certain factors—people’s religion, age, occupation, or size of the city they lived in—showed little relation to their attitude on capital punishment. But other factors did. Men were more likely to favor it than women. Whites supported it
more than blacks. Republicans endorsed it more than Democrats. The wealthy approved it more than the poor. People from the South were more likely to oppose the death penalty than people from other regions.

Recent Legal History of the Death Penalty

Following public protest over capital punishment in the 1950s and 1960s, the number of executions in America gradually declined. In 1967, there were only two, and the following year the Supreme Court struck down death-penalty laws for crimes other than murder—crimes such as kidnapping, rape, and federal bank robbery. That year also saw the beginning of an unofficial moratorium on executions. States waited to see how the Supreme Court would rule on the constitutionality of capital punishment. No executions took place in the United States from 1968 through 1976.

In the 1972 case of Furman v. Georgia, the Supreme Court declared capital punishment unconstitutional as it was then applied. The court said the death penalty was a violation of the Eighth Amendment prohibition against cruel and unusual punishment because there did not seem to be any consistency in who was given a death sentence and who was not. The court suggested that new laws might be acceptable, if they provided clear standards for which criminals should be given death sentences.

Between 1972 and 1976, 35 states wrote new capital punishment laws to try to meet the Supreme Court’s suggestions. These new laws fell into two broad groups. One group, represented by laws in Georgia, Texas, and Florida, clearly described which capital crimes could be punished by death. These laws also set up a weighing system for deciding when the death penalty should be applied. In a separate penalty trial after a conviction for first-degree murder, a jury would consider mitigating circumstances that tended to excuse the crime or the criminal’s behavior and aggravating circumstances that made the crime seem worse. The court could only sentence someone to death if the aggravating circumstances outweighed any mitigating circumstances.

A second group of laws, represented by statutes from North Carolina and Louisiana,
sought to overcome the Supreme Court’s objections in another way. These laws simply made the death penalty mandatory for anyone convicted of a capital crime.

In 1976, the Supreme Court in *Gregg v. Georgia* ruled that the first type of law, based on the act of balancing mitigating and aggravating circumstances, was constitutional. This upheld the Georgia, Texas, and Florida death penalties. The court, however, struck down the second type. It declared unconstitutional North Carolina’s and Louisiana’s mandatory death sentences. The court said a mandatory sentence was unduly harsh and rigid and made no allowance for the particular circumstances of each case.

Executions began again in 1977, though many states still waited for a ruling on one further major issue: whether the death penalty was being applied equally. From 1977 through 1985, only 50 executions took place, though almost 2,000 prisoners waited on death rows.

The test case came with the Georgia case of *McCleskey v. Kemp* (1987). In it, lawyers for the condemned man submitted a study of how the death penalty had been applied in Georgia during the 1970s.

The study, by University of Iowa Professor David Baldus, showed that blacks who had killed whites had been sentenced to die seven times more often than whites who had killed blacks. Even after accounting for other variables, such as the viciousness of the crime, blacks had been sentenced to die more than four times as often as whites.

In its decision, the U.S. Supreme Court acknowledged that there seemed to be some *statistical* racial discrimination in Georgia’s application of the death penalty. But the justices ruled by a 5–4 vote that a mere statistical variation was not enough to invalidate the death penalty. To do that, the defendant would have to show that the state had somehow encouraged the result or that there was actual discrimination in a particular case. Since the defendant had offered no such proof, which would be difficult to acquire, the court upheld the death penalty.

