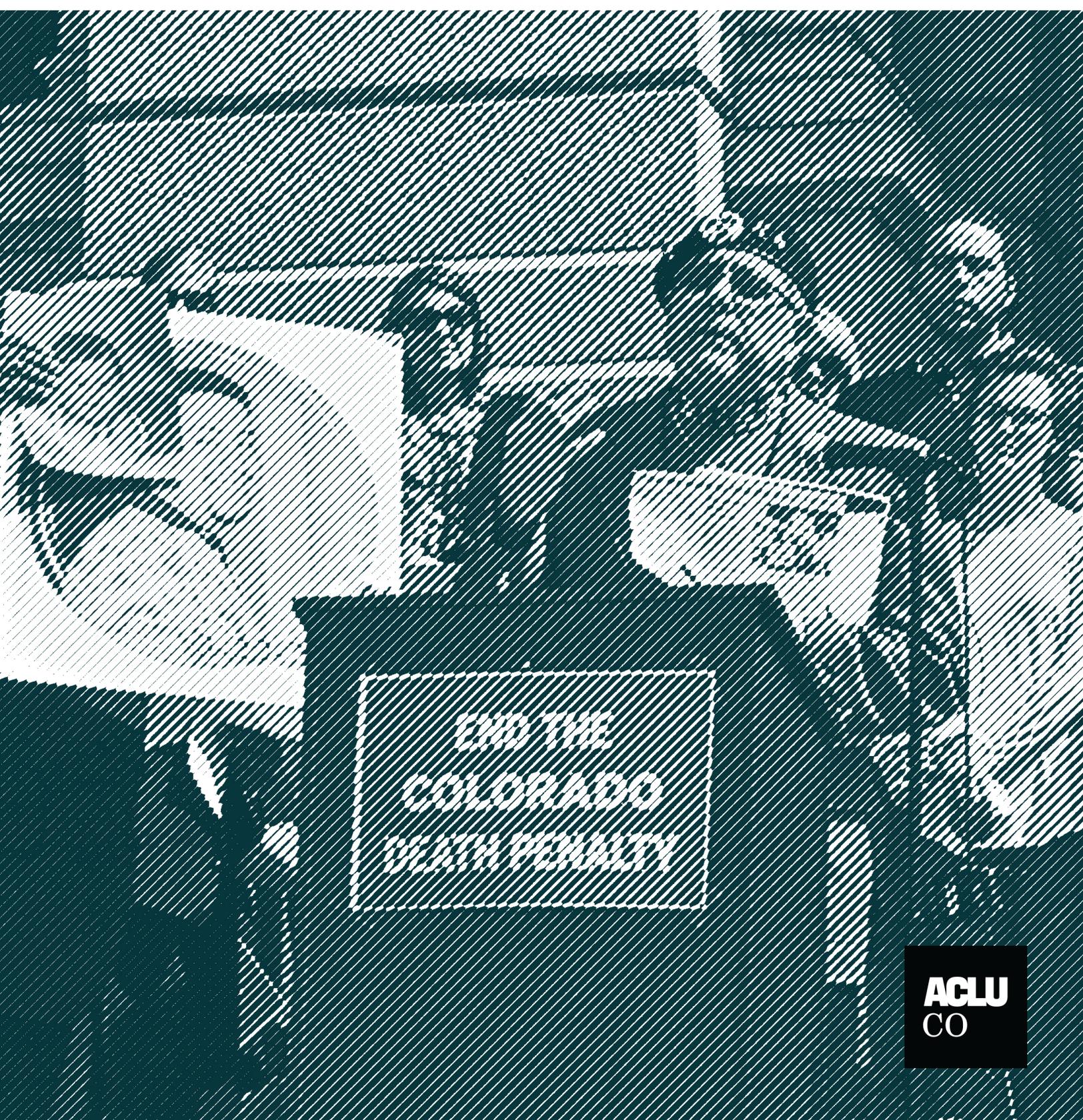


# ENDING A BROKEN SYSTEM: COLORADO'S EXPENSIVE, INEFFECTIVE AND UNJUST DEATH PENALTY





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## EXECUTIVE SUMMARY

The death penalty is an expensive, ineffective, and unjust process. The death penalty system harms victims' families by forcing them to relive the trauma of the murder over decades, by undermining the healing process as they navigate complicated legal trials, and by bringing additional attention to the person who committed the murder. The death penalty is a bloated government program that consumes police time and wastes millions of dollars better invested in solving cold cases, expanding services for victims' families, or addressing the root causes of violence.

