A Broken System:

Error Rates in Capital Cases,

1973-1995

James S. Liebman
Simon H. Rifkind Professor of Law
Columbia University School of Law

Jeffrey Fagan
Professor, Joseph Mailman
School of Public Health
Visiting Professor, Columbia
University School of Law

Valerie West
Doctoral Candidate
Department of Sociology
New York University

June 12, 2000

© 2000. James S. Liebman, Jeffrey Fagan, Valerie West
Executive Summary

There is a growing bipartisan consensus that flaws in America’s death-penalty system have reached crisis proportions. Many fear that capital trials put people on death row who don’t belong there. Others say capital appeals take too long. This report—the first statistical study ever undertaken of modern American capital appeals (4,578 of them in state capital cases between 1973 and 1995)—suggests that both claims are correct.

Capital sentences do spend a long time under judicial review. As this study documents, however, judicial review takes so long precisely because American capital sentences are so persistently and systematically fraught with error that seriously undermines their reliability.

Our 23 years worth of results reveal a death penalty system collapsing under the weight of its own mistakes. They reveal a system in which lives and public order are at stake, yet for decades has made more mistakes than we would tolerate in far less important activities. They reveal a system that is wasteful and broken and needs to be addressed.

Our central findings are as follows:

• Nationally, during the 23-year study period, the overall rate of prejudicial error in the American capital punishment system was 68%. In other words, courts found serious, reversible error in nearly 7 of every 10 of the thousands of capital sentences that were fully reviewed during the period.

• Capital trials produce so many mistakes that it takes three judicial inspections to catch them — leaving grave doubt whether we do catch them all. After state courts threw out 47% of death sentences due to serious flaws, a later federal review found “serious error”—error undermining the reliability of the outcome—in 40% of the remaining sentences.
Because state courts come first and see all the cases, they do most the work of correcting erroneous death sentences. Of the 2,370 death sentences thrown out due to serious error, 90% were overturned by state judges—many of whom were the very judges who imposed the death sentence in the first place; nearly all of whom were directly beholden to the electorate; and none of whom, consequently, were disposed to overturn death sentences except for very good reason. This does not mean that federal review is unnecessary. Precisely because of the huge amounts of serious capital error that state appellate judges are called upon to catch, it is not surprising that a substantial number of the capital judgments they let through to the federal stage are still seriously flawed.

To lead to reversal, error must be serious, indeed. The most common errors—prompting a majority of reversals at the state post-conviction stage—are (1) egregiously incompetent defense lawyers who didn’t even look for—and demonstrably missed—important evidence that the defendant was innocent or did not deserve to die; and (2) police or prosecutors who did discover that kind of evidence but suppressed it, again keeping it from the jury. [Hundreds of examples of these and other serious errors are collected in Appendix C and D to this Report.]

High error rates put many individuals at risk of wrongful execution: 82% of the people whose capital judgments were overturned by state post-conviction courts due to serious error were found to deserve a sentence less than death when the errors were cured on retrial; 7% were found to be innocent of the capital crime.

High error rates persist over time. More than 50% of all cases reviewed were found seriously
flawed in 20 of the 23 study years, including 17 of the last 19. In half the years, including the most recent one, the error rate was over 60%.

• High error rates exist across the country. Over 90% of American death-sentencing states have overall error rates of 52% or higher. 85% have error rates of 60% or higher. Three-fifths have error rates of 70% or higher.

• Illinois (whose governor recently declared a moratorium on executions after a spate of death-row exoneration) does not produce atypically faulty death sentences. The overall rate of serious error found in Illinois capital sentences (66%) is very close to—and slightly lower than—the national average (68%).

• Catching so much error takes time—a national average of 9 years from death sentence to the last inspection and execution. By the end of the study period, that average had risen to 10.6 years. In most cases, death row inmates wait for years for the lengthy review procedures needed to uncover all this error. Then, their death sentences are reversed.

• This much error, and the time needed to cure it, impose terrible costs on taxpayers, victims’ families, the judicial system, and the wrongly condemned. And it renders unattainable the finality, retribution and deterrence that are the reasons usually given for having a death penalty.

Erroneously trying capital defendants the first time around, operating the multi-tiered inspection process needed to catch the mistakes, warehousing thousands under costly death-row conditions in the meantime, and having to try two out of three cases again is irrational.