In the decade after *McCleskey*, the court tended to support the prosecution and make appeal of a death sentence more difficult. The justices ruled that:

- Death-row inmates have no right to free legal assistance after an initial round of appeals. (*Murray v. Giarratano*, 1989)
- Inmates may lose their right to appeal if they make procedural errors. (*Coleman v. Thompson*, 1991)
- Inmates can’t take advantage of any rule changes or precedents set after they have exhausted their appeals. (*Teague v. Lane*, 1989; *Butler v. McKellar*, 1990; and *Saffle v. Parks*, 1990)
- The prosecution may introduce victim-impact statements in penalty hearings. These statements may detail the pain and suffering of the victim. This decision overturned several earlier rulings banning such statements because they tend to inflame juries against convicted murderers. (*Payne v. Tennessee*, 1991)
- Death-row inmates cannot get a federal hearing on new-found evidence proving their innocence unless that evidence overwhelmingly proves their innocence. (*Herrera v. Collins*, 1993)

In 1996, Congress passed the Anti-Terrorism and Effective Death Penalty Act. Part of this act limited state prisoners’ habeas corpus appeals in federal court. The writ of habeas corpus is guaranteed by the U.S. Constitution. The writ is an order to bring a prisoner before a court to determine if the prisoner is legally held. Many death penalty appeals are petitions of habeas corpus. Supporters of the act say many prisoners are simply buying time by filing frivolous habeas corpus petitions. Opponents of the law argued that capital cases should be carefully reviewed and that the act prevents this. In *Felker v. Turpin* in 1996, the Supreme Court upheld this part of the act.

But beginning in 2000, the Supreme Court decided a series of cases that upheld prisoners’ rights to appeal and limited the death penalty. In 2000, it overturned two
The Supreme Court said that the 1996 act only banned unreasonable appeals. When “clearly established” constitutional rights have been violated, the federal courts may intervene. The two Virginia cases involved defendants with the same last name, but the defendants were not related.

In *Terry Williams v. Taylor*, the court ruled 6–3 that the defendant had been deprived of his right to effective counsel. The defense attorney failed to mention at the sentencing hearing that the defendant was borderline mentally retarded, he had been fed whiskey as a child, and his parents had been jailed for child abuse and neglect.

In *Michael Wayne Williams v. Taylor*, a unanimous court ruled that the defendant did not receive a fair trial. The jury forewoman failed to disclose that she was the ex-wife of the sheriff and a former client of the prosecutor.

In 1989, the Supreme Court had ruled that mentally retarded criminals could be executed (*Penry v. Lynaugh*). In 2002, the court overruled this opinion in the case of *Atkins v. Virginia*. In a 6–3 decision, the court declared that it was cruel and unusual punishment to execute the mentally retarded. The court noted that since its decision in *Penry*, the number of states outlawing such executions had grown from two to 18 and that in other states the practice was rare. The court majority found that a consensus had grown in the United States against executing mentally retarded persons.

In 2005 in *Roper v. Simmons*, the Supreme Court overruled a previous decision on executing murderers who were under 18 when committing the crime. The court declared such executions violated the Eighth Amendment. The 5–4 court majority pointed out that only two nations in the world allowed such executions—the United States and Somalia. It also noted that although 19 states permitted these executions, only three states had carried them out in the last decade.

In recent years, about 60 prisoners have been executed each year. More than 3,000 inmates wait on death rows in prisons across the United States.
America. Much of this backlog is caused by appeals. Even though some rulings have made it harder to appeal, it still takes an average of nine years for each prisoner to exhaust the appeals process. And it costs a state from $2 to $3 million to process each case.

Two studies by a Columbia Law School professor, published in 2000 and 2002, found that most death-row appeals succeed. Surveying the almost 5,000 capital cases appealed in state and federal courts between 1973 and 1995, the first study revealed that appeals courts found errors serious enough to overturn convictions in almost 70 percent of the cases. Three-fourths of those with overturned convictions got a sentence less than death when the case was retried or plea bargained. The second study found: “The higher the rate at which a state or county imposes death verdicts, the greater the probability that each death verdict will have to be reversed because of serious error.”

Opponents of the death penalty argue that these statistics expose a deeply flawed system. Supporters of the death penalty counter that the studies reveal how carefully the system reviews each case to make sure only those deserving the death penalty receive it.