A death penalty sentence risks making irreversible mistakes. A wave of exonerations in the U.S. proves that the death penalty is all too often applied to the innocent. When carried out, executions using untested, increasingly unavailable drugs are often botched, torturing defendants and traumatizing corrections officers.

The irrevocable nature of the death penalty makes the trials and decades of appeals exceedingly expensive. The death penalty squanders the time and energy of courts, prosecuting attorneys, defense counsel, juries, and courtroom and law enforcement personnel, and it unduly burdens the criminal legal system.

Whether or not you face the death penalty in Colorado depends more on the color of your skin, your socio-economic status, the quality of your attorney, and where you live than on the

seriousness of your crime. The death penalty is arbitrarily implemented, disproportionately impacting people of color, people living in poverty, and people with mental illnesses or intellectual and developmental disabilities. Despite common misconceptions, it is neither a deterrent nor an effective plea-bargaining tool.

The death penalty spurns the long-standing international obligations and human rights that the U.S. itself helped to create. As democracies around the world turn away from the death penalty, the U.S. has responded by defending a barbaric form of punishment only embraced by the world's autocrats. The risks are too great to maintain this unjust system, which is why 158 countries and 24 states no longer execute people.

In countless settings, victims' family members have explained how the death penalty delays justice, trapping them in a decades-long process that provides little solace. Despite enduring unimaginable grief, Colorado victims' families are urging lawmakers to end the death penalty. The stories of victims' families affected by the death penalty are featured throughout this report. These powerful stories of Coloradans demanding change are a call for legislators to end a system that only causes additional harm.

Support for the death penalty is at its lowest level since 1972, and there has not been an execution in Colorado since 1997.<sup>1</sup> It is time to put in law a decision our state has made clear in practice. It is time to end this broken and unjust system.



“Just as there are men and women that are guilty of causing harm or death to another - there are also innocent men and women behind bars who are left to rot by a judicial system that is not perfect.”

– *Linda Burks Brown, whose brother, Willie Frazier, was murdered in Denver*

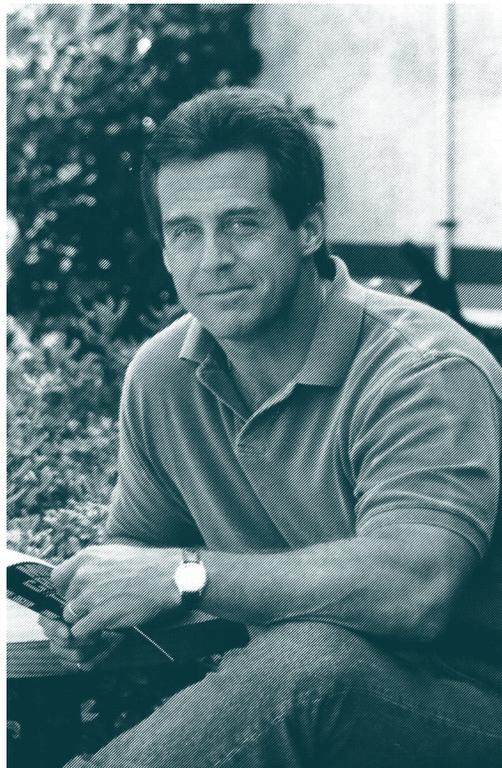


“The death penalty is a sentence not only on the murderers, but on the families of those who are murdered. If my brother’s wife is sentenced to death for her actions, we will have to face years, perhaps decades, of mandatory appeals and relive the trauma. My brother’s grandsons will grow up with the details of this horrific tragedy repeatedly thrust upon their lives. Appeals are focused on the murderer. Months before the trial, another murder case was sensationalized by the media. It was so stressful to wonder if that’s what was going to happen with my brother’s case. For three long years through a prolonged police investigation, filing of charges, then more charges, scheduling the trial then rescheduling and becoming a death penalty trial a year later, my family was under intense distress. When I hear prosecutors saying ‘you will feel closure magically when we kill this person’, that is just so wrong. Killing someone else will not bring my brother back.”

