

Diminishing All of Us:

The Death Penalty in Louisiana



Death Chamber, Louisiana State Penitentiary, Angola
Photo Courtesy of Richard Ross, Architecture of Authority (Aperture Press, 2007)

A Study for Louisiana Catholics Committed
to Repeal of the Death Penalty

Co-authors: Alex Mikulich & Sophie Cull
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JSRI Jesuit Social Research Institute
Loyola University New Orleans

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Louisiana Catholics Committed to Repeal of the Death Penalty Executive Leadership Committee

Mr. Nicholas Albares, Office of Justice and Peace, Archdiocese of New Orleans.
 Fr Louie Arsenault of the Congregation of the Mission (Vincentians).
 Mary Baudouin, Social Justice Ministries Director, Jesuit Southern Province.
 Fr. Donald Hawkins, S.J., Pastor, Holy Name of Jesus Parish, New Orleans.
 Ms. Peg Kenny, Director of the Archdiocese of New Orleans Respect Life Committee.
 Fr. George Lundy, S.J., Southern Province Society of Jesus. 1947-2011,
 pioneering anti-death penalty advocate in Louisiana.
 Dr. Alex Mikulich, Jesuit Social Research Institute, Loyola University New Orleans.
 Dr. Tom Ryan, Director of the Loyola University Institute for Ministry.
 Mr. Robert Tasman, Associate Director of the Louisiana Conference of Catholic Bishops.

Co-authors:

Alex Mikulich
 Jesuit Social Research Institute
 Loyola University New Orleans
 6363 St Charles Avenue
 New Orleans, LA 70118

Sophie Cull
 Louisiana Coalition for Alternatives to the Death Penalty
 New Orleans, LA 70113

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I. Introduction

Background to the Study

The Louisiana Catholics Committed to Repeal of the Death Penalty (LCCRDP) was formed in early 2010 through the leadership of Archbishop Gregory Aymond, the Louisiana Conference of Catholic Bishops, and Sister Helen Prejean. This initiative affirms what the U.S. Conference of Catholic Bishops, in its 2005 pastoral letter, *"A Culture of Life and the Death Penalty,"* called "a new moment for reflection and a call to action to end the death penalty." The letter described the death penalty as "unnecessary and unjustified in our time and circumstances." Likewise, it expresses the ongoing commitment of the Louisiana Catholic Bishops to the issue, as articulated in their 2002 pastoral letter *"Let Justice and Mercy Meet: Crime, Punishment and the Common Good in Light of Sacred Scripture and Catholic Teaching."*

Pope Benedict XVI, like his predecessor Blessed Pope John Paul II, is an outspoken critic of the death penalty and regularly appeals for commutation in death sentences. Pope Benedict urges an end to the death penalty worldwide and "encourages the political and legislative initiatives being promoted in a number of countries to end the death penalty."⁰¹

With such strong support from the Roman Catholic Church, the Executive Committee of LCCRDP undertook a strategic planning process in early 2010, under the leadership of Mary Baudouin, Director of Social Justice Ministries of the Jesuit Southern Province. The strategic planning team decided that a comprehensive study of the death penalty in Louisiana would be a critical way to educate all Louisiana citizens about the history and contemporary practice of the death penalty in Louisiana.

Focus of the Present Study

The present study arrives at a historic juncture when the United States is the only Western nation to retain the use of the death penalty. More than two-thirds (2/3rds) of the nations globally have abolished the death penalty. The death penalty is also facing opposition at home in the United States. Executions dropped 12% in 2011 and death sentences remain near historic lows.⁰² The Death Penalty Information Center reports that "In a recent national poll conducted by Lake Research Partners, 61% of U.S. voters chose various alternative sentences over the death penalty as the proper punishment for murder. Only 33% chose the death penalty." Four states have abolished the death penalty in four successive years: New York (2007), New Jersey (2008), New Mexico (2009), and Illinois (2011). In addition, the Governor of Oregon imposed a moratorium on the death penalty in November 2011. Nevertheless, the death penalty is very much alive in many Southern states, including Louisiana.

This study draws on comprehensive social scientific and historical analyses to detail the deep flaws in Louisiana's death penalty system, and how the system absorbs much needed resources that would be far more effective preventing crime and increasing public safety. We observe that the commitment to life, to the prospects of the poor, and to the problems of inequality requires Louisiana's Catholics to reject Louisiana's death penalty system because it is marred beyond repair by racial injustice, the marginalization of the many, and premised on the promise of retribution rather than the possibility of redemption.

Though this study addresses the death penalty through a Roman Catholic theological lens, we have aimed to demonstrate the ineffectiveness and arbitrariness of our death penalty system as a public policy, including the ways it is unfairly administered across racial, social and economic lines. We have attempted to gather the results of all qualitative and quantitative Louisiana-focused studies related to the administration of the death penalty and document them here in a single collection.

This paper begins with an outline of Roman Catholic theological and social teachings on poverty, inequality and the death penalty to situate the present study in its theological framework. In chapter three, we situate the present study in a historical and national context. In the fourth chapter, we examine the factors that perpetuate the racial and socio-economic exclusion and marginalization that characterize Louisiana's death penalty system. Finally, we outline the cost of the death penalty, government priorities, and the alternative resource allocation strategies required to better serve victims and prevent crime in our local communities.

II. Executive Summary and Major Findings

As a contemporary criminal justice policy, the death penalty in Louisiana is a costly and ineffective commitment to retribution, taking away scarce resources needed for prevention, healing and redemption. Exoneration rates and the disproportionate prosecutions of cases involving white victims belie any claim that the administration of the capital punishment system in Louisiana is rational or fair. We have provided a summary here of the major findings of our study by chapter:

Chapter III: Catholic Social Teaching and the Death Penalty

- i. The Roman Catholic Church opposes the use of capital punishment, and the US Conference of Catholic Bishops call for its abolition in the United States in all circumstances.
- ii. The Catechism states that “the cases in which the execution of the offender is an absolute necessity are very rare, if not practically non-existent.”⁰³ When this statement was issued it was not possible to produce one hypothetical instance of a crime in which an execution would be warranted.
- iii. The teaching of the Catechism is affirmed by the Louisiana Conference of Catholic Bishops, who frame opposition to the death penalty as necessary to a consistent ethic of life.
- iv. The Pope and Catholic social teaching invite us to realize how the death penalty exposes three gaping wounds in our society: racism, poverty, and violence.

Chapter IV: The Death Penalty in Context

- i. By the late 20th century, all Western nations, with the exception of the United States, had completely abolished the death penalty.
- ii. Louisiana is an exemplary case study for how the modern death penalty in the United States emerged as a “law and order” alternative to the “rough justice” of lynching in the nineteenth and early twentieth century.⁰⁴
- iii. Today, Louisiana leads the nation in the percentage of death row inmates who are African-American.⁰⁵
- iv. Localized studies within the most aggressive death penalty districts in Louisiana have found that cases involving white victims are disproportionately targeted for the death penalty by our elected district attorneys.

Chapter V: Arbitrary, Inaccurate and Unfair

- i. Per capita, Louisiana has one of the highest wrongful-conviction rates in the country. More people have been exonerated in Louisiana in the last ten years than executed.
- ii. The death penalty is applied in 1% of murder cases, draining resources from the other 99% of murder victims’ families who must also deal with the death of a loved one.
- iii. Reforms are needed to better assist murder victims’ family members, including:
 - a. Changes to Louisiana’s Crime Victims Reparation Act to make financial assistance more accessible to murder victims’ families.
 - b. The redirection of resources to address unsolved murders, provide counseling and mental health services to murder victims’ families, improve murder victims’ families’ access to the criminal justice system.
 - c. Promoting sentences that offer finality and surety.

II. Executive Summary and Major Findings Continued...

- iv. The death penalty has been reserved not for “the worst of the worst” in our society but rather for the least among us, illustrated by the fact that:
 - a. Louisiana’s death row is overrepresented by individuals with childhood trauma.
 - b. Many individuals on Louisiana’s death row were under 21 when they were arrested.
 - c. Louisiana’s death row is overrepresented by individuals with intellectual disabilities.
 - d. Louisiana’s death row is overrepresented by individuals with mental illness.
- v. When a death sentence is imposed in Louisiana, it does not reflect the moral judgment of the entire community; rather only those who would impose a death sentence as jurors who follow the teaching of their faith tradition to oppose the use of capital punishment are not allowed to serve on death penalty juries. Death qualification and peremptory strikes lead to the marked underrepresentation of African-Americans on Louisiana capital juries.

Chapter VI: Weighing the Costs: Alternatives to the Death Penalty

- i. A national survey of police chiefs found that they ranked the death penalty as the least effective criminal justice policy to deter violent crime. There remains no reliable statistical evidence that capital punishment in fact deters potential offenders.
- ii. The cost of pursuing the death penalty is infinitely greater than the costs of pursuing a life-without-parole sentence for murder.
- iii. These expenses are often for naught. In the last ten years, 50% of Louisiana’s capital cases have been sent back for a new trial from federal courts.
- iv. Louisiana is ranked as one of the least educated, unhealthiest, and poorest states in the nation.⁰⁶
- v. In the 2011 session, the Louisiana Legislature approved a state budget that:
 - continues to reduce human services to our most vulnerable populations;
 - further diminishes health care for the elderly, poor, and disabled;
 - undermines public education;
 - increases the cost of a college education for working families; and
 - extends the state’s budget crisis into the next fiscal year.⁰⁷
- vi. If we want to improve support victims and prevent crime, a better use of our resources than death penalty prosecutions would be to:
 - a. Increase murder victims’ families service assistance.
 - b. Invest in childhood education.
 - c. Improve and expand prisoner re-entry services.

By redirecting resources currently allocated for death penalty prosecutions, appeals, and the housing of death row inmates in Louisiana to we can: (1) reduce incidences of violent crime, (2) more adequately support those who have lost loved ones to violence, and (3) improve public safety.

III. Catholic Social Teaching and the Death Penalty

The Roman Catholic Church rejects the death penalty upon the basis of five interlocking reasons: first, the responsibility of society to uphold human dignity for all; second, the need to reverse systemic racial and economic inequality; third, the need to remain open to the reformation of the criminal; fourth, that nonviolent means best protect the common good; and fifth, it contradicts the very purposes of the law as based on the Judeo-Christian understanding of justice. These insights are rooted in the theological and moral wisdom of the Roman Catholic tradition as applied to contemporary society.

The U.S. Catholic Bishops, in their 2005 pastoral letter “A Culture of Life and the Death Penalty,” reaffirm the teaching of Pope John Paul II, of the Roman Catholic magisterium, and of U.S. Catholic Bishops since 1979, that “the death penalty is unnecessary and unjustified in our time and circumstances.” Four fundamental points informed their judgment:

- The death penalty violates human dignity especially when—in our contemporary context—it is unnecessary to protect society.
- State-sanctioned death penalty “in our name” diminishes all of us.
- The application of the death penalty is deeply flawed, irreversibly wrong, highly prone to error, and biased by race, the quality of legal representation, and location of the crime.
- We know of alternative solutions that both punish criminals and protect society.⁰⁸

Previous evaluations of the death penalty by the Papacy emphasized that it contradicts the very purposes of the law, namely to establish and maintain the moral order of society and to restore it when violated. In sum, it is not possible to restore the moral order through immoral means.

A. Louisiana Catholic Bishops on the Death Penalty

In *Violence in Our Society: Death is Not the Answer* (1994), the Louisiana Catholic Bishops underscored the teaching of Pope John Paul II and the national Catholic Church to promote a consistent culture of life. While the bishops recognize that anger, fear, and frustration may lead some people to promote the death penalty in Louisiana, the fact is that the death penalty has neither deterred nor decreased homicides; “violence only begets violence, death begets death.” Legal systems based on the Judeo-Christian understanding of justice will seek care for the victims, rehabilitation of offenders and reconciliation within society where possible; only where rehabilitation cannot be trusted should the law provide for life-long incarceration.

In their more recent pastoral letter addressing the criminal justice system and the death penalty, “Let Justice and Mercy Meet” (2002), the Louisiana bishops stress the biblical message of justice under the rule of God. The bishops explained that justice is defined as:

the return to right order, effected through the acceptance of responsibility, the assignment of appropriate punishment and the return or restoration of as many as possible to the human community. An appropriate punishment redresses harm done to the victims, their families and the wider society and both rehabilitates offenders and restores them to their families. Hence the title of our national document, *Responsibility, Rehabilitation, and Restoration*.