For Discussion
1. Why do you think prisons separate those sentenced to death from other prisoners?
2. Why do you think the United States is the only Western democracy that executes criminals?
3. What reason did the Supreme Court give in Furman for saying that death penalty statutes were unconstitutional? How did states change their statutes to make them constitutional? Do you agree with the court that these statutes are constitutional? Why or why not?
4. What did the court decide in the McCleskey case? Do you agree with its decision? Why or why not?
5. Which of the decisions after McCleskey do you agree with? Disagree with? Why?
6. Some have argued that executions should be televised. Do you agree? Explain.

Class Activity: Life or Death

In this activity, students role play sentencing juries in capital cases using a capital punishment statute. The defendant in each case has already been convicted of first-degree murder. Each jury must determine the penalty. The only two choices available are life imprisonment or death.

1. Form four juries. Review the Capital Punishment Statute, below. Each jury should decide one of the four cases on page 247.

2. Members of each jury should:
   a. Make a list of the mitigating circumstances, those that seem to call for mercy.
   b. Make a list of the aggravating circumstances, or those that make the crime seem especially violent or repulsive.
   c. Weigh the mitigating and the aggravating circumstances against each other. If the jury feels the case calls for leniency, it should recommend life imprisonment. If it thinks the case is particularly barbarous or savage, it should recommend death. The recommendation does not have to be unanimous. Only a majority is required for a sentencing recommendation.
   d. Prepare to report to the class. One student in each group should report the mitigating circumstances the group considered. Another student should report the aggravating circumstances. A third student should report the sentence and the number of students who voted each way.

Capital Punishment Statute. After finding a defendant guilty of murder in the first degree, the jury shall look at the circumstances of the crime and at the character of the individual defendant. If it finds the aggravating circumstances of the crime and the defendant outweigh the mitigating circumstances, it shall return a recommendation of the death penalty. Otherwise, it shall recommend life imprisonment.
Case 1: Luby Waxton  
**Age:** 22  
**Sex:** Male  
Luby has been in and out of jail ever since he was a teenager. He was convicted of shoplifting, burglary, and assault with a deadly weapon. He received a light sentence for each, because he has the mental capacity of an 8-year-old.  
On June 3 of this year, Waxton began drinking in the morning. He decided to rob a local grocery store to get some money. That afternoon, Waxton bought a small handgun.  
When he got to the market, he entered the store, bought some cigarettes, and then announced a holdup.  
Waxton went behind the counter and emptied the cash register. He put his gun to the sales clerk's head and pulled the trigger. The clerk, an old woman, died instantly.  
Waxton was convicted of armed robbery and murder in the first degree.

Case 2: James Woodson  
**Age:** 24  
**Sex:** Male  
Woodson has no prior record of being arrested.  
Woodson has been active in the anti-abortion movement. He believes that abortion is murder. After taking part in picketing an abortion clinic, Woodson became frustrated that the clinic remained open. He believed that much stronger action was necessary, but knew his fellow picketers would not go along with him.  
So late on the night of July 17, he broke into the clinic. He poured gasoline throughout the first floor and put a match to it. The clinic burned to the ground. Unknown to Woodson, a security guard was on the third floor. The guard died in the fire.  
Waxton was convicted of armed robbery and murder in the first degree.

Case 3: Phong Tran  
**Age:** 18  
**Sex:** Male  
Tran has a series of prior juvenile arrests for petty theft and assault. He has been involved in gang activity for the past five years.  
His family immigrated to the United States when he was 7 years old. His father abandoned the family shortly afterward, and his mother could not handle three children by herself. Placed in a foster home at age 13, he ran away and took to the streets.  
He found a new family in a local gang, headed by Tony Chin, age 35. Chin provided boys in the gang free housing, meals, movies, and video games. In return, they ran errands, protected Chin's businesses, and helped Chin's criminal enterprises. Tran looked on Chin as his father.  
On January 7 of this year, Chin handed Tran a gun and told him that a “customer” needed a new Mercedes. Tran went to a mall and waited in the parking lot. When Sally Kim drove up in a new Mercedes, Tran ran up, pointed a gun at her, and demanded she get out. The car lurched and Tran shot Kim, killing her.  
Phong Tran was convicted of first-degree murder.