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

“The exorbitant cost of the death penalty means that millions of dollars used for the death penalty cannot be used for crime prevention, increased law enforcement, or services for crime victims. Every death penalty case is bifurcated so it’s not one case, it’s really two. The first case to determine if the person committed the murder, the second case to decide whether or not the death penalty is an appropriate sentence. That’s why death penalty cases are so much longer and more expensive. Every capital case is a sentence to poor murder victims’ family members that they have to relive the murder and the trauma of that experience for many years while they await legal cases and appeals.”

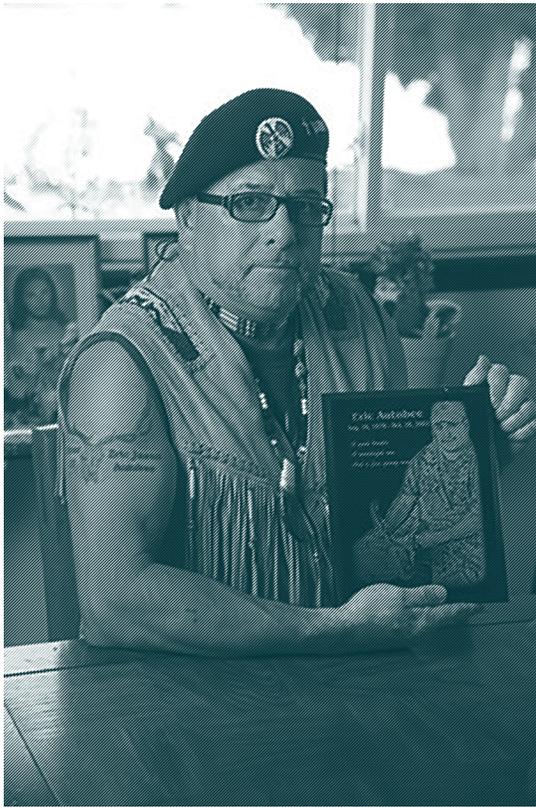
– *Gail Rice, whose brother, Denver Police Officer Bruce VanderJagt, was murdered while on duty*



“We’ve only had one execution in the last 40 years. And in that set time period we’ve had over 4,000 homicides in Colorado. I find it insulting when people suggest we need the death penalty as justice for victims. Are you suggesting the vast majority of us don’t deserve justice because we were never offered the death penalty? Don’t add insult to our tremendous injury by telling us our loss wasn’t the worst of the worst. Such a message is very insulting because it says to the rest of us, the murder of our loved one is ordinary or not that bad.”

– *Lieutenant Hollis, whose niece, Faye Johnson, was murdered in Aurora*





“I’m a veteran corrections officer. No one would ever call me soft on crime. The threat of the death penalty isn’t nearly as important to keeping our prisons safe as well-trained staff that have the tools they need to succeed. I wish more than anything that the millions of dollars the state used to prosecute and defend our offender’s capital case had instead been invested in making our prisons safer. As a victim’s father who has been trapped in the labyrinth of the death penalty, and after seeing the real misuse of resources, I am begging our elected officials to do away with our broken death penalty system.”

– *Bob Autobee of Denver, whose son, Sgt. Eric Autobee, was murdered in the Limon Correctional Facility*



“I have peace knowing that my mother’s murderer is being held accountable for his actions. He will serve life in prison without parole. To make that decision to take his life would be no different than him taking my mom’s life. And two wrongs never make a right. I want to teach my children the importance of human life. I would never have wanted my mother’s murderer to be killed -- knowing that his children would feel the grief and the pain that I feel.”

– *Katherine Smith, whose mother, Sgt Mary Katherine Ricard, was murdered at the Arkansas Valley Correctional Facility in Crowley, Colorado*

“I felt the death penalty would rob me of the chance to get answers from the killer. We didn’t want him put to death and the door shut forever on information he might provide. Last January, other inmates killed the man who stole Antonio from us. I grieve that I’ll never get the chance to have answers to my many questions. What’s more, I know he was someone’s child, and now another family is grieving. Nothing can ever bring back Antonio or mend our broken hearts. My experience has taught me that instead of providing support to our family, the death penalty would have added to our pain and diverted resources that could help so many.”