This report describes the extent of the problem. A subsequent report will examine its causes and
their implications for resolving the death penalty crisis.
Table of Contents


Executive Summary ............................................................ i

Table of Contents ............................................................... iv

Figures, Flow Charts, Tables and Capital-Sentencing Report Cards ........................................ x

Acknowledgments .................................................................................. xviii

I. Introduction .................................................................................. 1

II. Summary of Central Findings ..................................................... 3

III. Confirmation from a Parallel Study ............................................. 14

IV. Implications of Central Findings ................................................ 15

V. The Capital Review Process .......................................................... 18
   A. First Inspection: State Direct Appeal ........................................ 18
   B. Second Inspection: State Post-Conviction .............................. 19
   C. Third Inspection: Federal Habeas Corpus ......................... 20

VI. The Study ................................................................................. 23

VII. The National Capital Punishment Report Card ............................ 28
   A. Capital-Sentencing History ............................................... 31
   B. Sentences and Executions .................................................. 32
   C. Error and Success Rates .................................................. 32
   D. Length of Time of Review ................................................. 40
   E. Capital-Sentencing and Execution Rates .......................... 41
F. Demographic Factors........................................................................................................42
G. Court Factors: The Context of State Court Decision Making ................................44

VIII. State Comparisons ...................................................................................................46
A. Rates of Serious Error Found on State Direct Appeal ...........................................46
B. Rates of Serious Error Found on State Post-Conviction ......................................49
C. Rates of Serious Error Found on State Direct Appeal and State Post-Conviction ..................................................................................................................52
D. Rates of Serious Error Found on Federal Habeas Corpus ..................................56
E. Rates of Serious Error Found by State Versus Federal Courts ............................62
F. Overall Rates of Error Found on State Direct Appeal, State Post-Conviction and Federal Habeas Corpus ........................................................................67
G. Length of Time of Review ......................................................................................73
H. Capital-Sentencing and Execution Rates, and the Two Compared ....................78
I. Demographic Factors .............................................................................................87
J. Court Factors ........................................................................................................93

IX. Federal Circuit Court and Regional Comparisons .............................................102
X. Conclusion: A Broken System; the Need for Research into Causes ....................109

End Notes .....................................................................................................................115

Appendices (separately bound)

Appendix A: State Capital Punishment Report Cards

Description of Information in State Capital Punishment
<table>
<thead>
<tr>
<th>Report</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report Cards</td>
<td>A-1</td>
</tr>
<tr>
<td>Table 30: State-by-State Comparisons of Direct Appeal, State Post-Conviction, and Federal Habeas Corpus Reversal Rates and Overall Error Rates</td>
<td>A-7</td>
</tr>
<tr>
<td>Alabama Capital Punishment Report Card</td>
<td>A-9</td>
</tr>
<tr>
<td>Arizona Capital Punishment Report Card</td>
<td>A-11</td>
</tr>
<tr>
<td>Arkansas Capital Punishment Report Card</td>
<td>A-13</td>
</tr>
<tr>
<td>California Capital Punishment Report Card</td>
<td>A-15</td>
</tr>
<tr>
<td>Delaware Capital Punishment Report Card</td>
<td>A-17</td>
</tr>
<tr>
<td>Florida Capital Punishment Report Card</td>
<td>A-19</td>
</tr>
<tr>
<td>Georgia Capital Punishment Report Card</td>
<td>A-21</td>
</tr>
<tr>
<td>Idaho Capital Punishment Report Card</td>
<td>A-23</td>
</tr>
<tr>
<td>Indiana Capital Punishment Report Card</td>
<td>A-27</td>
</tr>
<tr>
<td>Kentucky Capital Punishment Report Card</td>
<td>A-29</td>
</tr>
<tr>
<td>Louisiana Capital Punishment Report Card</td>
<td>A-31</td>
</tr>
<tr>
<td>Maryland Capital Punishment Report Card</td>
<td>A-33</td>
</tr>
<tr>
<td>Mississippi Capital Punishment Report Card</td>
<td>A-35</td>
</tr>
<tr>
<td>Missouri Capital Punishment Report Card</td>
<td>A-37</td>
</tr>
<tr>
<td>Nebraska Capital Punishment Report Card</td>
<td>A-41</td>
</tr>
<tr>
<td>Nevada Capital Punishment Report Card</td>
<td>A-43</td>
</tr>
<tr>
<td>Oklahoma Capital Punishment Report Card</td>
<td>A-47</td>
</tr>
<tr>
<td>Pennsylvania Capital Punishment Report Card</td>
<td>A-49</td>
</tr>
<tr>
<td>South Carolina Capital Punishment Report Card</td>
<td>A-51</td>
</tr>
<tr>
<td>Texas Capital Punishment Report Card</td>
<td>A-55</td>
</tr>
<tr>
<td>Utah Capital Punishment Report Card</td>
<td>A-57</td>
</tr>
<tr>
<td>Virginia Capital Punishment Report Card</td>
<td>A-59</td>
</tr>
<tr>
<td>Wyoming Capital Punishment Report Card</td>
<td>A-63</td>
</tr>
</tbody>
</table>
Appendix B:  Federal Circuit Court and Regional Capital Punishment Report Cards