Case 4: Sonia Williams  
**Age:** 27  
**Sex:** Female  
Williams has no prior record.  
On September 10 of this year, Williams called the police and reported that she had been raped by a man named Greg. She was taken down to a hospital where a doctor examined her. He said he could find no evidence of rape.  
The police investigated her report and told Williams they could not arrest Greg. It was dark, they said, so she could have been mistaken about the identity of the attacker. Besides, they said, Greg had a perfect alibi for the night in question.  
Williams decided to take matters into her own hands. She bought a gun and waited around the corner where she allegedly first
attacked her. When Greg and a friend approached, she told Greg she had been looking for him and was glad to see him. She invited the two men to go somewhere for a drink. They got into her car and drove to a secluded spot, where she shot and killed both men.

Sonia Williams was convicted of first-degree murder.

Debriefing Questions
1. Do you think different juries would weigh the aggravating and mitigating circumstances differently? If so, is this fair? Why or why not?
2. If you were called to jury duty in a capital case, could you vote for the death penalty if circumstances warranted it? Why or why not?
3. Assume for the moment that you approve of the death penalty, what crimes should it apply to? Why?

Public Opinion on the Death Penalty

The public's attitude toward capital punishment has changed over the years. Polls show that the American public today strongly supports the death penalty. This support has grown much stronger since the 1960s. But polls also show that the strength of this support depends on how you ask the question. Note the differences between the two questions asked by Gallup polls.

Are you in favor of the death penalty for a person convicted of murder?

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What do you think should be the penalty for murder: the death penalty or life imprisonment with absolutely no possibility of parole?

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For Discussion
1. What do you think accounts for the shift in public opinion favoring the death penalty?
2. What do you think accounts for the different responses to the two questions? Which question do you think is better? Why?

Activity: Death Penalty Poll

In this activity, students conduct a poll on the death penalty.
1. Decide who you are going to poll. It can be the community, the school, or just one grade level.
2. Decide on how to get a random sample of the group you are polling. Determine how large a sample you will take.
3. Divide the class in two. One group should ask the first question; the other group, the second question.
4. Tabulate the results.

Debriefing Questions
1. How do your results compare with the official poll results?
2. How do you account for the similarities or differences?

Recent Developments in Capital Punishment

As of 2003, more than 3,000 prisoners were on death rows in the United States. California held the most (629), followed by Texas (453), Florida (364), and Pennsylvania (230). Despite these numbers, only about 60 convicts are executed each year. Part of this can be explained by the long appeals process. But there also appears to be a social reluctance to begin executing massive numbers of prisoners. Between 1977 and 2003, about 900 executions took place, most of them in the South. In fact, seven Southern states carried out three-fourths of all executions. The state of Texas by itself accounted for one-third of them.

Most of the executions have provoked little protest within the United States. Overseas, many of the executions have drawn widespread attention and some massive protests. The only recent execution hotly debated in America was that of Karla Faye Tucker, the first woman to be executed in Texas since 1863.

Karla Faye Tucker

Tucker had been a heroin addict since the age of 10. By 13, she was traveling with a rock band. For many years, she worked as a prostitute. In 1983 at age 23, she and her 37-year-old boyfriend broke into a biker’s apartment. Intoxicated on drugs and alcohol, they intended to steal money that the biker owed them. Her boyfriend attacked the biker with a hammer as he lay in bed. As the man lay unconscious, he moaned. Tucker later testified she found the moaning annoying and started striking him with a pickax. Her 28 blows killed him. Then she discovered that the biker was not alone in bed. A woman crouched in the corner. Tucker did not have enough energy left to attack her, so her boyfriend killed the woman.

Awaiting trial for the brutal murders, Tucker started reading the Bible. She said she soon realized the enormity of her crime. “At the time, I didn’t understand how the Holy Spirit works,” she said. “I just remember the whole weight of everything I had done suddenly
became a reality. Two precious lives were gone because of me.” She agreed to testify against her boyfriend with no promise of leniency. She thought she deserved the death penalty.