– *Babette Romero-Miller of Lochbuie, whose nephew, Antonio Ray Davalos, was murdered in Littleton*



“To take a life when a life has been lost is revenge, not justice. Capital punishment is the most premeditated of murders. We are the only western democracy that executes its citizens. Murder, whether state-sponsored or by a criminal, is abhorrent and demonstrates a lack of respect for human life. A society that respects human life doesn’t deliberately kill human beings. Colorado having a policy of state-authorized killings is immoral, and does not represent who we are as a state. Executions endorse killing to solve social issues. We must stop instilling this as a value to uphold in our younger generations.”

– *Brenda Carrasco of Denver, whose cousin, Brandon Cruz-Sigala, was murdered*





“My relationship with the death penalty began with three bullets to my mother’s head. My biological father was going to prison for her murder. I wrote a letter to my biological father and forgave him. A burden was lifted. As an adult, I learned that the Arapahoe County sheriff had urged the District Attorney’s office to seek the death penalty for my biological father. I am thankful that the death penalty was not sought, as the finality of death would have once again impacted my ability to seek out answers to my questions. I’ve learned firsthand that the power of forgiveness is a power that far outweighs the toxicity of anger. When I honor the memory of my mother, there is no intrusion of anger or animosity, and I owe that to forgiveness. When we are talking about public policy, and policy that will be impacting the legal system, it is imperative that it is rooted in redemption, not retribution.”

– *Ezra Aldern, whose mother, Wendy Mae Aldern, was murdered in Aurora*



“Six weeks after her murder, we met at the District Attorney’s Office. We were explaining that we did not want them to seek the death penalty -- it fell on deaf ears. We were discouraged realizing that they were going to have their own agenda and pursue the death penalty even though we asked them not to. My family believes in forgiveness. Our belief is that nobody has the right to take another human being’s life under any circumstance. God tells us ‘thou shalt not kill,’ and I know my wife wouldn’t want somebody killed.”

– *Tim Ricard, whose wife, Sgt Mary Katherine Ricard, was murdered at the Arkansas Valley Correctional Facility in Crowley, Colorado*

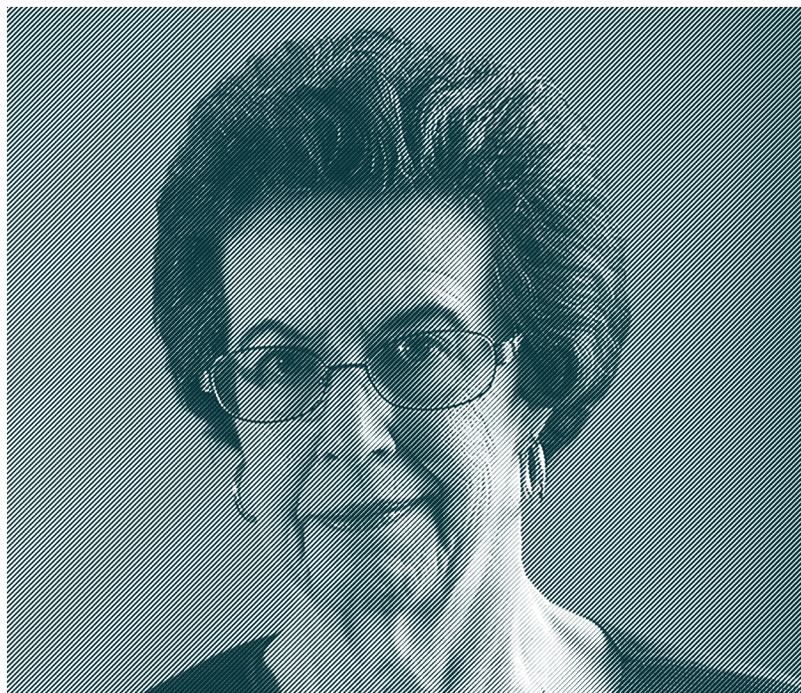
“The police detectives told us that although my brother’s killing was a capital offense, it was not a “heinous” enough crime to warrant the death penalty. It was off-putting to be told that our loss wasn’t heinous enough. It is sad that the nature of the justice system puts folks in the position of having to hear this distinction made about their loved ones. I felt that to end another person’s life would be an insult to my brother’s memory and was repelled by the idea of yet another life being lost through a death sentence. When there is a death sentence, the victim’s family members often do not find the comfort or closure that they were promised. Instead, they may be stuck in a legal process that lasts decades. This system causes more harm than good to victims’ families.”