The bishops affirm an ethic of responsibility that cultivates reciprocal relations of accountability between all members of society. The Louisiana bishops continue:

Restorative justice also calls us to reject capital punishment as an effective and moral means of confronting crime. Death does not restore, heal, or make whole what was lost. Death only causes more death. When the state imposes death as a sentence, a further insensitivity to the loss of life is the result. The death penalty makes it easy to give up on others and neglect the underlying causes which yield violence and death. As a people of the Gospel of Life, we are called to build a civilization of life and love.

B. Roman Catholic Theological and Moral Teaching

The Roman Catholic tradition celebrates the fundamental goodness of all life because God's love is the source of life itself. Thus, the moral demand upon society to practically realize the full dignity of all human beings does not rest upon a humanistically idealist account of our humanity but rather upon a divine account. The Church has always recognized, and never equivocates about the radical fact of sin, individual and social. Yet, we do not earn and we cannot lose our human dignity through our acts of sin because our human dignity is from God; God's creative love inheres within all human beings and throughout the human community, unconditionally.

This theological and moral insight forms the basis of the Church's affirmation of the dignity of each and every human being created by God, from conception to natural death: "When life is disrespected anyplace along the spectrum, then all human life is disrespected."⁰⁹ Pope John Paul II specifies a full range of life issues that threaten society and dishonor God, in his 1995 encyclical letter affirming the value and inviolability of all human life:

Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed. They poison human society, and they do harm to those who practice them than to those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator.¹⁰

In the State of Louisiana, too many of these affronts to dignity conspire and lead to an injustice that diminishes all of us—the death penalty. Racial bias in the prosecution of death penalty cases, sentencing, jury selection, and appeal and post-conviction processes render the death penalty system prone to irreversible error and results in a system that disproportionately targets brothers and sisters who are poor and/or of color. The death penalty has not decreased crime in our state, does not protect our citizens, is applied arbitrarily and unfairly, and diminishes our capacity to value life and create a society where all our members flourish in justice and peace.

The death penalty offers a bottom-line -- at the level of life and death -- permission for the view that some people do not deserve the respect of human dignity given by God, that their creator gives up on them, that they have to be removed from the earth on which God gave them life. This offense to the Christian view of creation leads to many forms of offense to human dignity, even against whole classes of people.

That we were created in the very image and likeness of God reveals God's purpose in calling us not to be diminished but to magnify His greatness and reflect His glory.

"I set before you life and death, the blessing and the curse. Choose life, then, that you and your descendents may live." (Deuteronomy 30:19)

God's command to choose life reveals a God of faithfulness, love, and infinite gift. We learn of our human giftedness at the very beginning of the accounts of creation in Genesis 1:27 and 2:7-8. Genesis articulates a profound theological insight: human persons cannot be understood apart from God. This enduring theological insight expresses the understanding that we are made in God's love and that this love identifies who we are at the very core of our being. The English Jesuit Gerard Manley Hopkins eloquently captures the beauty of God's creation in his poem "God's Grandeur." He writes, "There lives the dearest freshness deep down in things!" God's grandeur is in the freshness of divine, infinite longing and a love that always lures and draws us into new relationship.

III. Catholic Social Teaching and the Death Penalty continued...

Too often, debates on the death penalty miss the significance of “the dearest freshness deep down in things” and overlook our human relatedness to God. The *Imago Dei* means that human persons can respond freely to God’s gift of love and that we are capable of magnifying God’s gift by loving ourselves and becoming a gift to other persons. We are a gift given by God, and we are a gift to be given—in freedom and responsibility—to others. In the Roman Catholic theological tradition, the giftedness of God’s love calls us to care for each other and to be mutually responsible for each other.

Understood in this context, the death sentence is an attempt to extinguish “the dearest freshness deep down” in human beings by destroying life and destroying the possibility of free response to God’s gift of love and life. The death penalty represents, therefore, a profound rejection of the possibility of human transformation in love and freedom, both of the condemned and of ourselves. The death penalty extinguishes the possibility for transformation, forgiveness, and a new community to grow in the midst of our common brokenness. The death penalty is a rejection of the power of the gospel to transform people’s lives. The death penalty is a rejection of God’s love, gift of life, and grace.

C. Roman Catholic Social Teaching and Social Sin

Proponents of the death penalty sometime attempt to counter that the Roman Catholic interpretation of the *Imago Dei* fails to account for human sinfulness. The Roman Catholic theological tradition, however, articulates a profound understanding of the reality of social sin. When Blessed Pope John Paul II celebrates how human beings are made in the image and likeness of God, he develops a reflection on the meaning of original sin in Genesis 4:8, “Cain rose up against his brother Abel and killed him.” The Gospel of life, says the Pope, is contradicted by the painful experience of sin and death that enters the world in a violent way through the killing of Abel by his brother Cain. The Pope continues, the reality of original sinfulness and murder is “re-written daily, with inexorable and degrading frequency, in the book of human history.”¹¹

A crucial insight of the Church is that sin is both individual and social. None of us evades original sin or the corrupting influence of murder and of all affronts to human dignity. Sin is social because we are related to everyone as brothers and sisters before God. The Church teaches about social sin, not only through the story of original sin but also through the social dimension of moral knowledge. After Cain murders Abel, God says to Cain: “Where is Abel your brother?” Cain responds, “I do not know; am I my brother’s keeper?” God hears the voice of Abel’s blood crying to God from the ground. Cain’s envy and anger leads him to murder and his violence leads him to cover up his own crime, submitting himself to the “thinking of the evil one.” Rhetorically asking, “Am I my brother’s keeper?” Cain refuses to care for his brother and accept responsibility for him. At its root, “conscience” means “knowing together with.” In the story of Cain and Abel, Cain’s denial of “knowing together with” his brother is a denial of our human, shared, social dimension of the moral life. Cain denies his accountability to his brother and to God. The Louisiana death penalty reflects our own denial of our shared humanity with all men and women on death row and ultimately reflects a denial of God’s gift of life.

The Church does not reduce sin to the level of individual relationships. Social sin, of which we are all guilty, includes our ambivalence towards injustice, distorted consciousness, and collective actions and inactions that perpetuate social injustice and dehumanization. Roman Catholic social teaching recognizes that human persons are constituted by their social relationships and that persons tend to uncritically appropriate the prevailing values of a culture. This is precisely why Pope John Paul II consistently communicates his concern over the prevailing culture, what he terms a “culture of death,” which devalues life. The Church is concerned that the violence of the death penalty fosters the violence of criminal actions.

III. Catholic Social Teaching and the Death Penalty continued...

The story of Cain and Abel also reminds us of God's justice and mercy. This is one of the earliest biblical accounts of God's response to human suffering and God's mercy in the face of injustice. God hears the voice of Abel crying out from his blood in the ground. God is immediately present within human suffering. Not only does God hear the cry of the oppressed, God also does not demand the death of Cain in retribution for the murder of Abel. Cain is eligible for the death penalty under God's law, but God shows mercy to him, marking him so that he will not be submitted to the anger and violence of others. "Not even a murderer loses his personal dignity, and God pledges to guarantee this."¹² Blessed Pope John Paul II's *The Gospel of Life* cites the wisdom of St. Ambrose:

God, who preferred the correction rather than the death of the sinner, did not desire that a homicide be punished by the exaction of another homicide.¹³

Under his pontificate, Roman Catholic magisterial teaching on the death penalty shifted from affirming the right of the state to kill malefactors who are a threat to the common good to the present teaching of the Catechism, which states that "the cases in which the execution of the offender is an absolute necessity are very rare, if not practically non-existent."¹⁴ Indeed, when this statement was issued it was not possible to produce one hypothetical instance of a crime in which an execution would be warranted. More exhaustive historical and theological accounts trace the continuity and discontinuities of this change within Church history.¹⁵

In her letter to Pope John Paul II in January 22, 1997, Sister Helen Prejean CJS praised his encyclical *The Gospel of Life* for its affirmation of life and the narrowing of the use of the death penalty to cases of "absolute necessity."¹⁶ Her letter continued, however, to urge the Pope to unequivocally prohibit use of the death penalty. On January 29, 1997, one week after her letter was delivered to the Pope, Sr. Helen wrote in her journal, "Cardinal Joseph Ratzinger Prefect of the Congregation of the Doctrine of the Faith, announced that a change would be made in the Catechism to reflect 'recent progress in doctrine' on the death penalty."¹⁷

As Sr. Helen explains, the significance of the change to the Catechism is that no matter how heinous a particular crime might be, the Church teaches that the death penalty ought not be imposed. In the Church's teaching, governments cannot use "extreme gravity" of a crime to justify use of the death penalty. Nonviolent means of incarceration are available to protect society. This means a significant moral shift from emphasis on retributive justice to a focus on restorative justice, "the restoration of social order in a holistic, life-giving way that eschews violence."¹⁸

The shift in focus from retributive justice to restorative justice is necessary to reverse what Blessed Pope John Paul II articulated in his apostolic exhortation *The Church in America (Ecclesia America)* as "the culture of death and a society dominated by the powerful."

Nowadays, in America as elsewhere in the world, a model of society appears to be emerging in which the powerful predominate, setting aside and even eliminating the powerless: I am thinking here of unborn children, helpless victims of abortion; the elderly and incurably ill, subjected at times to euthanasia; and the many other people relegated to the margins of society by consumerism and materialism. *Nor can I fail to mention the unnecessary recourse to the death penalty when other bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons. Today, given the means at the State's disposal to deal with crime and control those who commit it, without abandoning all hope of their redemption, the cases where it is absolutely necessary to do away with an offender are now very rare, even non-existent practically.* This model of society bears the stamp of the culture of death, and is therefore in opposition to the Gospel message. Faced with this distressing reality, the Church community intends to commit itself all the more to the defense of the culture of life. [Emphasis added]¹⁹

III. Catholic Social Teaching and the Death Penalty continued...

The Pope and Catholic social teaching also invite us to realize how the death penalty exposes three gaping wounds in our society: racism, poverty, and violence. We must ask why the criminal justice, penal, and death penalty systems disproportionately condemn people who are poor and of color. At issue is the extent to which people of color and/or poor are fully regarded as genuine partners in building relationships of mutual regard and accountability for all the people of Louisiana.

Sister Helen Prejean invites us to ask: how many district attorneys clamor to avenge the deaths of the homeless, the poor, people of color and/or people who live in the inner city? The poor have put it like this: "Capital punishment means that [those] without the capital get the punishment." Sr. Helen reflects on the racial and economic application of capital punishment:

District Attorneys, who must calculate cost, court time, and personnel resources, must decide which murder cases are worth expense of the death penalty. The murder of one minority by another may not help a DA's next election. When "nobodies" are killed, law enforcement seems hardly to notice, much less vigorously prosecute the perpetrator.²⁰

In this context of racial and economic inequality, explored more deeply in the following chapters, we would do well to reflect upon the words of Jesus:

Woe to you, scribes...[who] tie up heavy burdens, hard to bear, and lay them on the shoulders of others but you are unwilling to lift a finger to move them...blind guides! You have neglected the weightier matters of the law: justice and mercy.²¹

The words of Jesus remind us that human sin and evil do not have the last word: that is at the heart of the Roman Catholic rejection of the death penalty. In his January 1997 World Day of Peace message, the Pope urges all people to recognize that "No punishment can alter the inalienable dignity of the one who has committed evil. The door that opens in repentance and rehabilitation ought always remain open." The Pope urges society to recognize that it is able to protect itself "without denying criminals the chance to reform. The cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent."

D. The Death Penalty: A Profound Forgetfulness of Eucharistic Remembering

The Eucharist stands at the center of each individual life, a symbol of divine sacrifice and the blessed gift of life for all. As proclaimed by the Second Vatican Council, the Eucharistic sacrifice is the "source and summit of the Christian life." The invitation to accept the Eucharist is given as a personal calling to each individual and brings power and renewal to the community as a whole through the Church.

The Eucharist "stands at the center of the Church's life."²² Blessed Pope John Paul II underscores this point when he celebrates how the "Church was born of the paschal mystery." In the Gospels, we learn how Jesus drew his disciples together and offered them bread and wine, his body and blood, sharing with them the hope of his death and resurrection for the forgiveness of sins (Mark 14: 12-26; Matthew 26: 17-30; and Luke 22: 7-38). His celebration of the Last Supper fulfills the covenant established with Israel for the reconciliation of the whole of creation with God and provides a foretaste of the reign of God in its fullness. The Last Supper also evokes memory of all the meals that Jesus shared with the excluded, marginalized, and condemned of society—people whom he welcomed to be first into the Kingdom.