Both she and her boyfriend were convicted and sentenced to death. During the 14 years she waited on death row, she became a born-again Christian. In 1993, she married a prison minister. She spent her days acting as a minister and anti-drug counselor to prisoners. She also changed her mind about the death penalty. “I can’t take back the lives I took, but I can help save lives now,” said Tucker. “I can be a part of the solution.”

She drew supporters from unlikely quarters. The Rev. Jerry Falwell, a strong supporter of the death penalty, argued she should be spared. The detective who arrested her and the prosecutor in the case believed her change was genuine and hoped her sentence would be commuted to life. Even the brother of the woman she killed urged authorities not to execute her. A poll of Texans, who overwhelmingly support the death penalty, found less than half thought she should undergo it. In the two months before the execution, about 25,000 letters, faxes and phone calls reached the governor’s office. They ran about 5 to 1 against killing her.

The governor only had power to commute her sentence to life if state Board of Pardons and Paroles recommended it. The board voted unanimously against her, as it had in 17 straight cases. On February 3, 1998, she was executed.

One reason Tucker’s case drew so much attention was that few women are executed. About one of every eight people arrested for murder is a woman. But only one out of 50 people sentenced to death is a woman. One in 70 people on death row is woman, but only one other woman since 1977 had been executed.

But Tucker’s supporters argued that they didn’t champion her cause because he was a woman. Another woman was put to death in Florida a few weeks after Tucker with little protest. They wanted Tucker saved because she felt genuine remorse and had changed into a new person.

Some who thought she should be executed did not believe she had really changed. Others, however, did believe her. But they didn’t think this should make a difference. She had committed a brutal crime, they argued, and she deserved to pay for it with her life. “She’s had her mercy,” said Dianne Clements, president of Justice for All, a Houston-based criminal justice reform organization. “She’s had 14 years to put herself right by God.”

Are We Executing Innocent People?

Tucker never claimed to be innocent. But many on death row do. In fact, according to the Death Penalty Information Center, an anti-capital punishment group, 119 prisoners since 1973 have been released from death row because they were innocent. Many were exonerated due to the efforts of the Innocence Project. Led by Cardozo Law School professors Peter Neufeld and Barry C. Scheck, the Innocence Project provides free legal assistance to inmates who want to prove their
innocence through DNA tests. The project is run by volunteers and inmates must pay for the DNA testing themselves. Because of budget constraints, the project can only offer its services to a select number of prisoners. Scheck has argued that all states should authorize DNA testing when the tests could prove a person’s innocence.

One of the first states to allow DNA testing was Illinois. In this state, 12 inmates of death row have been executed since capital punishment resumed in 1977. But 13 have been released because they were innocent. One of the 13 was two days away from being executed before his execution was stayed. In November 1999, the Chicago Tribune ran a series of investigative articles analyzing all 285 death penalty cases in Illinois since 1977. The Tribune found that 40 percent of these cases had at least one of the following elements:

- The defendant had an attorney who had been disbarred or suspended, penalties reserved for lawyers who are unethical or incompetent.
- The prosecution’s case relied on a jailhouse informant, who received lenient treatment for naming the defendant. Many consider this type of evidence highly unreliable.
- The prosecution’s case relied on testimony from a crime lab technician who made a visual comparison of hairs. This is an outmoded practice that some states bar from being used in court.
- The defendant was black and the jury was all white.

In 2000, Illinois Republican Governor George H. Ryan, a supporter of capital punishment, took the extraordinary step of placing a moratorium on all executions in the state. He said he had “grave concerns about . . . [the] state’s shameful record of convicting innocent people and putting them on death row.” He called for an investigation of the state’s death penalty procedures.