– Amy Plapp of Colorado Springs, whose brother, Steven F. Plapp, was murdered



“There was a trial for the killer’s accomplice that dragged on for eight years because of appeals. It was enormously stressful. As long as the trial was still going on and the case wasn’t settled, it was awful carrying that burden. The death penalty means victims’ families are putting their lives on hold for years as they attend new hearings and appeals and relive the murder.”

– Gail Rice, whose brother, Denver Police Officer Bruce VanderJagt, was murdered while on duty





“One day I received a call from the District Attorney’s office asking me if I wanted to pursue the death penalty. I said, “Why would I want to make another mother feel the pain I was experiencing?” My children oppose the death penalty because when the killer was found guilty, we began to heal and move on with our lives. We don’t want to give the person who murdered my son any more energy. It would not have been beneficial for me and my family to keep going to court and reliving the tragedy. The death penalty is not fair or just. When I look at how they measure what’s heinous, it’s like saying my child’s situation was worse than the next person’s situation but, it’s all bad. I do not believe in putting anyone to death. Yes, I see how terribly murder has affected my brothers and my sons. That’s just all the more to say, “No!” to more killing.”

– Alice Randolph of Lakewood, who witnessed the murder of her father when she was 5 years old and whose son, Loren Anthony Collins, was murdered in Aurora



“I knew long ago that even if the murderer was found, the only thing that would provide true healing for me would be equality and justice. I seek justice as I work to end the death penalty alongside other family members of murder victims. I seek equality for Colorado as I speak against a state death row that houses three people: all African-American men from the same county and from the same high school.”

– Rosemary Harris Lytle of Colorado Springs, whose father, Johnnie Banks Sr, was murdered

“When my son was murdered, I supported the death penalty. That was before I experienced how the system really doesn’t work. Justice should be swift. This just isn’t possible with the death penalty. Dr. Martin Luther King stated, “Justice delayed is not justice.” It has been more than 10 years since Eric was murdered and the case is still being fought. Thousands of hours, millions of dollars and an unspeakable emotional toll on my family has been poured into the fight for a death penalty. The death penalty means agony for families like mine that can’t move forward because we have to stay vigilant to the process. Everyone has to pick a side and the death penalty drives families apart. If the ultimate punishment in our case had been life without parole, my wife and I could be focusing on our healing. The fact that they want to kill somebody is a dishonor to my son because he was not about death. Don’t saddle my son’s name with the death penalty.”

– *Bob Autabee of Denver, whose son, Sgt. Eric Autabee, was murdered in the Limon Correctional Facility*



“Both of my sons were shot and killed. Taking someone’s life would not bring my children back. Justice comes from above. The All Mighty God is the one that’s the final judge.”

– *Elvira Maxwell, whose two sons, Charlie and Darron Sneed, were murdered in Denver*



## THE DEATH PENALTY'S TRUE TOLL: INNOCENT LIVES

Innocent people are often convicted of capital crimes – and some have been executed. For every nine people executed in this country, one person has been exonerated.<sup>2</sup> In Colorado, Joe Arridy was executed despite strong evidence of his innocence.<sup>3</sup> Since 1973, at least 166 people have been released from death row after evidence of their innocence was uncovered.<sup>4</sup> These Americans cumulatively spent over 1,000 years awaiting their execution before ultimately earning their freedom.<sup>5</sup> We are fallible human beings administering an imperfect system, and, despite our best efforts, mistakes can and do happen. In death penalty cases, one small mistake can cost an innocent life. The only way to guarantee that no innocent person is executed is to stop all executions.

Some argue that in the age of DNA evidence, it has become less likely that innocent people will be found guilty. Yet, DNA evidence exists in just 5-10% of criminal cases.<sup>6</sup> When DNA evidence is available, courts can block access to testing, even if it could exonerate the accused. Crime labs across the country have come under fire for errors and fraud in their forensics. During testimony as witnesses in death penalty cases, some “experts” have suppressed evidence, falsified results and credentials, misinterpreted test results, exaggerated statistical probabilities, and testified about tests that were never