Description of Information in Circuit and Regional Capital Punishment Report Cards .................................................................B-1

Third Circuit Capital Punishment Report Card ...............................................................B-4
Fourth Circuit Capital Punishment Report Card ............................................................B-6
Fifth Circuit Capital Punishment Report Card ...............................................................B-8
Sixth Circuit Capital Punishment Report Card ..............................................................B-10
Seventh Circuit Capital Punishment Report Card .......................................................B-12
Eighth Circuit Capital Punishment Report Card ............................................................B-14
Ninth Circuit Capital Punishment Report Card ..............................................................B-16
Tenth Circuit Capital Punishment Report Card .............................................................B-18
Eleventh Circuit Capital Punishment Report Card .......................................................B-20

Appendix C:  Incomplete List of Capital Judgments Reversed on State Post-Conviction or Related Types of Review

Introduction and Key .................................................................................................... C-1

Summary of National Composite Results ..................................................................... C-3

Alabama ................................................................. C-4
Arizona .................................................................................................................................... C-6
Arkansas .................................................................................................................................. C-8
California ................................................................................................................................ C-9
Delaware ................................................................................................................................ C-10
Florida ................................................................................................................................... C-11
Georgia .................................................................................................................................. C-17
Idaho ....................................................................................................................................... C-20
Illinois ..................................................................................................................................... C-21
Indiana .................................................................................................................................... C-24
Kentucky ............................................................................................................................... C-26
Louisiana .............................................................................................................................. C-27
Maryland .............................................................................................................................. C-28
Mississippi ............................................................................................................................ C-30
Missouri .................................................................................................................................. C-31
Montana .................................................................................................................................. C-32
Nebraska ................................................................................................................................ C-33
Nevada ................................................................................................................................... C-34
Appendix C, cont’d

North Carolina ............................................................................................................... C-35
Oklahoma ...................................................................................................................... C-37
Pennsylvania .................................................................................................................. C-38
South Carolina ............................................................................................................... C-39
Tennessee ...................................................................................................................... C-41
Texas ............................................................................................................................. C-44
Utah .............................................................................................................................. C-47
Virginia .......................................................................................................................... C-48
Washington .................................................................................................................... C-49
Wyoming ....................................................................................................................... C-50

Appendix D:  Appendix D: Examples of Serious Error
Warranting Federal Habeas Corpus Relief

Appendix E:  Tables and Figures

Table 1:  Overall Error Rates and Percent Death Sentences

Table 2:  Death Row Population, Executions, and Percent
Executed, 1973-1999................................................................................E-3

Table 3:  State and Federal Reversals by Year, 1973-1995.................................E-4

Table 9:  Overall Error Rates, by State, 1973-1995 Excluding
State Post-Conviction................................................................................E-5

Figure 11:  Combined Error Rates on State Direct Appeal and
Federal Habeas, 1973-95 ........................................................................ E-6

Table 11:  Years from First Death Sentence to First Non-
Consensual Execution, 1973-2000 ............................................................E-7

Table 12:  Average Years from Death Sentence to Execution,
1973-95 ...................................................................................................E-8