Three years later, just days before he was to leave office in January 2003, Ryan announced that he was commuting the sentences of all 156 prisoners on Illinois’ death row.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Number Executed Since 1930</th>
<th>Number Executed Since 1977</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>610</td>
<td>313</td>
</tr>
<tr>
<td>Georgia</td>
<td>400</td>
<td>34</td>
</tr>
<tr>
<td>New York</td>
<td>329</td>
<td>0</td>
</tr>
<tr>
<td>California</td>
<td>302</td>
<td>10</td>
</tr>
<tr>
<td>North Carolina</td>
<td>293</td>
<td>30</td>
</tr>
<tr>
<td>Florida</td>
<td>227</td>
<td>57</td>
</tr>
<tr>
<td>South Carolina</td>
<td>190</td>
<td>28</td>
</tr>
<tr>
<td>Virginia</td>
<td>181</td>
<td>89</td>
</tr>
<tr>
<td>Ohio</td>
<td>180</td>
<td>8</td>
</tr>
<tr>
<td>Alabama</td>
<td>163</td>
<td>28</td>
</tr>
<tr>
<td>Louisiana</td>
<td>160</td>
<td>27</td>
</tr>
<tr>
<td>Mississippi</td>
<td>160</td>
<td>6</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>155</td>
<td>3</td>
</tr>
<tr>
<td>Arkansas</td>
<td>143</td>
<td>25</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>129</td>
<td>69</td>
</tr>
<tr>
<td>Missouri</td>
<td>123</td>
<td>61</td>
</tr>
<tr>
<td>Illinois</td>
<td>102</td>
<td>12</td>
</tr>
<tr>
<td>Tennessee</td>
<td>94</td>
<td>1</td>
</tr>
<tr>
<td>New Jersey</td>
<td>74</td>
<td>0</td>
</tr>
<tr>
<td>Maryland</td>
<td>71</td>
<td>3</td>
</tr>
<tr>
<td>Arizona</td>
<td>60</td>
<td>22</td>
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<tr>
<td>Indiana</td>
<td>52</td>
<td>11</td>
</tr>
<tr>
<td>Washington</td>
<td>51</td>
<td>4</td>
</tr>
<tr>
<td>Colorado</td>
<td>48</td>
<td>1</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>40</td>
<td>0</td>
</tr>
<tr>
<td>West Virginia</td>
<td>40</td>
<td>0</td>
</tr>
<tr>
<td>Nevada</td>
<td>38</td>
<td>9</td>
</tr>
<tr>
<td>Federal system</td>
<td>36</td>
<td>3</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>27</td>
<td>0</td>
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<tr>
<td>Delaware</td>
<td>25</td>
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<td>Oregon</td>
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<td>2</td>
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<tr>
<td>Connecticut</td>
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<td>Utah</td>
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<td>Iowa</td>
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<tr>
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<tr>
<td>New Mexico</td>
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<td>1</td>
</tr>
<tr>
<td>Montana</td>
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<td>2</td>
</tr>
<tr>
<td>Wyoming</td>
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<td>1</td>
</tr>
<tr>
<td>Nebraska</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Idaho</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Vermont</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>U.S. total</strong></td>
<td><strong>4,744</strong></td>
<td><strong>885</strong></td>
</tr>
</tbody>
</table>

row. The prisoners will serve life sentences without the possibility of parole. Ryan said that three years of study had shown deep-seated problems with capital trials, sentencing, and appeals. He stated: “Because the Illinois death penalty system is arbitrary and capricious and therefore immoral, I no longer shall tinker with the machinery of death.”

Incoming Democratic Governor Rod Blagojevich called Ryan’s action “a big mistake.” He thought each case should have been considered individually. “There is no one-size-fits-all approach,” he said. “We’re talking about people who committed murder.” Even so, he is not going to lift the moratorium on executions.

Senator Russ Feingold of Wisconsin has introduced a bill in Congress to halt federal executions and encourage states to do the same. The bill would create a blue ribbon panel to study the fairness of capital punishment.

Opponents of federal and state moratoriums believe that problems in the system are being addressed. They point out that the appeals process already takes many years, and a moratorium on executions would just lengthen it further. They emphasize that no innocent person has been executed in at least 50 years.

