G. Length of Time of Review

The multiple inspections needed to detect all this error take time—a 23-year average of about 9 years if the outcome is execution (with that figure rising to 10.6 years in the latter third of the study period), and 7.6 years if the outcome is reversal on habeas corpus. Figures 14-16 below provide a variety of perspectives on the length of time required to cleanse capital judgments of chronically high rates of error.

Figure 14 below compares states on the basis of how many years elapsed between each state’s first death sentence and its first non-consensual execution (not necessarily in the same case):

- In 16 (57%) of the 28 study states, it took (or will take) 15 or more years to get from the state’s first death sentence to its first execution following full review.
- In 71% of the states it took 10 or more years.

Figure 15 compares the 23 study states in which at least one execution (consensual or non-consensual) took place between 1973 and 1995 based on the amount of time that elapsed, on average, between the same prisoner’s death sentence and execution. Subject to missing data, and the fact that the table counts consensual executions, which causes it to understate the time needed for full review, Figure 15 reveals that:

- In the vast majority of states, executions took place on average 7 or more years after death sentences during the study period.
- In over two-thirds of the states, executions took place an average of 9 or more years after the death sentence was imposed.
Figure 14. Years from First Death Sentence to First Nonconsensual Execution, 1973-2000
Figure 15. Average Years from Death Sentence to Execution, 1973-95
Figure 16\textsuperscript{212} below compares states based on the proportion of their 1973-1995 death sentences that were awaiting direct review in 1995. As is discussed above, this comparison provides a rough measure of the extent to which state direct appeal is a bottleneck in the inspection process.\textsuperscript{213} Nationally, 21\% of capital sentences imposed between 1973 and 1995—about 5-years-worth of death sentences—were awaiting direct appeal in 1995:

- In over a third of the 28 states, 20\% or more of all post-\textit{Furman} death sentences were backed up at the state direct appeal stage 23 years after \textit{Furman}.

- In three of the nations most prolific capital-sentencing states, Texas, Pennsylvania and California, the 1995 log-jam of cases awaiting state direct appeal contained (respectively) 27\%, 27\% and 47\% of the state’s post-1972 cases. In Washington and Wyoming, the 1995 logjam contained 45 and 70\% of the post-\textit{Furman} cases.

- Of note, although the federal Ninth Circuit Court of Appeals is sometimes blamed for holding up executions in the states within its jurisdiction, the three states in that circuit with the largest death rows—California, Arizona and Washington—were all in the top cohort of states as of 1995 in terms of the proportion of cases bottled up in the state courts awaiting direct appeal.
Figure 16. Percentage of 1973-95 Death Sentences Awaiting Direct Review as of 1995
H. Capital-Sentencing and Execution Rates, and the Two Compared

This section compares states to each other based on (1) how many death sentences they impose “per capita” and (2) how many executions the carry out “per capita.” We use three different per capita measures—sentences and executions per 1,000 homicides, per 100,000 population, and per 1,000 prison population. The middle measure is particularly interesting, given the expectation that the number of death sentences each jurisdiction imposes and carries out would be responsive to the number of homicides committed there. This section also asks whether, as one would expect, states that undertake to capitally sentence more offenders per capita than other states also execute more people per capita.

Figure 17 below compares states based on their death sentencing rates per 1,000 homicides, per 100,000 population and per 1,000 prisoners. Figure 18 below compares states based on their non-consensual execution rates per the same three populations.
Figures 17 and 18 reveal huge variations among states in both their death-sentencing rates and their execution rates measured per homicides and per population:215

- Measured against both populations, some death-sentencing states have death-sentencing rates that are 10 times those in other death sentencing states.
- In Wyoming, for example, nearly 6% of all homicides result in a death sentence—over four times the national average for death-sentencing states. In Maryland, less that six-tenths of 1% of homicides lead to a death sentence.
- Nevada condemns nearly 11 people out of every 100,000—about three times the national average for death-sentencing states. Washington State does so to less than 1 person out of every 100,000.
- Similar disparities characterize the execution rates in the various death-sentencing jurisdictions.
- The disparities among states in death sentences and executions per 1,000 homicides are particularly interesting, revealing the absence of what one would expect to be a consistent relationship between homicides and capital punishment.

Figures 19-21 below consider whether high (or low) death-sentencing rates (per homicide, per population or per prisoners) translate, as one would expect, into high (or low) execution rates.
Figure 19. Death Sentences and Executions per 1,000 Homicides by State, 1973-95

Death Sentences per 1,000 Homicides

Executions per 1,000 Homicides
Figure 21. Death Sentences and Executions per 1,000 Prisoners, 1973-95
Judging from figures 19-21, there is no relationship between death-sentencing and execution rates. When states are arranged in order of their death sentences per capita, the line representing their executions per capita fluctuates wildly and randomly:

- Idaho, Nevada, Arizona and Oklahoma rank 2\textsuperscript{nd}, 3\textsuperscript{rd}, 4\textsuperscript{th}, and 6\textsuperscript{th} (and range from 3 to 4 times the national average) when it comes to how often homicides result in death sentences. Those same states, however, are tied for 23\textsuperscript{rd}, tied for 24\textsuperscript{th}, 17\textsuperscript{th}, and 14\textsuperscript{th} among 28 states (near or well below the national average) when it comes to how often homicides result in execution.