The pattern of the life, ministry, death, and service to the oppressed and condemned, constitutes the pattern of life that is salvific. Central to the Eucharist, our faith, and the possibility of new life bestowed in Eucharist, is Christ's memory realized through *our living memory of Christ*. From the earliest Christian communities, to believe is to remember Christ and to always keep Christ in mind. Knowing Christ is never simply knowing doctrine; rather our faith is about living and abiding with and loving all whom Christ loves—including the despised of society. Blessed Pope John Paul II reminds us, citing St. Paul, that "it is unworthy of a Christian community to partake of the Lord's Supper amid division and indifference toward the poor (see 1 Cor 11: 17-22, 27-34)."²³

III. Catholic Social Teaching and the Death Penalty continued...

The subjects of Eucharistic memory are not only people, nor are they only “good” people of faith; the subjects of Eucharistic memory are all people, including the condemned of society, with Christ Jesus. Too often we forget that “They crucified him with criminals, one on either side (*Luke 23:33*).” The Protestant theologian Karl Barth describes the meaning of Jesus being crucified with two criminals:

Don’t be surprised if I tell you that this was the first Christian fellowship, the first certain, indissoluble and indestructible Christian community...These [criminals] may hear that everything that he is, he is for them, and everything he does, he does for them. To live by this promise to be a Christian community. The two criminals were the first certain Christian community.²⁴

Our condemnation of our brothers and sisters represents a condemnation of Jesus Christ, a rejection of his memory in solidarity with the condemned of society, and of the possibility of recognizing our fullness in the unity of Jesus in the Father and Spirit. We ought not forget that we all participate in a “shared criminality.”²⁵ We share in criminality in at least two senses highlighted by the Cain and Abel story above.

Thus, remembrance is not simply about the past; rather, as St. Augustine explains, “Memory is the presence of the past.”²⁶ Remembrance involves recognition of our identity in God, in language—through prayer, and in deed—through remembering those in need and acting to meet those needs. Eucharistic memory calls the faithful to recall this reality through speech, through formation of attitude, and for action amongst the community.

Against this understanding of Eucharistic memory, the death penalty represents a profound forgetfulness of who we are in God and Christ Jesus. And given how contemporary society executes the death penalty, the way it involves a deliberate, ostensibly “rational” and “civilized” plan to destroy a member of the human community through lethal injection, “we the people” have become executioners of our own humanity. This pervasive thinking in society has profound effects upon our identity, and upon our capacity to remember who we are as members of *the body of Christ*. The death penalty erodes our capacity for remembering, and the results are humanly catastrophic.

Ultimately, justice for revenge, spite, or cruelty, misses the fullness of the Gospel and of the sacramental life of the Church in which we are all called to conversion through baptism, penance, and Eucharist. Catholic Christians celebrate the Eucharist in hope of a “new heaven and a new earth (*Revelations 21*).” This expectation increases, rather than decreases, “our responsibility for the world today.” It is our “task of contributing with the light of the Gospel to the building of a more human world, a world fully in harmony with God’s plan.”²⁷ However passive or active we may be in the sentencing and execution of the death penalty in Louisiana, we are all diminished by it.

In his encyclical *The Gospel of Life*, Blessed Pope John Paul II taught that we have an “inescapable responsibility of choosing to be unconditionally pro-life.”²⁸ And as the U.S. Catholic Bishops concluded in their pastoral letter *A Culture of Life and the Penalty of Death*, this call to be unconditionally pro-life “poses an old and fundamental choice: I set before you life and death: choose life.”

IV. The Death Penalty in Context

A. The US Death Penalty in the International Context

The United States is the only Western nation to retain the death penalty. Only 58 nations—less than one third of all nations globally—that retain the death penalty. More than 138 nations have abolished the death penalty since 1977. The global trend toward abolition of the death penalty has continued over the past decade. Whereas 40 countries on average were known to carry out executions in the mid-1990s, only 21 of the 192 member states of the United Nations carried out executions in 2010. Thirty-six (36) of the fifty-three (53) member states of the African Union are abolitionist in law or practice.

The United States executed 46 people in 2010, trailing only North Korea (60+), Yemen (53+), Iran (252+), and China (over 1,000), in the number of reported executions in 2010.²⁹ In his comprehensive historical examination of the death penalty, David Garland explains that the abolitionist movement of Western nation-states began haltingly in the late 18th century, spread throughout the 19th and early 20th centuries, and by the late 20th century, all Western nations, with the exception of the United States, had completely abolished the death penalty.³⁰

B. The Search for “Humane” Executions: Lethal Injection

The medicalization and bureaucratization of the death penalty in the United States reflects important cultural and legal shifts that have occurred internationally since the 18th century. Historically, executions were public in the U.S. until the last public hanging in 1937. That shift away from public executions marked an implicit assumption that executions are repugnant and violate basic human dignity and rights. A 1960 report on the death penalty by the United Nations found that *“the history of executions is one of gradual diminution of the infliction of pain and degradation and of increasing insistence upon speedier and more painless methods.”*³¹ There have been profound changes in the method and style of executions, ranging from public hangings, which date back to antiquity and cause a slow painful death, to shooting, to electrocution, to the relatively sterilized, “backstage” performance of lethal injection that has become the practice in the U.S. over the past twenty years.

Currently, Louisiana is one of 35 states that use lethal injection as its method of execution. Most of these states use a combination of three drugs that includes sodium thiopental (a barbiturate to induce anesthesia), pancurium bromide (a muscle relaxant that paralyzes all muscles of the body), and potassium chloride (a salt that speeds the heart until it stops). This protocol was developed for the state of Oklahoma in 1977. The U.S. Food and Drug Administration (FDA) has never sanctioned its use.

There is no scientific evidence to support the cultural assumption that lethal injection is “quick and painless.” In fact, recent scientific studies find:

Current lethal injection protocols may not reliably effect death through the mechanisms intended, indicating a failure of design and implementation. If thiopental and potassium chloride fail to cause anesthesia and cardiac arrest, potentially aware inmates could die through pancuronium-induced asphyxiation. Thus the conventional view of lethal injection leading to an invariably peaceful and painless death is questionable.³²

One group of medical editors highlight the medical and ethical contradiction of lethal injection: “Execution by lethal injection, even if it uses tools of intensive care such as intravenous tubing and beeping heart monitors, has the same relationship to medicine that an executioner’s axe has to surgery.”³³ These editors detail how it is “quite likely that those being executed have experienced asphyxiation while conscious and unable to move, and possibly an intense burning pain throughout the body from the potassium injection.” These medical editors thus conclude:

As editors of a medical journal, we must ensure that research is ethical, and there is no ethical way to establish the humaneness of procedures for killing people who do not wish to die... Lethal injection is the latest in a long line of execution methods that have been found inhumane. It is time for the U.S. to join the majority of countries worldwide in recognizing that there is no humane way of forcibly killing anyone.³⁴

As the legal scholar David Garland explains, this modern method of lethal injection has modeled execution as a “medical procedure.”³⁵ The American Medical Association, the American College of Physicians, the American Public Health Association, and the World Medical Association all prohibit physician participation in executions.³⁶

C. The Movement toward Repeal

Illinois was the fourth state in four years to abolish the death penalty. Governor Pat Quinn signed legislation in March 2011 replacing the death penalty with a sentence of life without parole. Since 1976, Illinois carried out 12 executions and 20 death row inmates were exonerated during the same period, the second highest number of exonerations in the nation. The legislation was successful in Illinois because the death penalty was found to be expensive, ineffective as a deterrent, and unfair due to the high number of exonerations. New Mexico and New Jersey voted to abolish the death penalty in 2009 and 2007, respectively. The death penalty was found unconstitutional in New York in 2004 and the last person on death row was removed in 2007.

On November 22, 2011, Governor John Kitzhaber of Oregon declared a moratorium on all executions, declaring, "The death penalty as practiced in Oregon is neither fair nor just; and it is not swift or certain. It is not applied equally to all."³⁷

Of the thirty-four states that retain the death penalty, the most (12) are in the South, seven are in the Midwest, six in the West, five in the East, and three are in the Western mountain region. Since 1976, the most executions have occurred in the South (1,031) with 72 in the West, 149 in the Midwest, and 4 in the Northeast. The South accounts for over 80 percent of all executions nationally.³⁸

D. The Death Penalty: Louisiana's Response to Lynching

The death penalty's historic intersection with race is deep and well documented.³⁹ Justice John Paul Stevens, after his departure from the bench, observed the continued connection between the death penalty and lynchings: "That the murder of black victims is treated as less culpable than the murder of white victims provides a haunting reminder of once-prevalent Southern lynchings."⁴⁰ Indeed, racial disparities and tensions permeate the criminal justice system generally, and the death penalty specifically.⁴¹

Historians and social scientists have found that "the relationship between prior lynching and recent death sentences that we have isolated also suggest that vivid historical events continue to influence the current behavior of important social institutions."⁴² Even Christian scriptures which were historically used to support slavery are now widely used to support the death penalty.⁴³

In Louisiana, the presence of the Confederate Flag outside the Courthouse in Caddo Parish, which sees African-American men sentenced to death by near all-white juries for killing white victims at an alarmingly disproportionate rate to the actual occurrence of murders with that racial combination, provides an important case study on the historical underpinnings of modern-day executions in our state.

The memory of slavery and the Confederacy endures in the administration of justice and the death penalty in Caddo Parish, where the Confederate flag had flown outside its courthouse since 1951. The Caddo Parish Commission finally decided to remove the Confederate flag from a monument in front of the courthouse on November 3, 2011.⁴⁴ The remaining memorial pays tribute to the Confederacy's last capital in the South, Shreveport, which never fell to northern forces.

The emancipation of African-American slaves at the end of the Civil War was met with fear and violence *en masse* by whites in Caddo Parish. With 566 homicides, it was the most violent parish in the South, earning it the nickname "Bloody Caddo".⁴⁵ According to the Tuskegee Institute, Caddo and Bossier Parishes led the nation in the use of lynching against African-Americans between 1900 and 1931. At least 30% of whites in Caddo between the ages of 18 and 45 were involved in these homicides.⁴⁶

The Shreveport Times editorials at the time made plain that the death penalty's function was to substitute for lynchings, since law enforcement could not control the mob:

We are having suggestions from some of the newspapers of the State that Louisiana follow the lead of a few other States and abolish the death penalty...Would not one result be to increase the number of lynchings?... Would the murderer be permitted to reach State prison in safety from the vengeance of an outraged citizenship, there to plan to elude the guards at the first opportunity?

Editorial, The Shreveport Times, April 13, 1914.

IV. The Death Penalty in Context continued...

The fact that the Confederate flag flew over the site where lynching occurred and the death penalty is now applied along racial lines is telling. Since the Supreme Court reinstated the death penalty in 1976, juries in Caddo Parish have voted to impose the death penalty on nineteen men and one woman. Fifteen of these cases involved black defendants, and research demonstrates that the combination of a black defendant and a white victim exponentially increases the likelihood of capital prosecution.⁴⁷ No white person has ever received the death penalty for killing a black person in Caddo Parish in the modern era of capital punishment.

This historical legacy of racial oppression prompts African-Americans in diverse social and cultural locations to remain critical of the state's use of lethal punishment.⁴⁸ Indeed, many African-Americans are removed for cause from capital juries based on their opposition to the infliction of capital punishment,⁴⁹ which is rooted in an awareness of the death penalty's disproportionate application against poor and minority members of society, the value of mercy, and the risk of wrongful execution.⁵⁰ An African-American man in Caddo Parish who was excused from a capital jury because he would not impose the death penalty explained:

Like many African-Americans I know and have spoken to, I feel that African-American people have never known justice... For this reason we cannot consider the death penalty as a real option in a capital case.⁵¹

V. Arbitrary, Inaccurate and Unfair

The time for a dispassionate, impartial comparison of the enormous costs that death penalty litigation imposes on society with the benefits that it produces has surely arrived.

Justice Stevens, *Baze v. Rees* (2008)

In the United States and Louisiana, whether or not a person is prosecuted, tried, and sentenced to death has more to do with his or her race, wealth (poverty), and geographical location than the actual facts of the crime. In Louisiana, four parishes (of a total of 64) are responsible for 86 percent of defendants on death row: Caddo Parish, East Baton Rouge Parish, Orleans Parish and Jefferson Parish.⁵² Only two percent of all murders in death penalty states result in a death sentence and ten percent of U.S. counties accounted for all of the death sentences imposed between 2007 and 2009.⁵³ Five counties are responsible for a disproportionate number of the 1277 executions that have been carried out since 1976 (as of December 11, 2011). Four of these five counties are in Texas.