Congress has not acted on Feingold’s bill. But in 2004, Congress did pass the Innocence Protection Act. Among other things, it gives federal prisoners the right to ask a court for DNA tests to prove their innocence. It also provides grants to states that adopt measures that allow prisoners easier access to DNA tests, preserve biological evidence used for DNA testing, and issue minimum standards for court-appointed defense attorneys.

Scheck of the Innocence Project supports this new law. He believes many innocent people are on death row. Although he strongly advocates DNA testing, he says that it cannot solve all the problems in the criminal justice system, because biological evidence is only available in about 60 percent of all violent crimes.

Does the Death Penalty Deter Murders?

Since 1995, more than a dozen studies have claimed that executions and sentences of death reduce the murder rate. The studies have analyzed state and county death-penalty data over the past several decades.

One study found that each execution on average resulted in 18 fewer murders. Another study set the average lower—at five fewer murders—and yet another at three fewer murders.

One study looked at the types of murders deterred and found that executions even deterred murders by intimates and those done in the heat of passion. It also looked at the waiting time on death row. It found that for every 2.75 years the wait time before execution is reduced, “one extra murder is deterred.”

Another study looked at the effect of brief ban on capital punishment in the years 1972–1976 caused by the Supreme Court decision in Furman v. Georgia. The study found that the murder rate went up in 91 percent of the states when the ban went into effect. The murder rate dropped in 67 percent of the states when the death penalty was reinstated.

Still another study looked at differences state by state. It found that capital punishment in only six states deterred murders. The other 21 states with capital punishment did not deter murders. The difference was that the six states executed more convicts. They executed at least nine persons between the years 1977 and 1996. The study concluded that for deterrence to work, a state must execute a certain number of prisoners. Once states pass this threshold, the study found, the deterrent effect is strong.

All these studies have provoked great controversy and come under attack. Richard Berk, a UCLA professor of statistics and sociology, analyzed the studies in a 2005 paper titled “New Claims about Executions and General Deterrence: Déjà Vu All Over Again?” After reviewing the studies, he concluded that “credible evidence for deterrence is lacking.” Jeffrey Fagan, a professor at Columbia Law School, testified on the studies to a committee of the New York State Assembly in 2005. He noted that older studies had made claims similar to the recent ones. In fact, one was mentioned in the Supreme Court decision in Gregg v. Georgia. The older studies have been discredited.
Fagan concluded that the new studies were no better. He said that it would be extremely difficult to prove executions caused a decline in the murder rate. These studies, he argued, fell far short. He pointed out that all the studies except one failed to distinguish between different types of murder. The one that did found that executions deterred murders by intimates and those done in the heat of passion, “a claim that flies in the face of six decades of theory, research and facts on homicide.” He went on to say that the studies produced erratic results, failed to account for trends, ignored missing data, did not examine whether murderers knew about executions in their state, did not look at the deterrence effect of life without parole sentences, and failed to look at alternative causes of changes in the murder rate. He thought the studies were so shoddy that he called them “junk science.”

For Discussion
1. Do you think Karla Faye Tucker should have been executed? Explain.
2. Do you think Illinois Governor George H. Ryan was correct in suspending all executions in the state? Was he correct in commuting all the sentences? Do you favor a moratorium across the United States? Explain.
3. Do you think the federal Innocence Protection Act is needed? Explain.
4. If it could be proved that a number of innocent people have been executed, would that make you more likely to oppose the death penalty? Explain.
5. If it were proved that every execution deterred a certain number of murders, would you be more likely to favor the death penalty? Explain.

Class Activity: Taking a Stand on Capital Punishment

In this activity, students take a stand on the death penalty and reflect on arguments for and against the death penalty. The chart on page 254 summarizes some of these arguments.