Table 13:  Proportion of 1973-1995 Death Sentences Awaiting
State Direct Review as of 1995.................................................................E-9
Appendix E, cont’d

| Table 14: | Death Sentences Per 1,000 Homicides, 1973-1995 ..................E-10 |
| Table 15: | Death Sentences Per 100,000 Population, 1973-1995 .................E-11 |
| Table 16: | Death Sentences Per 1,000 Prison Population, 1973-1995 ..........E-12 |
| Table 17: | Non-Consensual Executions Per 1,000 Homicides, 1973-1995 ..........E-13 |
| Table 18: | Non-Consensual Executions Per 100,000 Population, 1973-1995 ..........E-14 |
| Table 19: | Non-Consensual Executions Per 1,000 Prison Population, 1973-1995 ..........E-15 |
| Table 20: | Average Homicides Per 100,000 Population, 1973-1995 ..........E-16 |
| Table 21: | Average Percent of Population that is Non-White, 1973-1995 ..........E-17 |
| Table 22: | Index of Political Pressure on State Courts .........................E-18 |
| Table 23: | State Expenditures Per Capita on Courts, 1973-95 .................E-19 |
| Table 24: | State Court Criminal Cases Per 1,000 Population, 1973-95 ..........E-29 |
| Table 26: | Death Sentences Per 100,000 Population by Region, 1973-1995 ..........E-21 |
| Table 27: | Non-Consensual Executions Per 100,000 Population by Region, 1973-1995 ..........E-21 |
| Table 28: | Percent of Death Sentences Carried Out (All Executions), 1973-1995 ..........E-22 |
| Table 29: | Percent of Death Sentences Carried Out (Non-Consensual Executions), 1973-1995 ..........E-23 |
Figure 36: Percent Death Sentences Carried Out (Non-Consensual Executions), 1973-95
Figures, Flow Charts, Tables and Capital-Sentencing Report Cards

Figures

Figure 1: Overall Error Rate and Percent of Death Sentences Carried Out, 1973-1995 .................................................................11

Figure 2: Persons on Death Row and Percent and Number Executed, 1974-1999 ........................................................................13

Figure 3: Error Rates Detected on State Direct Appeal, Federal Habeas, and the Two Combined, by Year, 1973-95 ...............................38

Figure 4: Known State Post-Conviction Reversals, 1973-2000 39

Figure 5: Percent of Death Sentences Reversed on State Direct Appeal, 1973-95 ........................................................................48

Figure 6: Percent of Death Sentences Reversed on State Direct Appeal or State Post-Conviction, 1973-95 ................................................54

Figure 7: Percent of Death Sentences Reversed on Federal Habeas, 1973-95 ...............................................................................58

Figure 8: Percent of Capital Sentences Reversed on Federal Habeas by State and Circuit, 1973-95 ..........................................................61

Figure 9: Percent of Capital Judgments Reversed on State Direct Appeal and Federal Habeas, 1973-95 ....................................................63

Figure 10: Percent of Capital Judgments Reversed on State Direct Appeal or State Post-Conviction and on Federal Habeas, 1973-95 .................................64

Figure 11: Combined Error Rate on State Direct Appeal and Federal Habeas, 1973-95 .................................................................E-6

Figure 12: Combined Error Rate on State Direct Appeal, State Post-Conviction and Federal Habeas, 1973-95 ..............................................69
Figure 13: Overall Error Rate (Including State Post-Conviction) and Reversal Rate by Type of Review, 1973-95 .................................................................72

Figure 14: Years from First Death Sentence to First Non-Consensual Execution, 1973-2000.................................................................74

Figure 15: Average Years from Death Sentence to Execution, 1973-95 .................................................................................................75

Figure 16: Percent of 1973-95 Death Sentences Awaiting Review as of 1995 .................................................................77

Figure 17: Per Capita Death Sentencing Rates by State, 1973-95 .................................................................................................79

Figure 18: Per Capita Non-Consensual Executions by State, 1973-95 .................................................................................................80

Figure 19: Death Sentences and Executions per 1,000 Homicides by State, 1973-95 .................................................................................................82

Figure 20: Death Sentences and Executions per 100,000 Population by State, 1973-95 .................................................................................................83

Figure 21: Death Sentences and Executions per 1,000 Prisoners, 1973-95 .................................................................................................84

Figure 22: Per Capita Death Sentences and Percent Death Sentences Carried Out, 1973-95.................................................................86

Figure 23: Death Sentencing Rates Per 1,000 Homicides and Per Capita Homicide Rates, 1973-95 .................................................................88

Figure 24: Execution Rates and Homicide Rates, 1973-95 .................................................................89