Over the past two decades David Dow has represented over 100 death-row inmates in Texas. In *The Autobiography of an Execution*, Dow recounts what it is like to defend death row inmates. He recently explained his criticism of capital punishment and his sympathy for people who support the death penalty:

On a regular basis, I am sitting face to face with murderers. When I imagine sitting face to face with somebody who might have injured somebody I love or care about, I can imagine wanting to injure that person myself. I used to support the death penalty. [But] once I started doing the work, I became aware of the inequalities. I tell people that if you are going to commit murder, you want to be white and you want to be wealthy—so that you can hire a first-class lawyer—and you want to kill a black person. And if you are, the odds of your being sentenced are basically zero. It's one thing to say that rich people should be able to drive Ferraris and poor people should have to take the bus. It's very different to say that rich people should get treated one way by the state's criminal justice system and poor people should get treated another way.⁵⁴

Too often who lives and who dies depends upon geography, ability to access adequate legal defense, race, and poverty. But one of the most decisive factors in who is prosecuted for the death penalty and ultimately convicted is the race of the victim. In Louisiana, capital jury selection procedures compound the impact of race in the system – African-American males are sentenced to death for killing white victims by near all-white juries at a highly disproportionate rate to the incidences of black-on-white homicides.

Not only is this arbitrary – it perpetuates an unfair system which negatively impacts murder victim's families and allows innocent people to be sentenced to death, eroding confidence in our criminal justice system.

A. Exonerees

*Per capita, Louisiana has one of the highest exoneration rates in the country.*⁵⁵

The Innocence Project reports that there have been 273 post-conviction DNA exonerations in the U.S. The first occurred in 1989. Exonerations have been won in thirty-four states and 206 of all exonerations have occurred since 2000. Nearly sixty percent (162) of exonerees are African-American. The Innocence Project finds that “these exoneration cases provide irrefutable proof that wrongful convictions are not isolated or rare events, but arise from systemic defects that can be precisely identified and addressed.” The Innocence Project has worked to identify these defects for over fifteen years, which include: eyewitness misidentification testimony, improper or invalid forensic science, false confessions and incriminating statements, and unreliable informant testimony.⁵⁶

Under the purview of District Attorney Harry Connick Sr., sixteen-year old Shareef Cousin was sentenced to death in 1996 for the murder of Michael Gerardi in 1995. Cousin had always protested his innocence, saying he was playing in a basketball game at the time that the murder occurred. The murder took place at 10:26pm. Eric White, a coach in the city of New Orleans' recreation department, took Cousin and three of his teammates home after the game. In an article in *Time Magazine*, Coach White explained:

We left the gym between 10:20 p.m. and 10:30. I dropped Shareef off at quarter to 11. I lived half a block from his house. I remember the time because my wife was sitting up and waiting. She told me what time it was. Shareef couldn't have committed that crime. He was with me.

V. Arbitrary, Inaccurate and Unfair continued...

At trial, the prosecutor played part of an interview where White says the game was over by 9:30, but did not play the rest of the interview. White objected to the tape at trial but wasn't allowed to tell the jury why. Two referees also told police that Cousin was playing basketball, but their statements were never turned over to the defense. Cousin was convicted and sentenced to death, making him the one of the youngest people on death row in the United States. Eventually, Cousin's conviction was overturned on grounds of prosecutorial misconduct.⁵⁷ It was later found that the assistant district attorney in the case, Roger Jordan, offered a key witness a reduced sentence on another charge in exchange for his testimony about Cousin. The detective in the case, Anthony Small, had also lied about two eyewitnesses fingering Cousin so that he could obtain an arrest warrant. The witnesses didn't actually exist.

Nationally, at least one person is exonerated for every 10 that are executed.

In Orleans Parish, John Thompson's capital murder conviction was overturned when he was able to show that a prosecutor in his case had withheld blood evidence that proved someone other than Thompson was responsible for an armed robbery that helped put him on death row. The jury acquitted Thompson of all charges after deliberating for less than an hour at his 2003 retrial. Thompson faced multiple execution dates until finally he was given a last minute reprieve and his conviction was overturned. In an op-ed for the New York Times he said, "If a private investigator hired by a generous law firm hadn't found the blood evidence, I'd be dead today. No doubt about it."⁵⁸

In the last twelve years there have been more men freed from Louisiana's death row because of their innocence than there were executions, five to three. Nationally, at least one person is exonerated for every ten that are executed.⁵⁹

The death penalty system, which targets the poor and marginalized, creates the unacceptable risk that an innocent person will be executed. Most recently, the executions of Cameron Todd Willingham (TX) and Troy Davis (GA) have been met with widespread horror as questions about their innocence linger.⁶⁰

B. Murder Victims and their Families

Nationwide, death sentences only comprise approximately 1 percent of all sentences for homicides.⁶¹ For the 99 percent of victims' families whose loved one's murderer is not subject to a death penalty prosecution, they may feel that the case is not considered as important as other cases where prosecutors pursue the ultimate penalty. These families tend to be disproportionately people of color. In Caddo Parish, Louisiana, 81% of murder victims are African-American, and yet 73% of cases where the District Attorney pursues the death penalty involve a white victim.⁶²

A disturbing number of murders are not even solved. Between 30 and 50 percent of all homicides in Louisiana's major cities do not result in a criminal prosecution. Rachel King recounts the story of Anne Coleman, who's 19-year-old, African-American daughter was murdered in her car in Los Angeles:

No one was ever charged with the crime. Authorities told Anne that there were dozens of homicides in the city every week and they couldn't possibly solve all of them. Anne felt that her daughter's life was not valuable enough for authorities to put the resources into solving the crime.⁶³

Rose Preston's Story:

In the early hours of the morning, I was awakened by my phone ringing. After identifying who I was, I was asked if I was sitting down. My heart and mind raced: whatever the news was, it was bad. James and Patrina (my husband and his mother), the woman (a relative) said, were both dead. The logical part of my brain said: they've been in a car accident. But the woman went on to say: I'm sorry to tell you they were murdered. At that moment I was spun into a surreal space. For not only was I dealing with the sudden absence of my loved ones, but there was the freakish dimension of unimaginable violence. I soon sought out oblivion, increasingly in alcohol and drugs.

Then, as if to add insult to the most grievous injury, I had to face the notorious legal system. Although we all knew who the killer was from the outset, it took the police 6 months to arrest him, because the case was circumstantial and was a high profile case. During that time, I pestered the detective and his superiors for information and especially for the promise of action. Finally the court proceedings began. It felt labyrinthian to be going from one hearing to another, and I didn't really understand them. I was fortunate to meet a couple (their son had been murdered) who accompanied me to court and to the many sessions I demanded of the staff. It was infuriating to realize that I was just another number in a huge pile of cases, and that I had a very limited voice.

Just before the case was to go to trial, the killer died of medical complications. I felt furious, cheated – I had wanted to see him 'go down by law', and now he was dead. The killer's wife had been indicted as an accessory after the fact (she had lied to the police and hidden evidence), and so attention now turned to her. Then Hurricane Katrina happened and the evidence room was flooded. The D.A.'s office told me I needed to do a plea-bargain with her because the case was now so weak. I landed up negotiating the plea-bargain with the wife's attorney. I had heard of restorative justice (or victim-offender dialog), and wanted this to be a part of the plea. This was agreed to, and is ongoing. It has been a helpful journey in that it gave me a voice to ask questions that had haunted me.

I have battled to come to terms with this new reality, what people sometimes call the new normal, because nothing is ever the same again. There is a stigma that sticks when murder is part of your story. I quickly learned to discriminate between those hungry for sensationalism and those who had genuine compassion. I have talked obsessively about the situation to a select group, and find this helps in my painful and slow adaptation.

Rose Preston, author of *Crime Victims Guidebook*.

Challenges Faced by Louisiana's Victims' Family Members

A number of factors complicate victims' families' abilities to successfully obtain much-needed resources, including the limitations of existing legislation and the allocation of resources to murder investigations and prosecutions on the basis of race and class.

Limitations of the Crime Victims Reparation Act

Under the Louisiana Crime Victim Reparation Act (CVRA), dependents are not eligible for financial assistance if "the victim has a criminal history, including a felony conviction in the last 5 years."⁶⁴ Further, the CVRA requires that the victim's own misconduct did not cause or contribute to their death, which further limits victims' families' ability to receive aid. The limitations of this act are keenly felt by murder victims' families around the state. For instance, in New Orleans, 73% of murder victims have some type of criminal history, which means that many of their families may have no access to financial assistance to cover funeral expenses, counseling services or economic loss incurred as a dependent of the victim.

Status of the Victim

Throughout Louisiana it is painfully clear that the race of the victim impacts the likelihood that a criminal defendant will be prosecuted, and further that the most serious sentences will be sought. Recent studies of two of Louisiana's most aggressive death penalty parishes have shown that prosecutors disproportionately target murder cases where there is a black defendant and a white victim for capital prosecution.

East Baton Rouge Parish: ⁶⁵

A study comparing racial characteristics of homicides occurring in the parish of East Baton Rouge between 1990 and 2008, found significant racial bias in death sentencing: the odds of a death sentence were **2.6 times higher** for those charged with killing whites than for those charged with killing blacks. Even after controlling for the number of aggravating circumstances, number of concurrent felonies, and number of homicide victims, the odds of a death sentence "are still 97% higher for those who kill whites than those who kill blacks."

Caddo Parish: ⁶⁶

A study in Caddo Parish compared racial characteristics of all homicides to the racial characteristics of cases prosecuted during the same period (1988-2008) found similar results. The majority of death sentences are handed down to black defendants who are accused of killing white victims, and the overwhelming majority of death sentences are handed down to people of any race who kill white victims. **Cases involving black suspects and white victims constitute only 8% of all murders and yet result in almost 50% of death sentences.** Conversely, no white person has ever been sentenced to death for killing a black person in Caddo Parish. The study concluded that there is a "less than one-in-ten-thousand chance that the prosecuted cases were a racially random sample drawn from the homicide group."¹

As Professors Michael Radelet and Glen Pierce explain, economic restrictions make it impossible for the maximum sentence to be pursued in every case, and so the status of the victim, including their race and socio-economic level, factor into prosecutorial decision-making.⁶⁷ Almost half of homicide investigations in New Orleans do not even result in an arrest and in cases where an offender is never found, a victim's family may cease to interact with criminal justice representatives within weeks or months of their loved one's murder.

V. Arbitrary, Inaccurate and Unfair continued...

Length of Appeals and Overturned Convictions

In those cases where the death penalty is secured, victims' families face years – even decades – without assurance of finality. The New Jersey Death Penalty Study Commission (2007) stated in their findings, "the non-finality of death penalty appeals hurts victims, drains resources and creates a false sense of justice. Replacing the death penalty with life without parole would be a certain punishment, not subject to the lengthy delays of capital cases; it would incapacitate the offenders; and it would provide finality for victims' families".⁶⁸ Gail Chasey, a state representative who helped push the abolition bill in New Mexico, explained that research conducted by the New Mexico capital punishment inquest committee revealed, "Families devastated by the murder of their own loved ones described the cruel impact of the death penalty on them. Far from providing closure or comfort, death penalty trials and constitutionally guaranteed appeals re-open the wounds for many families. Their hearts simply break again and again when all attention focuses on the defendants and their fate, rather than on honoring the memory of those they lost."⁶⁹ This was one of the main reasons that New Mexico repealed the death penalty in 2009.

The appeals process is required to ensure that the process by which a defendant received the death penalty was fair according to the law and that an innocent person has not been wrongfully condemned. In Louisiana, 64% of capital sentences were reversed by higher courts between 1976 and 1995.⁷⁰ In the last ten years, 50% of capital cases have been sent back for a new trial from federal courts. Such a high reversal rate not only exposes the inherent flaws in the administration of the death penalty, but takes away the surety of a jury's verdict from murder victims' families.

Aside from the practical implications of capital punishment for murder victims' families, many also wrestle with the ideological nature of a sentence that involves the taking of a life. A recent nationwide report has found that "The courts put the psychological burden of the death sentence onto the victim's family without regard to the family's stance on the death penalty." As a result, "there's been this rise of co-victim opposition, but it's gone relatively unnoticed by the justice system and the American public."⁷¹

Rejecting Execution as a Response to Murder

Charisse Coleman's brother, Russell, was shot and killed during an armed robbery of a liquor store in Shreveport, Louisiana where he was working as a stock clerk. The man responsible for the murder was sentenced to death and is currently on death row in Louisiana.¹ Charisse has spoken against the death penalty at conferences, town meetings, and panels, and has written op-ed pieces and other essays and articles:

"It has sometimes been hard over the last 15 years to keep this single event from turning me into someone I don't want to be. Precisely because I refuse to let a murderer sour my soul and embitter my life, because I refuse to let him dictate to me the limits of my capacity to heal and thrive, I stand firmly with the growing number of victims' families who believe that we must stop looking to a deeply flawed capital punishment system to soothe our anger and grief over violent crime. One senseless killing need not beget another. We absolutely must deal with violent crime in this country, an epidemic that needs to be addressed with forceful, creative energy. But I can't help recognizing: Russell died because a man saw killing him as the answer to a problem. What sense can there be to society using a murderer's methods to solve our problems?"