- On the other hand, Texas, Virginia and Louisiana rank 18\textsuperscript{th}, 22\textsuperscript{nd}, and 25\textsuperscript{th} in death sentences per homicide (ranging from slightly above, down to two-thirds, the national average) but 4\textsuperscript{th}, 2\textsuperscript{d}, and 7\textsuperscript{th} in executions per homicide (ranging from over twice to nearly four times the national average).

Thus, the three states most associated in the public’s mind with executions—Louisiana, which was the nation’s execution capital in the late 1980s,\textsuperscript{217} and Texas and Virginia which claimed that distinction in the 1990s\textsuperscript{218}—did not attain that status by sentencing disproportionately large numbers of people to death row. Instead, they have done so by translating below-average death-sentencing rates into above-average execution rates.

Figure 22 below asks a related question: Are states that are most likely to punish homicides with death also most likely to translate death sentences into executions?
Figure 22. Per Capita Death Sentences and Percent Death Sentences Carried Out, 1973-95
Figure 22 reveals no relationship between death sentencing and execution rates. Indeed, for nearly half the states—Louisiana, Virginia, Missouri, and Texas (with comparatively low death-sentencing but high death-sentences-carried-out rates) and Wyoming, Idaho, Nevada, Arizona, Oklahoma, Florida, Alabama, and Mississippi (with comparatively high death sentencing rates but low death-sentences-carried-out rates), the relationship is the inverse: the more frequently states sentence killers to die, the less frequently they execute them, and vice versa.

Overall, therefore, it seems clear that a powerful disposition to sentence offenders to die does \textit{not} go hand in hand with a strong capacity to carry out the death sentences that are imposed. Figuring out why this is so is a question we will address in a subsequent report. Our analysis so far, however, suggests one place to look for the source of the discrepancy: the distributively high rates of capital-sentencing error that we document above.

\textbf{I. Demographic Factors}

This section considers two other possible explanations for the frequency with which states sentence individuals to die, and the frequency with which they carry out the capital sentences they impose. The first is violent crime—measured by each state’s homicide rate per 100,000 population.\textsuperscript{219} The second is race—based on the proportion of each state’s population that is non-white.\textsuperscript{220}

Figures 23 and 24 below consider the relationship between homicide rates per 100,000 population and, respectively, capital-sentencing and execution rates.
Figure 23. Death Sentencing Rates Per 1,000 Homicides and Per Capita Homicide Rates, 1973-85
Figure 24. Execution Rate and Homicide Rate, 1973-95
If there is any relationship at all between homicide and capital-sentencing rates (a matter requiring more sophisticated analysis), Figure 23 suggests that it is weak and inverse. Figure 24 asks whether variations in rates of serious crime, as measured by homicides per 100,000 population, can explain variations in execution rates, or vice versa. Figure 24's decisive answer is that there is no such relationship between a state’s serious crime rate and its willingness or capacity to execute its citizens.

Turning to the issue of race, Figure 25 below compares capital-sentencing states’ relative death-sentencing rates (per 1,000 homicide) to their percent nonwhite population.

Surprisingly, perhaps, this chart suggests that proportionately larger minority populations are associated with somewhat lower death-sentencing rates, and vice versa. Figure 25 also reveals the sharp variation among capital-sentencing states in terms of the proportion of their populations that are nonwhite, ranging from 5% in Idaho (which, incidently, has a very high death sentencing rate per homicide) to 37% in Mississippi (where the death-sentencing rate per homicide is relatively low).

Figure 26 below considers whether race influences execution, as opposed to death-sentencing, rates. Here, the relationship is weaker than in Figure 25, and runs in the opposite direction: Although states with larger proportions of racial minorities tend to capitaly sentence less often than states with proportionately smaller minority populations, those same states tend to carry out relatively more of the death sentences they impose.
Figure 25. Per Capita Death Sentencing Rate and Percent Non-White Population
Figure 26. Percent of Death Sentences Carried Out and Non-White Population

- Percent Death Sentences Executed
- Percent Non-White Population
J. Court Factors

Here, we consider whether differences among states’ judicial systems account for the marked variability in their capital-case error rates, death-sentencing rates, and execution rates. Relevant, reliable, and comparable state-court contextual data are difficult to obtain. For purposes of this initial report, we have developed three comparative measures: “political pressure” (the extent to which state sentencing and appellate judges are subject to electoral discipline for actions they take as judges\(^\text{221}\)), judicial workloads (which we measure by comparing the various states’ criminal court caseloads per 1,000 persons during the relevant period) and judicial resources (comparing the dollars the respective states spent on their courts per capita during the relevant period).\(^\text{222}\) The details of each of these measures are described at pp. 44-45 above.\(^\text{223}\)