“

**Since 1973, at least 166 people have been released from death row after evidence of their innocence was uncovered.**

conducted. Additionally, some forensic evidence used in death penalty cases fails to meet basic scientific standards. The FBI found that experts exaggerated the value of hair analysis in hundreds of cases, 32 of which resulted in death sentences. Defendants in nine of those cases had already been executed. Fingerprint, bite mark, ballistics, and fire pattern analyses have also come under scrutiny.<sup>7</sup>

An examination of the 166 death row exonerations reveals that murder cases are often riddled with problems: overzealous prosecution, mistaken or perjured testimony, faulty police work, false confessions, inept and under-resourced defense counsel, circumstantial evidence, community pressure for a conviction, racial prejudice, suppression of mitigating evidence, mistaken eyewitness identification, botched crime scenes, destroyed DNA evidence, insufficient judicial oversight, shoddy forensics, and more.<sup>8</sup>

A recent study by Columbia University Law School found that two-thirds of all capital trials contained errors so serious that the guilt or sentencing trials had to be redone. When the cases were retried, 82% of the defendants were not sentenced to death, and 7% were completely acquitted.<sup>9</sup> The figure in Colorado is even higher, with 75% of death sentences vacated or reversed.<sup>10</sup> When the system goes wrong, it is often community members from outside the criminal legal system who rectify the errors. Juan Roberto Meléndez, who was exonerated in 2002, explains, “I was not saved by the system. I was saved in spite of the system.”<sup>11</sup>

The American Bar Association and the Constitution Project have recommended numerous reforms to our death penalty system. Sadly, not a single state – including Colorado – has implemented more than half of those reforms.<sup>12</sup> Even if all recommended reforms were widely adopted, the risk of executing the innocent would remain. The Death Penalty Information Center found that in 92% of exonerations, there were multiple contributing causes, with nearly half of faulty convictions being the result of three or more systemic issues.<sup>13</sup> With so many factors contributing to a single death penalty prosecution, the possibility of making a mistake can never be eliminated.

Executions take away the possibility of new evidence exonerating someone. The average exoneration takes nine years, but innocent people have spent up to 39 years awaiting execution.<sup>14</sup> Once a person is executed, there is no way to make amends if a mistake is made. Freddie Lee Pitts, a Florida death row exoneree, explains, “You can release an innocent man from prison, but you can’t release him from the grave.” Wrongful executions are preventable. By ending the death penalty, we can meet society’s desire for accountability and protection, without risking an irrevocable error.

## IN THEIR OWN WORDS: THE RISK OF EXECUTING THE INNOCENT

“My experience after my son died showed me that our court system can make mistakes. We’ve seen many innocent men freed from death row after mistakes like this were made. I would hate to see an innocent person executed.”

– *Jean Gregory of Denver, whose son, Steve (Nick), was murdered*

“I learned the appalling frequency at which innocent people are convicted and executed for crimes they didn’t commit. I had the opportunity to listen to two people who were wrongly convicted in Colorado and were imprisoned for years before being exonerated.”

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

“I had the opportunity to meet people exonerated from death row. That was very sobering. The threat of executing an innocent person is very real. Some people think that DNA solves all that, but DNA isn’t available in most cases. Many exonerations did not take place within the system. They were the result of law professors and their students digging up the facts on cases. There are many reasons innocent people might be convicted – faulty eyewitness testimony, bad forensics, policy and prosecutorial misconduct or misleading statements.”

– *Gail Rice, whose brother, Denver Police Officer Bruce VanderJagt, was murdered while on duty*

## THE WRONG PERSON: STORIES OF COLORADO'S BROKEN SYSTEM



“If the criminal legal system cannot be trusted to put the right man behind bars, how can it be trusted to put the right man to death?”

— **ROBERT DEWEY**

Dewey was imprisoned for 17 years on a wrongful murder charge. DNA testing of blood found at the scene matched the victim, the suspect, and at least 45% of the U.S. population – yet it led to his conviction. After the DNA evidence was retested years later, the person who actually committed the crime was identified, and Dewey was released from prison.



**LORENZO MONTOYA**

The 14-year-old was one of the youngest Coloradans sentenced to life without parole in an adult prison. He spent the next 13 years of his life behind bars - four of those in solitary confinement - before his conviction was overturned by DNA evidence in 2014. A disturbing video was released showing detectives pushing Montoya to confess to a murder he did not commit.