C. The Condemned

*Reserved not for the Worst of the Worst but for the Least among Us*⁷²

The lives of those waiting on death row often reflect some of the darkest and most troubling stories of those neglected and rejected by society. Louisiana's death row is filled with individuals who have suffered from physical and/or sexual abuse, mental illness, and mental retardation. As the life of Brandy Holmes illustrates, the death penalty has been reserved not for "the worst of the worst" in our society but rather for the least among us.

"I would like for all children to have what they wanted and that nothing will hurt them..."

As a baby *in utero*, Brandy Holmes was exposed to vast quantities of alcohol for the entire course of her prenatal development. Once born, she was named "Brandy" after her mother's favorite drink. Brandy came into the world as a victim of Fetal Alcohol Syndrome (FAS). When a pregnant mother drinks alcohol, the ethanol crosses the placenta and the blood alcohol level of the fetus equals that of the mother within minutes. Brandy's mother was drinking a fifth of brandy a day.

As a girl, Brandy's experience of school was unlike that of an ordinary child. With an IQ of 74 -77 and adaptive functioning deficits, Brandy quickly found that she was not keeping up with the children around her. From age six, she was classified by her school as learning-disabled and speech-impaired, with exceptionally poor performances in reading, math and communication. Her school records show that she had difficulties with both "visual and auditory processing and visual-motor integration." As a result of her limitations, Brandy had to repeat the first and third grades.

Brandy's FAS did not just affect her academic abilities. Those around her noticed that she had strange social interactions. She would miss social cues and display indiscriminate social behavior. She didn't seem to understand the implications of her actions or learn from her experiences. Her hyperactivity, also a symptom of FAS, made her difficult for teachers to control. As she grew older, Brandy found herself in a number of fights at school when some of the children taunted her, calling her a special education nerd. Other children found she was easily manipulated, and realized they could take advantage of her.

Meanwhile, at home, Brandy experienced the trauma of recurring sexual abuse by her father and other adults who passed through his house. Throughout her childhood, she was shipped back and forth between Louisiana and Mississippi, between her poverty-stricken, alcoholic mother and sexually abusive father, neither of which had the capacity to care for Brandy or address her developmental needs.

As a twelve-year old, Brandy was raped by an older boy. The impact of this horrifying event led her to attempt suicide by starving herself, and she was committed to a psychiatric hospital in Mississippi. Brandy was diagnosed with Post Traumatic Stress Disorder and Major Depression, and from that point on, struggled with depression for the rest of her life. A psychiatrist asked twelve-year old Brandy in an interview what she would wish if she had three wishes, and Brandy responded that "she would like for all children to have what they wanted and that nothing will hurt them and everybody should be rich." It was recommended that Brandy participate in group therapy for sexual abuse survivors, but she never received that treatment. It was also recommended that she be placed in a group home where she would receive the care that she required; instead, she was returned to her father's home. As a teenager, she turned to drugs and alcohol as a way to cope with the traumatic childhood she had barely survived. She became dependent on alcohol - a desperately sad irony for a victim of Fetal Alcohol Syndrome.

Brandy's first run-in with the law happened when she was thirteen. She was convicted of possession of a concealed weapon because she carried a knife to school in an attempt to protect herself. At the same time, dependency proceedings had been initiated against Brandy's mother. Once sentenced, Brandy was removed from her home and, after group homes were unable to control her, she was placed in a juvenile facility. Upon her release, Brandy had an abortion because she fell pregnant. Brandy said she had been gang-raped, but the incident was never investigated.

V. Arbitrary, Inaccurate and Unfair continued...

By this time, Brandy was fourteen years old. Soon after her release, Brandy was arrested for burglary. She was convicted and sentenced to juvenile life. Rather than sending her to a detention center, Brandy's judge wanted to place her in psychiatric care, recognizing Brandy's mental health needs. However, due to administrative red-tape this wasn't possible. Brandy was sent to do her time in various juvenile facilities, where a subsequent battery conviction led her to be sentenced to two years in adult prison at the Louisiana Correctional Institute for Women.

The original source of Brandy's difficulties, the Fetal Alcohol Syndrome, continued to rear its head in her turbulent adolescence. In their friend-of-the-court brief which they filed in Brandy's case at the United States Supreme Court, the National Organization for Fetal Alcohol Syndrome commented: "Her trouble with the law is a direct result of her impaired executive functioning, inability to conform to social norms and difficulty learning from past experiences, all of which are characteristic of FAS."

As she moved into her early twenties, Brandy continued to function at the level of borderline mental retardation, with a full scale IQ in the 74-77 range, and the mental capabilities of a ten to twelve year old. It was at this time, having endured an unspeakable childhood of trauma and neglect, and effectively "growing-up" in Louisiana's juvenile system, that Brandy met Robert Coleman.

Robert and Brandy entered into a relationship that was characterized by brutal and consuming violence. In their friend-of-the-court brief to the United States Supreme Court, the National Center on Domestic and Sexual Violence (NCDSV) pointed out that Brandy's experience "as a victim of rape and physical assault as a child rendered her especially vulnerable to victimization as an adult." As her classmates in the playground had done, Coleman instantly recognized Brandy's ability to be manipulated and used it to his advantage. Coleman inflicted physical, sexual, psychological, verbal and financial abuse upon Brandy which had the effect of keeping her in a constant state of fear. Her mother and sister often observed bruises and scratches on her body when they saw her. Brandy commented to others that she was afraid of Robert but that she couldn't leave him or he would come after her and find her. The NCDSV explained, "In a pattern that is not unusual for battered women... Brandy defended her abuser, protected him, and lied on his behalf."

In 2002, Brandy – now 23, and Robert – 33, moved back to Shreveport, Louisiana, where Brandy's mother lived. Shortly after their arrival, the pair was arrested for the murder of Reverend Julian Brandon, and attempted murder of his wife, Alice Brandon, at their home on the evening of New Years' Day, 2003.

Upon their arrest, Brandy gave a number of inconsistent statements about the role that Robert played in the incident. Contrary to the clear physical evidence collected by police, Brandy attempted to take ownership of the crime and exculpate Coleman altogether, saying that he wasn't present at the crime scene. While speaking with a female detective in one interview, Brandy asked: "Have you ever loved someone so much that you would do anything in the world for him?" When the detective asked if Brandy was referring to Coleman, she said that she was. Even the assistant district attorney working on the case believed that Brandy was minimizing Coleman's role in the murders, and commented that "Holmes' personality is one that would exhibit tendencies to cover for and/or make excuses for an individual that she cared for."

Brandy was convicted and sentenced to death by a Caddo Parish jury in 2006 for the murder of Julian Brandon, and the Louisiana Supreme Court declined to give her relief on direct appeal in 2009. She sits on Louisiana's death row today awaiting her execution.

There is no question that the allegations against Brandy Holmes present a case of murder. Even so, the full picture of Brandy reveals a twenty-three year old, brain-damaged young woman who endured horrific sexual abuse, poverty and mental illness throughout her childhood and was at the whim of her physically and psychologically abusive boyfriend at the time the murders occurred. Nobody ever told Brandy that she deserved something better for her life. Now, as a society, we have told her that she deserves death.

When we think about the death penalty being reserved for the most cold-blooded, calculating, people - the "worst of the worst" in our society - do we picture Brandy Holmes?

V. Arbitrary, Inaccurate and Unfair continued...

Louisiana's death row is overrepresented by individuals with childhood trauma

"A childhood and a life that none of us should have."

Michael Legrand was born Michael Clarence Myers on September 27, 1973. Michael was born in the confines of the Louisiana Correctional Institute for Women to a mother who was serving a 6-year prison sentence for drug possession. Michael's father was also incarcerated at the time of his birth for drug dealing. Michael's uncle (by marriage) was given custody of Michael and raised him even after Michael's aunt left the family home.

After five years, Michael's mother was released from prison. She successfully instituted proceedings to reclaim custody of her child, and five-year-old Michael left the safe confines of his home with Paul Legrand to enter a world of abuse and neglect. Michael's mother beat him as she continued to feed her drug addiction. She married a former cellmate of Michael's father, who had since divorced her.

Michael's stepfather physically and sexually abused him over a period of years. A psychologist who later interviewed Michael said that he once pointed out a scar on his arm and told the psychologist that it was from a time when his stepfather beat him so badly with a belt that he had to go to hospital. When Paul Legrand found out about the abuse to which his nephew was being subjected, he contacted Social Services. But instead of removing Michael from his abusive home, Social Services instead ordered Paul Legrand not to go near Michael again. Michael remained with his mother, and Paul was no longer able to see him.

Michael's stepfather repeatedly raped him throughout his childhood. At age nine, Michael finally told his older sister (who did not live with him) about the abuse. His sister was horrified and immediately called her mother and stepfather to confront them. Michael's mother responded by siding with her husband, saying "Michael, you tell me this is not true, and we'll take you home right now. If you continue to keep this lie up, I will take you and put you at the juvenile detention center, and they will put you in prison because little boys who lie about stuff like this go to prison..." Michael broke down and screamed at his stepfather, "You know I'm not lying... You're hurting me." But his mother interjected, "Oh, that's just it Michael, whenever you're lying, you cry." After two and a half hours of fighting, nine-year-old Michael finally dropped his head and said, "Okay, I'm lying. I want to go home."

Shortly after this incident, Michael's mother sent him away to a group home. Once in state custody, he was shipped between foster homes, where he was frequently molested. His older sister wanted to take custody of him but was told that he was doing well in foster care, so she decided to leave him be. She didn't see him again after the night she confronted her mother and stepfather about the abuse until Michael was incarcerated many years later.

Though told by Social Services that Michael's whereabouts were confidential, Paul Legrand never gave up searching for him. He went from group home to group home looking for Michael, until he finally found him. At the time, Michael was undergoing psychological treatment for his mental and behavioral problems, which stemmed from his horrific childhood abuse. Michael had begun to display angry outbursts and an inability to process and cope with his own emotions. The mental health treatment he received was limited and not informed by the specific and unique needs of children who have endured long-term abuse. Michael's problems persisted.

Eventually, Michael was legally adopted by Paul Legrand and was allowed to live with him. Paul tried to support his nephew in the best way he could, but the trauma Michael had experienced had caused too much damage, and he was unable to stay in school or lead a productive life. At seventeen, he quit school and got a job. He struggled with rage and confusion. Because of his age, the state would no longer pay for Michael's appointments with a psychologist. He turned to drugs as a way of self-medicating, and his life began to spiral out of control.

Michael attempted suicide at least three times as a young adult. He was hospitalized after these attempts on two occasions, one of which occurred just two months before the murder for which he now sits on death row.

V. Arbitrary, Inaccurate and Unfair continued...

Court records reflect that, in May of 1999, Michael went to a friend's apartment in an effort to steal his CD collection so he could sell it to pay for drugs. Michael was high on cocaine and didn't eat or sleep for five days, in the midst of which he committed his crime. He stabbed his friend, Rafael Santos, to death in a frenzy. A pharmacological expert at his trial explained that his behavior was consistent with heavy cocaine use, which his older sister attributed at trial to Michael's pent up rage. It was undisputed that the murder was not premeditated, but rather occurred in the throes of a struggle between Michael and Rafael. Michael admitted his guilt and was extremely remorseful, telling law enforcement that he should have been the one to die.

Once in the structured environment of prison, off of drugs, Michael began to understand the real significance of his acts, to live with the consequence of having killed Mr. Santos. He experienced God in his life. While on death row, Michael has completed his G.E.D., Bible college courses, and has become a mentor to other prisoners.

When Michael was formally sentenced to death by the Court following his trial, the judge addressed him on the record directly, saying:

Mr. Legrand, you had a childhood and a life that none of us should have. Nobody should have to put up with what you had to put up with... But having said all that, it is my duty to say this. The court sentences you to death... And I will say this, I don't usually say this... May God have mercy on your soul.