Figure 25: Per Capita Death Sentencing Rates and Percent Non-White Population, 1973-95 .................................................................91

Figure 26: Percent of Death Sentences Carried Out and Non-White Population, 1973-95 .................................................................92
Figure 27: Political Pressure and Death-Sentencing Rate, 1973-95 .................................................................94
Figure 28: Political Pressure and Percent of Death Sentences Carried Out, 1973-95 ...........................................95
Figure 29: Per Capita Spending on Courts and Per Capita Death Sentencing Rates, 1973-95 ........................................97
Figure 30: Per Capita Spending on Courts and Percent of Death Sentences Carried Out, 1973-95 .........................98
Figure 31: State Court Caseloads and Death Sentencing Rates per 1,000 Homicides, 1973-95 ..........................100
Figure 32: State Court Caseloads and Percent of Death Sentences Carried Out, 1973-95 ............................101
Figure 33: Rate of Error Detected on Habeas in Circuits with Over 10 Cases, 1973-95 .................................104
Figure 34: Per Capita Death Sentencing and Per Capita Execution Rates by Circuit, 1973-95 .......................108
Figure 35: Percent Death Sentences Carried Out, All Executions, 1973-95 .......................................................111
Figure 36: Percent Death Sentences Carried Out, Non-Consensual Executions, 1973-95 .................................E-34

Flow Charts

The Attrition of Capital Judgments .........................................................7

The Capital Criminal Process: Trial Through State and Federal Post-Conviction ...........................................22

Tables

Table 1: Overall Error Rates and Percent Death Sentences

xiv
Table 2: Death Row Population, Executions, and Percent Executed, 1973-1999

Table 3: State and Federal Reversals by Year, 1973-1995

Table 4: Percent of Capital Judgments Reviewed on Direct Appeal in Which Reversible Error Was Found, 1973-1995

Table 5: Known State Post-Conviction Reversals, 1973-1995, By State

Table 6: State-by-State Comparisons of Rates of Error Detected by All State Courts (State Direct Appeal and State Post-Conviction)


Table 10: Overall Error Rates, by State, 1973-1995 Including State Post-Conviction

Table 11: Years from First Death Sentence to First Non-Consensual Execution, 1973-2000

Table 12: Average Years from Death Sentence to Execution, 1973-95

Table 14: Death Sentences Per 1,000 Homicides, 1973-1995 ..................................................E-10
Table 15: Death Sentences Per 100,000 Population, 1973-1995 ..............................................E-11
Table 16: Death Sentences Per 1,000 Prison Population, 1973-1995 .................................E-12
Table 17: Non-Consensual Executions Per 1,000 Homicides, 1973-1995 ..............................E-13
Table 18: Non-Consensual Executions Per 100,000 Population, 1973-1995 ......................E-14
Table 19: Non-Consensual Executions Per 1,000 Prison Population, 1973-1995 ....................E-15
Table 20: Average Homicides Per 100,000 Population, 1973-1995 .....................................E-16
Table 21: Average Percent of Population Non-White, 1973-1995 ........................................E-17
Table 22: Index of Political Pressure on State Courts ............................................................E-18
Table 23: State Expenditures Per Capita on Courts, 1973-95 ...............................................E-19
Table 24: State Court Criminal Cases Per 1,000 Population, 1973-95 ..............................E-20
Table 25: Error Rates Detected on Habeas Review and Overall (State Direct Appeal and Federal Review Combined) by Federal Circuit/Multi-State Regions .........................................................103
Table 26: Death Sentences Per 100,000 Population by Region, 1973-1995 ..............................E-21
Table 27: Non-Consensual Executions Per 100,000 Population by Region, 1973-1995 .................E-21
Table 28: Percent of Death Sentences Carried Out (All Executions), 1973-1995 ..................E-22
Table 29: Percent of Death Sentences Carried Out (Non-Consensual Executions), 1973-1995 ..........................................................E-23
Table 30: State-by-State Comparisons of Direct Appeal, State Post-Conviction, Federal Habeas Corpus Reversal Rates and Overall Error Rates .............................................................................. A-7
Tables in End Notes

Outcomes Following State Post-Conviction Reversals, 1973-April 2000 ................................................................. note 45 (text p.5)

Direct Appeal Reversal Rates in States in Which No Capital Judgments Had Completed Federal Habeas Review by End of Study Period ........................................ note 147 (text p.33)