Figure 27 and Figure 28 below consider the impact of political pressure on, respectively, death-sentencing and execution (more specifically, death-sentences-carried-out) rates. Because error rates and the rates at which death sentences are carried out are so highly correlated (see Figure 1, supra p. 11), the latter chart is also a rough measure of the relationship between political pressure and capital error rates.
Figure 28. Political Pressure and Percent of Death Sentences Carried Out, 1973-95
Figures 27 and 28 reveal a curious and potentially significant pattern: In general, the more electoral pressure a state’s judges are under, the higher the state’s death-sentencing rate, but the lower the rate at which it carries out its death sentences. Assuming a causal relationship, this suggests that political pressure tends to impel judges—or to create an environment in which prosecutors and jurors are impelled—to impose death sentences, but then tends to interfere with the state’s capacity to carry out the death sentences that are imposed.

Whether it is fair to infer a causal relationship here and, if so, what might account for that relationship is a question for further research. One hypothesis is suggested by possible relationships between high death-sentencing rates and high error rates, and between the latter and low execution rates: Public opinion may place a premium on obtaining death sentences. If so, a desire to curry favor with voters may lead elected prosecutors and judges to cut corners in an effort to secure that premium—simultaneously causing death-sentencing rates, and error rates, to increase. In that event, high rates of reversible error would explain why high political-pressure states, after imposing so disproportionately many death sentences—making so many errors in the process—end up carrying out so disproportionately few of their death sentences. These are questions for further research.

Figures 29 and 30 below relate, respectively, states’ death-sentencing rates, and the rates at which they carry out death sentences, to their per capita court expenditures.
Figure 29. Per Capita Spending on Courts and Per Capita Death Sentencing Rates, 1973-95
Figure 30. Per Capita Spending on Courts and Percent of Death Sentences Carried Out, 1973-95
With some exceptions, Figure 29 appears to indicate that comparatively high expenditures on courts are associated with relatively high death-sentencing rates. It is difficult to know what to make of this relationship, especially because capital cases are themselves costly and thus may partly account for high expenditures. It may be, however, that states whose courts have substantial amounts of resources are more capable of handling capital cases—and thus do so more often—than states with less well-funded courts.

As was the case when we looked at capital punishment and political pressure, the relationship between capital punishment and spending reverses when we move from analyzing death sentencing rates to rates of death sentences carried out: Figure 29 shows a direct relationship between court expenditures and death sentencing (the higher the one is, the higher the other tends to be); by contrast, Figure 30 shows a weak inverse relationship between court expenditures and death sentences carried out—as states’ spending on their courts increases, the proportion of the death sentences imposed that are carried out tends to decrease. The cause of that relationship (if any exists) is unclear. If, however, it were the case that the processing of death cases is itself responsible for significantly driving up court expenditures, then Figures 29 and 30 might suggest that spending relatively large sums to secure relatively large numbers of death sentences has little pay off—and, indeed, is counterproductive—when it comes to securing executions. If so, the policy alternative of spending less by securing fewer death sentences—each of which, however, is more likely to be carried out—would be indicated.

Figures 31 and 32 below consider the relationship between state court caseloads and, respectively, death sentencing rates and the rate of death sentences carried out.
Figure 31. State Court Caseloads and Death Sentencing Rates per 1,000 Homicides
Figure 32. State Court Caseloads and Percent of Death Sentences Carried Out, 1973-95
Judging from Figure 31, there is no relationship between how many cases per capita state courts handle and the rate at which those courts impose death sentences. Figure 32 does, however, suggest a weak relationship between court caseloads and death sentences carried out: As per capita caseloads drop, the rate of death sentences carried out also tends to drop. One might hypothesize that states with smaller courts (ones with lower caseloads) are more likely to generate seriously flawed death sentences at the trial level, thus depressing the rate at which their death sentences are carried out. Alternatively, state appellate courts with lower caseloads may be superior error detectors, thus (given high error rates across all states) accounting for lower rates of executions—or, in this scenario, lower rates of flawed executions. Further research is called for.

IX. Federal Circuit Court and Regional Comparisons

Appendix B contains report cards for the nine federal judicial circuits that conducted federal habeas corpus review of state death sentences during the 1973-1995 study period. Those circuits reviewed between 2 (Sixth Circuit) and 215 (Eleventh Circuit) death sentences in that period.

Referring to these tables as Federal Circuit report cards is at times misleading, because much of the information in them considers results generated by state courts or other state actors in the states (noted at the top of each report card) that are grouped in that circuit. For purposes of the latter sorts of information, these are actually regional report cards, which aggregate the results of actions by a variety of state actors in multiple states in particular segments of the nation. Only the three items falling within the “Federal Habeas Corpus” category of each report (which we have marked with a number sign (#)) report the results of actions exclusively by the federal courts in the relevant circuit. An additional six rows of