1. The class should form a line based on how each person feels about the death penalty. Make one end of the room mark the spot for those who absolutely favor the death penalty. The other end marks the spot for those who absolutely oppose capital punishment. The stronger that people feel one way or the other, the closer they should be to the ends of the line. Those unsure of their opinion belong in the middle.
2. The first person from each end of the line are advocates—pro and con—for argument number one on the chart. They should sit together at a table and silently read and think about argument one. The advocates’ job is to present their assigned argument in their own words.
3. The second person from each end of the line are advocates for argument number two. They should sit together at a different table and read argument two. Continue through the line until you have tables with pro and con advocates for all seven arguments.
4. The remaining students should sit as arbiters at the tables. The arbiters’ job is to evaluate the advocates’ arguments.
5. The advocates should take 30 seconds each to make their arguments to the arbiters at their table.
6. After hearing the arguments, the arbiters should form a new line showing how they now feel about capital punishment. Like before, one end of the line should mark absolute approval and the other end absolute disapproval of the death penalty. Like before, one end of the line should mark absolute approval and the other end absolute disapproval of the death penalty.
7. After forming a new line, each pair of advocates should make their arguments in turn to the standing arbiters. After each pair has spoken, the arbiters should move on the line if they are swayed by the argument.

Debriefing Questions
1. Which arguments for and against the death penalty do you find most convincing? Least convincing? Why?
2. Can you think of other arguments for or against the death penalty?
### Death Penalty Arguments

<table>
<thead>
<tr>
<th>Pro</th>
<th>Con</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Capital cases are carefully reviewed. Mistakes are discovered. It has been more than 50 years since an innocent person has been executed.</td>
<td>1. Many innocent people have been released from death rows. Many undoubtedly remain. Are we willing to risk executing innocent people?</td>
</tr>
<tr>
<td>2. Capital punishment keeps people from committing murders. Recent studies have shown that executions deter murders.</td>
<td>2. There is no evidence that capital punishment has a deterrent effect. In states that have abolished the death penalty, murder rates have declined or remained the same.</td>
</tr>
<tr>
<td>3. If a person takes a life, that person should pay by giving a life. “An eye for an eye and a tooth for a tooth.” This is in accordance with the punishment purpose of the criminal justice system.</td>
<td>3. Killing a criminal is an evil on top of an evil. All the Western democracies have abolished it, and many religions oppose it.</td>
</tr>
<tr>
<td>4. To receive capital punishment, a person must be convicted of committing a horrible crime. The jury is carefully instructed and appellate courts scrutinize the case. If a defendant has been discriminated against, the appellate court will overturn the conviction. The procedure meets all “due process of law” standards.</td>
<td>4. It is almost impossible to apply capital punishment fairly. Evidence shows that African Americans and other minorities are sentenced to death far out of proportion to others, especially when a white victim is killed.</td>
</tr>
<tr>
<td>5. Some criminals are so dangerous that they must never be allowed to live in society. They cannot be rehabilitated. If allowed to live, they may escape or kill a guard or another prisoner. They should be executed to make sure make sure they never harm anyone again.</td>
<td>5. Life imprisonment without the possibility of parole is punishment enough, and it keeps criminals off the streets just as well as executing them.</td>
</tr>
<tr>
<td>6. Capital punishment is specifically allowed by the language of the Bill of Rights. The Fifth Amendment says that no person shall be deprived “of life, liberty or property without due process of law.”</td>
<td>6. Customs and conditions have changed since the Constitution was written. Just as slavery is no longer acceptable, the death penalty should be considered cruel and unusual punishment.</td>
</tr>
<tr>
<td>7. The public wants the death penalty. Polls in some states run as high as 80 percent in favor.</td>
<td>7. Public opinion has gone up and down on the death penalty. No other Western democracy executes criminals. We should join the ranks of these countries.</td>
</tr>
<tr>
<td>8. Capital punishment would be less expensive if frivolous appeals were eliminated. But even if it is more expensive, it’s worth the price.</td>
<td>8. Capital punishment costs more than life imprisonment. At current costs, the appeals and hearings for a single death-penalty case cost the government between $2 and $3 million.</td>
</tr>
</tbody>
</table>
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Fourth Edition

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