Total Number of Executions Compared to Executions by Texas and Virginia .............................................................. note 218 (text p.85)

Rank in Death Sentences per 1,000 Homicides Compared to Rank in Sentences Carried Out Following Full Review ................................................................. note 238 (text p.112)

Capital Punishment Report Cards

National Capital Punishment Report Card


State Capital Punishment Report Cards

Alabama Capital Punishment Report Card ................................................................. A-9

Arizona Capital Punishment Report Card ................................................................. A-11

Arkansas Capital Punishment Report Card ............................................................... A-13

California Capital Punishment Report Card ............................................................. A-15

Delaware Capital Punishment Report Card ............................................................... A-17

Florida Capital Punishment Report Card ................................................................. A-19

Georgia Capital Punishment Report Card ............................................................... A-21

Idaho Capital Punishment Report Card ................................................................. A-23
Indiana Capital Punishment Report Card ............................................................... A-27
Kentucky Capital Punishment Report Card ............................................................ A-29
Louisiana Capital Punishment Report Card ............................................................ A-31
Maryland Capital Punishment Report Card ............................................................ A-33
Mississippi Capital Punishment Report Card ......................................................... A-35
Missouri Capital Punishment Report Card ............................................................. A-37
Montana Capital Punishment Report Card ............................................................. A-39
Nebraska Capital Punishment Report Card ............................................................ A-41
Nevada Capital Punishment Report Card ............................................................... A-43
North Carolina Capital Punishment Report Card .................................................. A-45
Oklahoma Capital Punishment Report Card ........................................................... A-47
Pennsylvania Capital Punishment Report Card ...................................................... A-49
South Carolina Capital Punishment Report Card .................................................. A-51
Texas Capital Punishment Report Card ................................................................. A-55
Utah Capital Punishment Report Card ................................................................. A-57
Virginia Capital Punishment Report Card ............................................................. A-59
Wyoming Capital Punishment Report Card .......................................................... A-63

Circuits Capital Punishment Report Cards

xix
Third Circuit Capital Punishment Report Card .................................................................B-4
Fourth Circuit Capital Punishment Report Card ..............................................................B-6
Fifth Circuit Capital Punishment Report Card .................................................................B-8
Sixth Circuit Capital Punishment Report Card .................................................................B-10
Seventh Circuit Capital Punishment Report Card .............................................................B-12
Eighth Circuit Capital Punishment Report Card ...............................................................B-14
Ninth Circuit Capital Punishment Report Card ...............................................................B-16
Tenth Circuit Capital Punishment Report Card ...............................................................B-18
Eleventh Circuit Capital Punishment Report Card ..........................................................B-20
Acknowledgments

This Report is the product of thousands of hours of labor by dozens of people, including colleagues, administrative assistants, and many tireless and immensely resourceful and productive student research assistants at Columbia Law School. Special thanks go to John Lundin, Randy Hertz, Jon Lloyd, Garth Davies, Michael J. Balzano (for his terrific graphics assistance), Clare Huntington, Julia Tarver, Honri Marcel, Janet Sabel, and especially Kate McGarry. We also express our appreciation to Alicia Amezcua, Sandor Bak, Dan Canova, Molly Bishop, Kristin Buff, Sean Feller, Kara Finck, Brandon Garrett, Brian Gifford, George Hatzmann, Justine Harris, Tricia Hoefling, Nick Isaacson, Matt Kadasian, Alice Kim, Hyeon Lee, Jeremiah Marble, Stephan Murphy, Stefan Schick, Yosef Rothstein, Troy Selvaratnam, Erika Smith, and Ernest Yakob.

Scores of people in death-sentencing states around the nation have helped us immensely over the years—typically taking time away from important activities and withering schedules to provide us with information about capital cases in their states. We are very grateful. In this regard, we would especially like to remember Patsy Morris, and to thank Donna Gloekner and Professor Michael L. Radelet.

From 1991 until June 1999, this research was funded entirely by the Columbia Law School through a series of stipends for faculty research and student research assistance during the summer months. We deeply appreciate that support. We also express our thanks to the Law and Society Program of the Open Society Institute for a grant that supported the work of one of the authors, Valerie West, during the spring and summer of 1999 and has helped defray the cost of distributing this Report to the public.