**TIMOTHY MASTERS**

No physical evidence linked him to the murder, but one psychologist testified that his artwork implicated him. When prosecutors admitted evidence had been withheld and DNA tests pointed to a different suspect, Masters was found

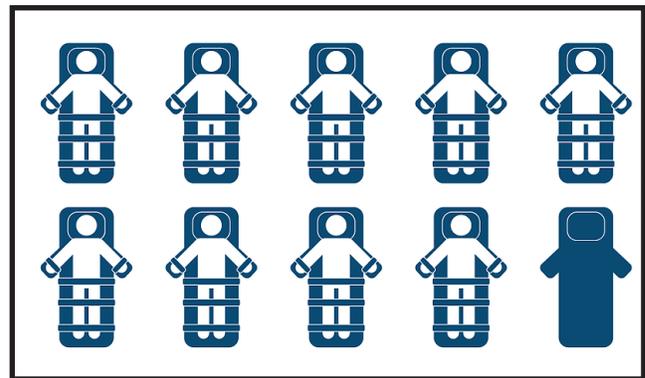
innocent after 10 years in prison. Colorado taxpayers paid \$10 million in two separate lawsuits over the wrongful conviction.



**JOE ARRIDY**

He had the mental capacity of a six-year-old and spent the last seven years of his life in an institution. In 2011, the Colorado governor pardoned him, stating, “[A]n overwhelming body of evidence indicates the 23-year-old Arridy was innocent, including false and coerced confessions, the likelihood that Arridy was not in Pueblo at the time of the killing, and an admission of guilt by someone else.”

FROM TOP TO BOTTOM: INNOCENCE PROJECT, CBS DENVER, DENVER POST, ALL THAT'S INTERESTING.



INNOCENCE PROJECT

FOR EVERY NINE PEOPLE EXECUTED IN THIS COUNTRY, ONE PERSON HAS BEEN EXONERATED.

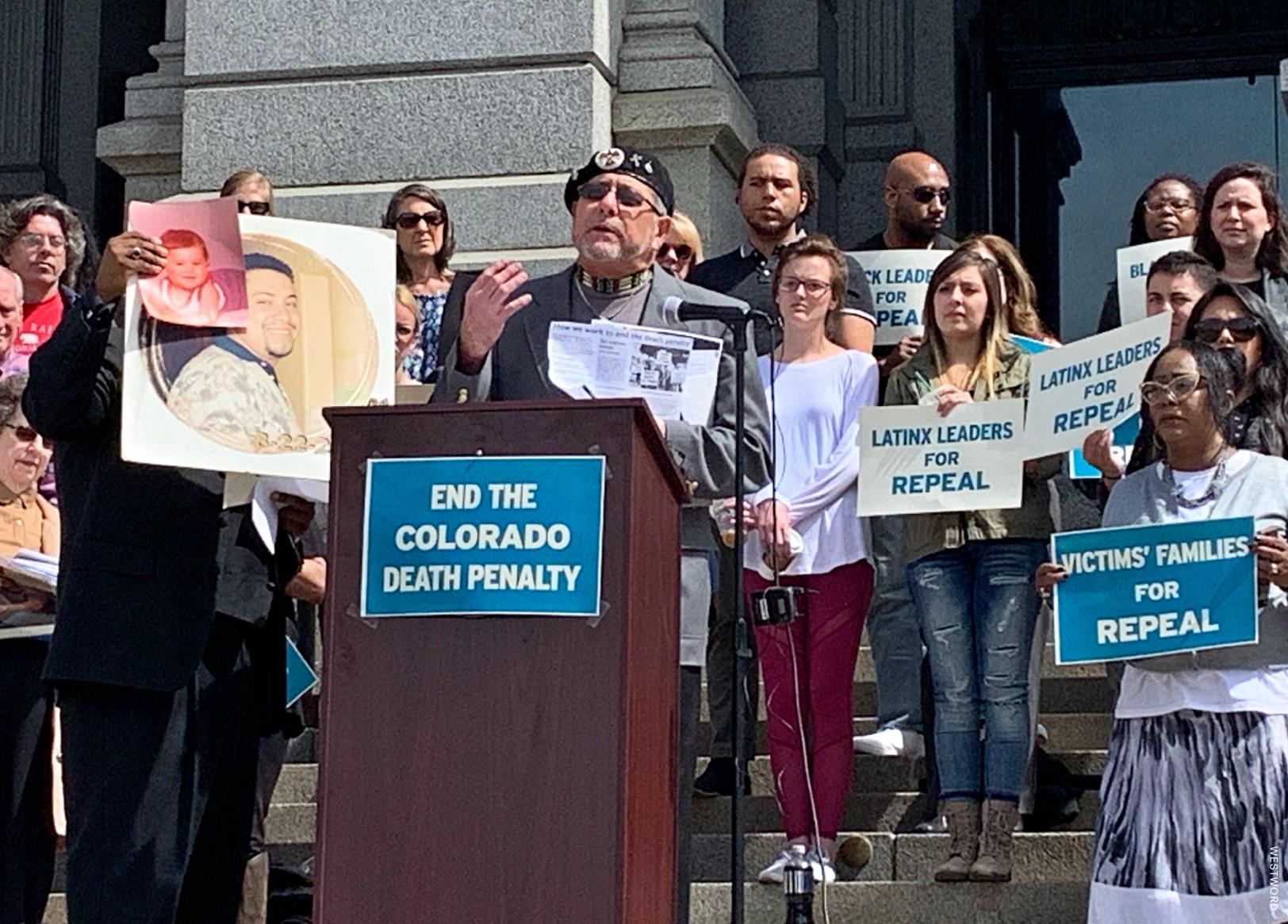
State, including neighboring Nebraska. It is important to help victims’ family members; the death penalty wastes limited resources that could do so. It is time that Colorado starts offering real support to victims’ family members instead of the false promise of an execution.