Michael's traumatic childhood is only one story of many Louisiana death row inmates who have endured physical, sexual and emotional abuse during the most formative years of their lives.⁷³ Their stories are punctuated by moments in time when help should have been made available to them as survivors of childhood abuse, but for reasons beyond their control, it was not. Now, they sit on Louisiana's death row as the perpetrators of terrible crimes. Though the system has finally noticed them, it is too little and too late.

Many individuals on Louisiana's death row were under 21 when they were arrested

"I feel like if I had gotten some help, we wouldn't be here."

Since he was deprived of oxygen as a newborn, Dustin Dressner has battled psychological illness. During the birthing process, Dustin went without oxygen for a significant period of time, which caused his cortex (which governs impulse-control) to be damaged.

As he grew, it became apparent that his family's history of mental illness was manifesting itself in Dustin. Both his mother and father struggled with bouts of severe depression and at times, his mother's panic disorders incapacitated her. Dustin's paternal grandmother had been institutionalized for paranoid schizophrenia after attempting suicide a number of times.

Feeling that something wasn't right, Dustin began self-medicating with Nyquil and Benadryl at the age of eleven. Even as this self-medicating escalated to drug and alcohol abuse, Dustin's bipolarism went untreated. It was not until he was a teenager that he was diagnosed with hypermania, Bi-Polar Affective Disorder II, a low IQ measured at 79, attention deficit disorder and poly-substance abuse disorder. Though he was institutionalized and prescribed medications, Dustin's adolescent mind was never able to cope with the illnesses that controlled it.

Seven months past his 18th birthday, Dustin Dressner killed Paul Fasullo during a major Bi-Polar, hyper-manic episode when he was drunk and high. By that time, Dustin had been forcibly institutionalized three times because he suffered from severe depression and psychological impairments. At trial, Dustin's mother testified that she had noticed her son's troubling behavior as a young child but didn't want to believe he had a problem. Just months before the incident, Dustin's mother had tried to get him re-institutionalized because she had come to see that his mental illness had caused him to lose control. At trial, she told the jury, "I feel like if I had gotten some help, we wouldn't be here." But her attempts to get Dustin treated were unsuccessful, and he quickly careened onto a path of destruction.

V. Arbitrary, Inaccurate and Unfair continued...

In 2005, the United States Supreme Court ruled that the death penalty is unconstitutional for juveniles. In its opinion, the Supreme Court identified three differences between juveniles under 18 and adults, which means that juveniles cannot be classed in the category of the "worst of the worst". Those differences are: 1) a lack of maturity and underdeveloped sense of responsibility; 2) their susceptibility to peer pressure and negative influences; and 3) the incomplete development of their character. The Court relied on scientific studies to identify these facts before making its ruling to deem juveniles less culpable, and therefore protect them from the death penalty.

Youthfulness and immaturity are biologically linked. Brain development continues until age 25, particularly in the frontal lobes. The frontal lobes of the brain affect judgment, impulse control, delay of gratification, the appreciation of consequences, empathy, and responsibility. Indeed, youthfulness is supposed to be a mitigating factor when juries are deciding whether to give a defendant the death penalty or life without parole in Louisiana.

Yet Louisiana's death row is overrepresented by offenders who were only just past their eighteenth birthday at the time they committed murder: Dustin Dressner was 18 and 7 months; LaMondre Tucker was 18 and 4 months; Freddie Gradley was 18 and 9 months; Teddy Chester was 18 and 1 month; Rogers Lacaze was 18 and 5 months; Jimmy Ray Williams was 18 and 6 months; Danny Irish was 18 and 11 months; LaDerrick Campbell was 18 and 11 months; Jeremiah Manning was 19 and 0 months.

Furthermore, in keeping with the second difference identified by the Court, these young men almost always acted in concert with others; yet their co-defendants, who were equally culpable for the crime, did not receive the death penalty.⁷⁴

The legislature has deemed that these young men were not responsible enough to buy alcohol or sit on a jury when they were sentenced to death. The only difference between them and juvenile offenders who are serving life without parole for the same offense is but a handful of months.

Louisiana's death row is overrepresented by individuals with intellectual disabilities

In the case *Atkins v. Virginia* (2003), the Supreme Court ruled that it was unconstitutional to execute mentally retarded individuals. The Court found that while people who are intellectually disabled may know the difference between right and wrong, their propensity to act impulsively and follow others in a group setting diminishes their culpability, so that it would be unjustifiably severe to execute them for their crimes.⁷⁵

Many of Louisiana's death row inmates are intellectually disabled and should not be executed. However, Louisiana's legislature has decided that defendants have to prove their intellectual disability based on a preponderance of the evidence, and that elected judges rather than mental health professionals are responsible for making that determination. The result is that unforgiving legal processes often result in offenders with very poor intellectual functioning remaining on death row.

James Dunn is currently facing the death penalty in Louisiana. His IQ has been measured between 69 and 75, and he has been found to have adaptive functioning deficits in 6 adaptive skills areas. He performed poorly at school, receiving poor grades, repeating grades and having to be placed in special education classes.

During the commission of an armed robbery resulting in a murder for which he now sits on death row, Dunn and his intellectually disabled co-defendant poured gasoline around the crime scene but forgot to bring a light to set it on fire. They removed the entire metal case containing a security camera's video tape recorder by ripping it from the wall instead of simply ejecting the VHS tape. They chose to rob a bank located on a long service road with no exits so that they could not escape ensuing police. And they drove their getaway car into the side of a train. This was the second time in his life that James Dunn made the intellectually disabled attempt to drive through a train. However, on appeal, the Supreme Court asserted that his actions were better attributed to the stress of the situation than adaptive functioning deficits. Furthermore, though the Court did not find that Dunn is not mentally retarded, they ruled that he had failed to meet the burden of proof to demonstrate that he is, and thus upheld his sentence of death.

V. Arbitrary, Inaccurate and Unfair continued...

James Dunn is not the lone individual on death row with severe intellectual disabilities:

Henry Anderson has a measured IQ of 73 and repeated the 2nd, 3rd, 8th, and 10th grades; he also received a traumatic brain injury which left him brain damaged before the commission of the crime for which he received the death penalty. But because this occurred after his 18th birthday, he has not been classified as intellectually disabled under Louisiana's statutory scheme.

Quincy Broaden was put in special education after failing the 3rd and 4th grades; he was diagnosed with a severe learning disability and tested in the bottom 7% nationally in science and reading, and the bottom 1% in language. At the age of 18 he failed the 9th grade and left school.

Clifford Deruise experienced brain damage in the right and left temporal regions of his brain when he was in elementary school, and he was classified as learning disabled. He has an IQ measured in the range of 70-75.

Freddie Gradley was placed in special education classes in school and was classified as learning disabled. His IQ is measured in the mid-60's.

David Bowie was held back in a number of grades in school so that he was 16 years old in the 8th grade when he dropped out. He functions at a 2nd grade reading level.

Jeremiah Manning has a measured IQ of 73 and operates at the 1st grade level for spelling and the 4rd grade level for arithmetic. He failed kindergarten, the 1st, 3rd, 7th and 9th grades and his school wanted to place him in special education, but his mother refused.

Many more of Louisiana's death row inmates' IQ's test in the range of mental retardation.⁷⁶

Louisiana's death row is overrepresented by individuals with mental illness

"These two men are trying to put you to death, trying to kill you . . . And if you don't understand this yet, young man, I don't know what I can say."

With a tested IQ of 67, charged with first-degree murder for an offense alleged to have been committed when he was eighteen years old, LaDerrick Campbell elected to represent himself at his capital trial. He was experiencing delusions that his attorneys were conspiring with potential jurors to have him found guilty.

As a young boy, LaDerrick failed the 2nd grade. His teachers realized he needed help and placed him in special education in the 4th grade. And there he stayed for the rest of his school years. In the 8th grade, LaDerrick's results on a standardized test put him in the lowest one percentile of students nationwide. He went on to fail the 9th grade twice, receiving failing grades in every single class for both years. During his third attempt to pass the 9th grade as an eighteen-year-old, he dropped out of school.

LaDerrick was not just impaired by mental limitations – he also experienced serious mental and emotional problems. A psychiatrist would say of LaDerrick two years later, "It is my opinion that Mr. Campbell is a scared and angry man; angry because of the rejection of his mother when he was a toddler and angry at the loss of his father when Mr. Campbell was only 15 years old. He is an emotionally troubled person..."

On February 11, 2002, 51-year old Kathy Parker was shot in the chest and died when two armed men entered the Magnolia Club where she worked in Caddo Parish and robbed her at gunpoint. LaDerrick Campbell was arrested for his involvement in the crime, and because he was eleven months past his 18th birthday, the state sought to secure the death penalty against him.

Prior to his trial, LaDerrick was tested by psychologists and psychiatrists to assess his level of intellectual functioning. In addition to his low IQ, adaptive behavior tests revealed that LaDerrick was performing life-tasks at the true-age level of a 12 year old.

V. Arbitrary, Inaccurate and Unfair continued...

As trial approached and voir dire began, the stress of the situation caused LaDerrick's mental health to disintegrate. The full extent of his mental illnesses, which include paranoid delusions, began to exhibit themselves. LaDerrick's relationship with his attorneys broke down, and they admitted on the record that they could not work with him. LaDerrick repeatedly told the judge that his defense attorneys were conspiring with the prosecution and the potential jurors against him through a series of elaborate hand signals. He became desperate, telling the judge:

They [his defense attorneys] trying to – they trying to let them [the jurors] know something. They throwing sign signals and talking to them. I guess they trying to put some news – everybody watch the news, and then they trying to persuade them I'm guilty. And by him talking to them I guess he trying to get in they head. They already heard news so they already think I'm guilty anyway. I'm just trying to let you know cause so you can do something cause I feel like a dead man walking.

The judge put his concerns about LaDerrick's competency to stand trial on the record numerous times, but never ordered a sanity commission. During jury selection, the judge stated: "My concern is whether or not Mr. Campbell is observing something that's real or is not real."

Mid-jury selection, LaDerrick told the court he wanted to dismiss his attorneys and represent himself at trial. The judge allowed him to do so, and LaDerrick proceeded to question jurors. The Court and the jurors repeatedly expressed their inability to understand LaDerrick or answer his questions, which is exemplified by the following exchange:

LaDerrick Campbell: Do anybody in the jury box feel offended about the questions the questioning I'm asking?

Juror Spears: We just don't understand most of them.

At one point, the judge felt it was necessary to tell LaDerrick, in a colloquy that lasted seven pages in the transcript, that he was concerned that LaDerrick did not appreciate the seriousness of his situation or even what he was facing – the death penalty. The judge fruitlessly tried to impress the reality of LaDerrick's situation upon him, saying: "*These two men [prosecutors] are trying to put you to death, trying to kill you . . . And if you don't understand this yet, young man, I don't know what I can say.*"

Despite the overwhelming signs that LaDerrick was mentally ill and unable to assist in his own defense, the judge stating on the record that LaDerrick did a wholly incompetent job representing himself, and the evidence of LaDerrick's diminished mental capacity, he proceeded to trial. The jury convicted him and sentenced him to death on September 28, 2004. Mr. Campbell is only one in a line of intellectually disabled individuals in Louisiana who have represented themselves at their capital trial and been sentenced to death. Greg Brown represented himself in his capital trial, despite suffering brain damage from a gunshot wound to his brain. Anthony Bell represented himself at his capital trial despite suffering major mental illness and a reported IQ of 56.

Many other defendants on Louisiana's death row also experience chronic forms of mental illness:

Michael Owen Perry was diagnosed as a paranoid schizophrenic at the age of 16. He twice escaped from mental institutions and was housed in a shed behind his parents' home because he was too disruptive to have in the house. When he was 28, he killed his parents, nephew and two cousins during a psychotic episode. He was convicted and sentenced to death. In a subsequent sanity commission ordered by the Louisiana Supreme Court, it was determined that Michael, "suffers from an incurable schizoaffective disorder that causes his days to be a series of hallucinations, delusional and disordered thinking, incoherent speech, and manic behavior. These symptoms can be temporarily diminished with antipsychotic drugs... but his underlying insanity can never be permanently cured or quelled." In 1992, the Louisiana Supreme Court decided that it was a violation of the Eighth Amendment to temporarily medicate Michael so that he could be executed. As a result, Michael continues to sit on Louisiana's death row – sentenced to death but unable to be executed – and will live out his days as an incurable schizophrenic.

Shedran Williams was deemed by a doctor to be legally insane at the time of his crime, suffering from severe acute stress disorder—often characterized by the absence of consequence processing.

Dustin Dressner has been diagnosed with Bi-Polar Affective Disorder II induced hypermania and was forcibly institutionalized three times before his 18th birthday, having tried to kill himself twice.

V. Arbitrary, Inaccurate and Unfair continued...

Lee Roy Odenbaugh experienced delusions before and throughout his trial and continues to believe that the government has implanted a chip in his brain to monitor his activities. He has trouble sleeping because he hears voices. Psychiatrists have determined he suffers from acute schizophrenia, paranoia, and psychosis.

Terrance Carter, who suffered from chronic depression, overdosed on his neighbor's schizophrenia medication and chased it with beer and liquor in an attempt to kill himself on the morning that he carried out the crime for which he now sits on death row.

Donald Wright experienced a traumatic head injury at age 13 that left him unconscious for forty five minutes and impaired his ability to make rational, controlled decisions and decisions requiring higher order levels of thinking. He has been diagnosed with dysthymic disorder, conduct disorder, and schizophrenia disorder.

Phillip Anthony suffers from depression and attempted to commit suicide; George Brooks Jr. suffers from schizophrenia.

Nathaniel Code was diagnosed as a paranoid schizophrenic with borderline personality disorder.

Curtis Deal suffers from a moderate depressive condition, alcohol dependence, and a neurological deficit of unknown origin.

Daniel Blank experiences abnormal brain functioning characterized by schizophrenia.

Clarence Harris attempted suicide while in jail in 1993 after learning of wife's death.

Cedric Jacobs attempted suicide three years prior to committing his crime.

Willard Allen suffered from chronic depression.

Quincey Broaden attempted suicide in his youth and again on the first day of his capital trial.

If these individuals had received a diagnosis and adequate treatment when their symptoms first emerged, the violence that they inflicted on the victims in their cases may have been avoided. This year, the Louisiana legislature reduced the budget for mental health services and support by \$44 million, which will lead to the closure of mental health facilities around the state.⁷⁷ Treatment programs for troubled teens in group homes will be reduced from six-nine months to 30-45 days.⁷⁸ As we cut services to people in need of mental health support, we will simultaneously spend hundreds of thousands of dollars prosecuting a single mentally-ill capital defendant.

D. Jurors

Death Qualification: Disqualifying People of Faith

To serve on a jury in which the prosecutor is seeking the death penalty, jurors must be willing to consider imposing both a life sentence and a death sentence under Louisiana law. Otherwise, potential jurors will be deemed "unqualified" by the Court and disqualified from service.

A death penalty trial is broken up into two smaller trials – the first determines the guilt of the defendant; the second determines his punishment. The process of excluding jurors who cannot give the death penalty or would only give the death penalty is called "death qualification." This process occurs in every capital murder trial in Louisiana, and it invariably excludes a large proportion of the otherwise-qualified jury pool.

This process particularly impacts the representation of people of faith. Almost all the major Christian denominations as well as Jewish and other faith traditions oppose the use of capital punishment in the United States, including the U.S. Conference of Catholic Bishops which has repeatedly called for its abolition.⁷⁹ Jurors who follow the teaching of their faith tradition to oppose the use of capital punishment are not allowed to serve. In our state which is one-third Catholic, this is a troubling reality.

V. Arbitrary, Inaccurate and Unfair continued...

A Catholic juror who was excluded from a capital trial in St. Tammany recalls:

"I remember being confused about the instructions for the penalty phase. The law seemed to be inconsistent. On the one hand, it allowed individuals on the jury to rule according to their conscience during the penalty phase. On the other hand, the law prohibited those exercising their moral convictions or conscience from ever getting on such a jury... There was no way for me to get onto that jury without lying about my moral beliefs on the death penalty."⁸⁰

The determination whether a defendant should live or die is the law's most significant moral question. This determination is intentionally left to a jury rather than a judge so that when a death sentence is imposed, it reflects the moral judgment of the community.

"The jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges."

Duncan v. Louisiana, United States Supreme Court (1968)

Louisiana's current law allows the removal of all jurors with religious opposition to the death penalty. This infringes on the religious liberty of Louisiana's citizens, frustrates the voice of the community, and prevents individuals of faith from participating in this moral decision. Death qualification undermines both the spirit of the jury system and the purpose of making capital sentencing a jury determination.

"Of special concern to me are rules that deprive the defendant of a trial by jurors representing a fair cross section of the community. Litigation involving both challenges for cause and peremptory challenges has persuaded me that the process of obtaining a "death qualified jury" is really a procedure that has the purpose and effect of obtaining a jury that is biased in favor of conviction. *The prosecutorial concern that death verdicts would rarely be returned by 12 randomly selected jurors should be viewed as objective evidence supporting the conclusion that the penalty is excessive.*" [Emphasis added]

Justice Stevens, Baze v. Rees (2008)

Partly because people of color are more likely to be people of faith,⁸¹ death qualification also contributes strongly to racial skewing of capital juries.

Racial Exclusion in Jury Selection

African-Americans called for jury service are far less likely to survive the jury selection process and make it onto a capital jury than white jurors in Louisiana. Though African-Americans make up a third of Louisiana's population and in some Parishes, almost half of the population, they are rarely represented on capital juries by more than one or two jurors. In a survey of fifteen capital cases in Louisiana between 2000 and 2011, African-Americans made up an average of 38% of the population and yet only constituted an average of 10% of the jury, which means less than two jurors (on a jury of 14, including 2 alternates).⁸²

In Caddo Parish, a study of jury selection outcomes in six capital cases found that only 4.84% of African-American jurors in the jury pools served on juries.⁸³ Fifty-four percent of African-American prospective jurors were excluded from the jury pool through death qualification.⁸⁴

One factor that contributes strongly to racial skewing of capital juries is the practice of "death qualification". Researchers have found in experimental settings that racial minorities were more than twice as likely to be excluded by death qualification.⁸⁵

V. Arbitrary, Inaccurate and Unfair continued...

The government's disproportionate use of peremptory strikes against eligible African-American jurors across the state of Louisiana further limits their representation on capital juries.⁸⁶ The striking of African-Americans from juries on the basis of race violates the 14th Amendment's assurance of equal protection under the law. The United States and Louisiana Supreme Courts have overturned death sentences in Louisiana based on the fact that prosecutors gave unlawful or suspect reasons for removing black jurors.⁸⁷ Due to extensive anecdotal evidence of racial discrimination in juror selection in Jefferson Parish, the Louisiana Crisis Assistance Center (LCAC) initiated a formal study to determine the extent and scope of racially biased juror selection by the Jefferson Parish District Attorney's Office.⁸⁸ LCAC's survey examined the State's decision to accept or reject 10,050 jurors in a total of 390 trials. LCAC found that the Jefferson Parish District Attorney's Office chose to strike black prospective jurors at more than three times the rate at which they struck white jurors.

The exclusion of African-Americans and other minorities from juries destabilizes the jury system. Research cited by the Equal Justice Initiative in its report, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy*,⁸⁹ shows that non-diverse juries tend to:

- spend less time deliberating
- consider fewer perspectives
- be less likely to correct inaccuracies
- be more likely to discuss controversial race-related topics in deliberations make more factual errors.

VI. Weighing the Costs: Alternatives to the Death Penalty

By redirecting resources currently allocated for death penalty prosecutions, appeals, and housing of death row inmates in Louisiana, we can: (1) reduce incidences of violent crime, and (2) improve public safety, particularly in communities hardest hit by crime and violence.

A. Cost of Louisiana's Death Penalty

There has never been a comprehensive study on the costs of a death penalty case in Louisiana. However, it is clearly established in Louisiana and around the country that the cost of pursuing the death penalty is infinitely greater than the costs of pursuing a life-without-parole sentence for murder. Richard Dieter, director of the non-partisan Death Penalty Information Center, says studies have uniformly and conservatively shown that it costs \$1 million more to try a case seeking the death penalty rather than life-without-parole.⁹⁰

In 2009, State Attorney General Buddy Caldwell described the costs of trying a capital case instead of simply pursuing a life sentence as "playing on a \$100-a-roll table instead of a nickel or dime table."⁹¹ Caldwell also explained that the costs of trying a second-degree murder case (and pursuing a life sentence) would only cost his parish \$15,000 or \$20,000, instead of the quarter of a million dollars he estimated it would cost to try the capital case.⁹² And that is before one even considers the range of costs arising from the lengthy appeals process required for all capital cases:

Cost of Prosecuting the Poor: Because capital defendants in Louisiana are indigent, the state must pay for costs that arise in the course of capital trial, the direct appeal, post-conviction and federal habeas. Minimum standards set by the U.S. Supreme Court require two capitally-certified attorneys to work death penalty trials, and each attorney should spend about 2,500 hours leading up to and including trials.⁹³

Protecting Against the Risk of Wrongful Conviction: The U.S. Supreme Court requires a lengthy appeals process for capital cases in order to ensure a "heightened reliability" of the capital cases. Any cut to the appeals process exacerbates the risk that an innocent person will be executed. As previously noted in this report, Louisianans have reason to be concerned that innocent people face execution in our state.

Experts: At the trial level, expert witnesses are often brought in by the state and defense to testify about the mental capacity and limitations of capital defendants, costing thousands of dollars. In the 2008 trial of Sean Gillis, the East Baton Rouge District Attorney spent over \$17,000 in fees for expert witnesses in trying to pursue a death sentence against the defendant. Yet the jury voted to give Sean Gillis a sentence of life without the possibility of parole.⁹⁴

Expert costs do not end at the trial level. Competency and mental retardation evaluations can continue all the way through a capital defendant's appeals. Kevan Brumfield, who has been on Louisiana's death row since the mid-90's, was recently evaluated by a state-funded expert to determine if he is mentally retarded and therefore, by law, ineligible for the death penalty. The Nineteenth Judicial District of Louisiana spent \$38,000 in fees for two psychiatrists to evaluate the defendant in post-conviction proceedings, fifteen years after his trial.⁹⁵

Jury Selection: Unlike non-capital cases, jury selection in capital cases occurs in two phases. In the first phase, the jury decides if the defendant is guilty; in the second, they determine his sentence. This means that capital trials last longer and cost more than non-capital trials. Jury selection itself takes substantially longer because jurors must be "death-qualified", taking more time in questioning and requiring more panels of jurors. Juries are also sequestered in capital cases, creating expenses for hotel accommodation, food and transportation for the duration of the trial, which often lasts two to three times longer than a life-without-parole murder trial.

"The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies..."

Richard Dieter (1994) *"Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty."*

VI. Weighing the Costs: Alternatives to the Death Penalty continued...

Housing: The cost to house someone on death row is far higher than keeping someone in the general population. Death row inmates must have their own cells in a maximum-security camp with more guards and surveillance. The Department of Corrections recently stated that it costs an additional \$1,400 per month, per inmate to house someone in a regular isolation camp at Angola – and this does not take into account the extra costs for security incurred at Death Row.⁹⁶

B. Our Misplaced Policy Priorities

Louisiana is ranked as one of the least educated, unhealthiest, and poorest states in the nation.⁹⁷

The Louisiana Budget Project, an independent, nonpartisan program that monitors and reports on state government spending and how it affects Louisiana's low- to moderate-income families, found that in the 2011 session, the Louisiana Legislature approved a \$26.3 billion state budget that:

- continues to reduce human services to our most vulnerable populations;
- further diminishes health care for the elderly, poor, and disabled;
- undermines public education;
- increases the cost of a college education for working families; and
- extends the state's budget crisis into the next fiscal year.⁹⁸

The following findings are taken from the LBP's 2011 Legislative Wrap-up:

Reduced Services for Children Living in Poverty: The Fiscal Year 2012 budget cuts funding for families and children that suffer from incapacitating poverty, abuse, and homelessness. Since Gov. Jindal came into office, state funding for the Department for Children and Family Services (DCFS) has been reduced by 40 percent, including a nearly \$53 million reduction in FY2012 compared to last year... By continuing to slash funding for human services, despite the high poverty and growing need for services in Louisiana, the state continues to undermine its ability to create the educated, healthy workforce required by prospective employers.⁹⁹

Reduced Support for Higher Education: Since Governor Jindal took office, higher education has lost over \$491 million in state funding, a 31% decrease. Compared to other southern states and to states nationally, Louisiana spends a disproportionately large share of its financial aid resources on those who can readily afford college while providing insufficient financial aid to those who need financial help in order to have a chance at a college education.¹⁰⁰

Reduced Support for Public School Education: While denying funds to public schools, legislators are giving money to parents who send their children to private schools. This year marks the third year in a row without an increase in state funding for public schools to cover rising costs. At an annual cost of \$5.3 million, the Legislature doubled a tax break that allows parents to deduct up to \$5,000 of nonpublic school tuition costs from their income on their state tax returns. With approximately 22 percent of white students attending private elementary and secondary schools, compared to just 5 percent of African-American students, this tax break disproportionately benefits white families who are already financially better off than black families based on average incomes and poverty levels. This subsidy will further erode our state's crumbling public education system and increase the disparity of education opportunities between white and black students.¹⁰¹

Reduced Mental Health Services: In addition, the final budget cut state spending on mental health and psychiatric services by \$44 million from last year. The system includes 43 community mental health centers, 16 clinics, and hospitals that treat people for mental and emotional disorders.¹⁰²

Reduced Services for Youth: Since Governor Jindal took office, state funding for Youth Services is down 21 percent. As a result of this year's cuts, alternative schools that serve 900 at-risk youth per year will be forced to close and treatment programs for troubled teens in group-homes will be reduced from six-nine months to 30-45 days.

Louisiana is tied with several other states as the worst in the country for child well-being, according to the Annie E. Casey Foundation's 2010 Kids Count Data Book. Troubling signs include a rise in the infant mortality rate, teen death rates, and the percent of children in single-parent families.

Compared to other states, Louisiana ranks appallingly low in terms of teen birth rate (44th), percent of teens not in school and not working (47th), and the percent of children in poverty (48th). Balancing a budget by taking away services for at-risk youth ensures that Louisiana's next generation falls further behind.¹⁰³

C. Smart on Crime: Crime Prevention, Public Safety, and Victims Services

The Death Penalty is an Ineffective Deterrent of Murder

The nation's police chiefs rank the death penalty last in their priorities for effective crime reduction. The officers do not believe the death penalty acts as a deterrent to murder, and they rate it as one of most inefficient uses of taxpayer dollars in fighting crime.¹⁰⁴

Similarly, 82% of the world's leading criminologists agree that the death penalty does not deter murders.¹⁰⁵ In a recent study, 75% of these criminologists suggested, "Debates about the death penalty distract Congress and state legislatures from focusing on real solutions to crime problems."¹⁰⁶

As Justice Stevens noted in *Baze v. Rees* (2008), "Despite 30 years of empirical research in the area, there remains no reliable statistical evidence that capital punishment in fact deters potential offenders." But even if it did have a deterrent effect, does it have the greatest effect on reducing crime of the criminal and social justice policies available to us?

[T]he death penalty is inefficient and extravagantly expensive. . . . Spending scarce public resources on after-school programs, mental health care, drug and alcohol treatment, education, more crime labs and new technologies, or on hiring more police officers, would truly help create safer communities.

Norm Stamper, 35-Year-Veteran Police Officer; Chief of Police, Seattle.

The ineffectiveness of the death penalty as a deterrent to crime exposes the need for critical resources and funds to be channeled into more effective crime prevention strategies. These crime prevention strategies do not necessarily mean incarcerating more people. For instance, between 1997 and 2007, New York experienced both the greatest decrease in violent crime and, simultaneously, the greatest decrease in prison populations and incarceration rate of any state in the country.

The list below highlights the urgent need to re-orient our policy priorities if we want to effectively fight crime and reduce incidences of homicide in Louisiana.

Improve and Expand Re-entry Services: The Louisiana Department of Corrections says that 15,000 inmates are released each year from Louisiana prisons, most to return to the communities where they were living when they committed their crimes.¹⁰⁷ People who leave a prison in Louisiana receive a bus ticket and ten dollars. More than two-thirds of those released are leaving parish prisons where they have had no opportunity learn skills that will equip them for employment. Half of those people released from prison will return within five years.¹⁰⁸

Two local New Orleans judges recently established "Re-entry Court," which allows short-term inmates to spend their sentence at Angola under the tutelage of "lifers," who teach them employment and life skills.¹⁰⁹ All inmates earn their GEDs, receive certification in a trade, and attend "life skills" classes. But only non-violent offenders serving sentences of less than ten years are eligible for Re-entry Court.¹¹⁰

It is well established that successful re-entry programs reduce recidivism rates, and thus save thousands in tax dollars;¹¹¹ nevertheless, Louisiana has yet to prioritize government spending on re-entry and continues to incarcerate people at an astounding rate. Elsewhere around the country, promising safety-oriented strategies have been developed.¹¹² The Boston Reentry Initiative was developed in 2000 to deter high-risk former prisoners from reoffending, enhance public safety, and strengthen the community.¹¹³ The program coordinates law enforcement and social services' efforts to assist prisoners before and after their release and has shown to be successful, with active participants being less likely to be rearrested upon their release from prison.¹¹⁴

VI. Weighing the Costs: Alternatives to the Death Penalty continued...

The Department of Corrections states on its website, "The question of what happens to men and women when they leave prison has never been as urgent as it is today."

Yet re-entry programs of any kind are scarce in Louisiana.

Examples of local non-government organizations assisting prisoners upon their release in Louisiana include:

- Cornerstone Builders
- Capital Reentry Coalition
- Louisiana Cure

Invest in Childhood Education: According to national economists, boosting graduation rates would produce tremendous dividends, more productive communities, and lower social costs.¹¹⁵ One study predicts that increasing high school graduation rates by 1% would decrease violent crime by 20% and drug and property crimes by more than 10%.¹¹⁶ They calculated that each additional high school graduate yielded an average savings of \$26,500 in lifetime criminal justice expenditures.¹¹⁷

Research shows that attending a high-quality pre-kindergarten influences a child's success both in school and in life. One rigorous study that followed severely disadvantaged children into adulthood showed that participation in pre-kindergarten dramatically reduced participation in juvenile and adult crime, and increased high school graduation, employment and earnings, with a total benefit-cost ratio of 16 to 1.¹¹⁸

State policymakers around the country are finding that a dollar spent for pre-kindergarten classes can now forestall many more dollars for prison beds down the road.¹¹⁹ "If we invest in early education programs, we'll reduce the likelihood that at-risk kids will end up in jail, which is very expensive. It's about dollars, cents and common sense," said Durham, NC Police Chief Jose Lopez in a recent poll.¹²⁰

An astounding 50% of children do not graduate from high school in Caddo Parish, Louisiana.¹²¹ Executive Director of the Alliance for Education notes, "*Hope for these children's future long term financial and life success is dim. For many it condemns them to repeat the cycle of poverty they grew up in.*"¹²² Caddo has sentenced more people to death than any other parish in the state over the last decade. An article by Fox News in 2010 titled "Just or Not, Cost of Death Penalty is a Killer for State Budgets" put it in these terms: "Every time a killer is sentenced to die, a school closes. That is the broad assessment of a growing number of studies taking a cold, hard look at how much the death penalty costs..."¹²³

For examples of local initiatives providing services to at-risk children, see:

- Headstart
- The Youth Empowerment Project
- Volunteers for Youth Justice

Increase Murder Victims' Families Service Assistance: Rogers and Naughton (2011) point out that those communities most impacted by crime and violence have concentrated numbers of victims and perpetrators –indeed, many people fall into both categories. The authors note, "How much overlap there is between those two identities is a dynamic that gets little attention... in many cases, it was the victimization [people] experienced which set off a chain of events that led them to crime and then prison."¹²⁴

VI. Weighing the Costs: Alternatives to the Death Penalty continued...

Rogers and Naughton go on to explain that victims of crime need outside information, assistance, and support to process the violence and rebuild their lives, as Louisiana murder victim family member Rose Preston emphasizes in her story. When murder victims' family members are denied access to these kinds of assistance, they are vulnerable to developing unhealthy coping mechanisms that affect not only their lives, but their loved ones and communities.¹²⁵ There is abundant clinical evidence indicating that following a murder, murder victims' family members are at risk for developing sustained and psychological reactions. Nearly one-quarter of family members of murder victims experience post-traumatic stress disorder.¹²⁷ They are also at a heightened risk of depression and anxiety.

"From my personal experience struggling for good mental health care for my son, who suffered tremendously following my husband's murder, I believe family survivors of murder victims would be much better served if the resources wasted on the death penalty were used to provide quality mental health care for the victims and survivors of violence."

Bonnita Spikes, wife of Michael Spikes, murdered in 1994.

Despite the pressing need for more services for murder victims' family members throughout Louisiana, government funding restrictions have led to the closing of mental health treatment facilities and reduced support for people experiencing mental and emotional health disorders.¹²⁸ In de-prioritizing these services, we do a disservice to murder victims' family members in our state.

For examples of local initiatives providing services to victims see:

- Turning Point Partners, Louisiana
- VOCA Program

Conclusion

The initiatives discussed here are by no means exhaustive of what can be done to address violent crime in Louisiana. Rather, we merely mean to suggest that alternatives already exist which accomplish much more than the death penalty to reduce crime in our local communities. We aim to make concrete not only what Louisiana residents lose when they maintain the death penalty, but what they might gain if they chose differently.

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- ¹⁹ Pope John Paul II (1999). *The Church in America (Ecclesia in America)*, Post-synodal apostolic exhortation, The Vatican, #63.
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- ³⁸ Ibid., *Peculiar Institution*, chapter 7.
- ³⁹ See, e.g., Charles Ogletree (2002). *Black Man's Burden: Race and the Death Penalty in America*, 81 *Oregon L. Rev.* 15, 17 ("Like the entire criminal justice system, the administration of the death penalty in America places a disproportionate burden on African Americans."); id. at 18 ("[T]he racially disproportionate application of the death penalty can be seen as being in historical continuity with the long and sordid history of lynching in this country."); Bright, Stephen B. (2005) "Discrimination, death and denial: the tolerance of racial discrimination in infliction of the death penalty"; 35 *Santa Clara Law Review* 433.

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- ⁴¹ See, e.g., Richard Dieter, *Struck by Lightning: The Continuing Arbitrariness of the Death Penalty Thirty Five Years After Its Reinstatement in 1976*, available at www.deathpenaltyinfo.org/documents/StruckByLightning.pdf; Richard Dieter, *The Death Penalty in Black and White: Who lives, Who Dies, Who Decides*, www.deathpenaltyinfo.org/death-penalty-black-and-white-who-lives-who-dies-who-decides#34 [accessed 1/1/2012].
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- ⁷⁴ See Gradley, Dressner, Campbell, Tucker, Chester, Williams, Manning.
- ⁷⁵ The determination that an individual has an intellectual disability and cannot be executed requires findings that (1) he has sub-average intelligence, as measured by objective standardized tests; (2) he has significant impairments in several areas of adaptive skills; and (3) his neuro-psychological disorder was manifested in the development stage. In Louisiana, the statute defining intellectual disability requires that it is identified prior to the defendant's 18th birthday, that his/her intelligence level is in the range of mental retardation (no specific IQ score is delineated), and that the defendant displays adaptive functioning deficits in two or more areas of the following: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.
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- ⁷⁸ *Ibid.*, "2011 Legislative Wrap-up", pages 4-5.
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- ⁸³ The study included the following cases from Caddo Parish: *State v. (Robert) Coleman*, No. 226,816 (1st JDC 2006); *State v. (Felton) Dorsey*, No. 251,406 (1st JDC 2009); *State v. (Laderrick) Campbell*, No. 220,544 (1st JDC 2004); *State v. (Nolan) Turner*, No. 203173 (1st JDC 2002); *State v. (Corey) Williams*, No. 193258 (1st JDC 2000); *State v. (LaMondre) Tucker*, No. 273436 (1st JDC 2011). The records of jury-selection used for the study are on file at LCADP's Office.
- ⁸⁴ *Ibid.*, Caddo Parish (above).
- ⁸⁵ Alicia Summers, R. David Hayward, & Monica K. Miller (2010). "Death Qualification as Systematic Exclusion of Jurors with Certain Religious and Other characteristics", *Applied Soc. Psychology*, vol 40, p. 3218.
- ⁸⁶ In the following cases, 100% of eligible African-American jurors were struck by the state: *State v. Chris Arceneaux* (2004), *State v. James Dunn* (1999), *State v. Antoine Watts* (1999), *State v. Michael Weary* (1998), *State v. Jessie Hoffman* (1998), *State v. Hakim El-Mumit* (1984).
In the following cases, more than 80% of eligible African-American jurors were struck by the state: *State v. Robert McCoy* (2011), *State v. Darrell Draughn* (2003), *State v. Anthony Scott* (2002), *State v. Corey Williams* (2000), *State v. Cedric Jacobs* (1998), *State v. Lawrence Jacobs* (1998), *State v. Henri Broadway* (1995).
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- ⁹³ P. Purpura, "Surge in Death Penalty Prosecutions Slows in Jefferson Parish," Times-Picayune, July, 6, 2009.
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- ⁹⁵ Information obtained through PRA Request to East Baton Rouge District Attorney's Office, 2010. (On file with author)
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