The long and complex court proceedings of a capital trial “freeze” families in the most traumatic moment of their lives by forcing them to relive the violence over and over for years while the legal process slowly moves forward. Between 1984 and 2012, the average time a defendant spent between sentencing and execution rose from just over 6 years to nearly 16 years.<sup>15</sup> Today, victims’ family members wait even longer for resolution.

**PROLONGED AND PAINFUL: THE DEATH PENALTY INFLICTS HARM ON VICTIMS’ FAMILIES**

Across the nation, loved ones of murder victims have come together to tell elected officials that the death penalty brings nothing but additional harm to those left behind after violence. These families have supported campaigns to end the death penalty in every state that has done so in the modern era: from New York to Washington

Instead of allowing loved ones the opportunity to heal and rebuild their lives, the long death penalty process forces them to take time off work and away from their families to attend court hearings. Trials and appeals generate waves of media attention, focusing most frequently on the person who committed the crime, rather than on the lives of the victims. Families must face the person who took their loved one in the courtroom, only to go home and see them again in the newspaper and on the television.<sup>16</sup>



VICTIMS' FAMILY MEMEBRS, INCLUDING BOB AUTOBEE, SPEAK OUT AGAINST THE DEATH PENALTY IN COLORADO.

Unlike other sentences, which begin the moment the trial is over, a death sentence postpones the process of healing. The implicit promise of the death penalty is an execution, but that comes only after decades of mandatory appeals. In Colorado, it rarely happens at all.<sup>17</sup> Colorado's last execution was in 1997, and the vast majority of the state's death sentences have been overturned on appeal.

Death penalty proponents often assert that executions are necessary for the "worst of the worst," but this argument implies that the vast majority of murders that are not charged capitally are somehow ordinary. Between

**“ The long and complex court proceedings of a capital trial “freeze” families in the most traumatic moment of their lives by forcing them to relive the violence over and over for years while the legal process slowly moves forward. ”**

## WE URGE LEGISLATORS TO REPEAL COLORADO'S DEATH PENALTY.

**Ezra Aldern, son of murder victim, Wendy Mae Aldern**

**Bob Autobee, father of murder victim, Sgt. Eric Jason Autobee**

**Victoria Baker Willford, mother of murder victim, Carolyn Jansen**

**Linda Burks-Brown, sister of murder victim, Willie Frazier**

**Brenda Carrasco, cousin of murder victim, Brandon Cruz-Sigala**

**Lisa Cisneros, niece of murder victim, Fred Sanchez**

**Derrick Collins, Kristopher Randolph and Alice Randolph, two brothers and the mother of murder victim, Loren Anthony Collins**

**Senator Lucia Guzman, daughter of murder victim, Tom Guzman**

**Lieutenant L. Hollis, uncle of murder victim, Faye Johnson**

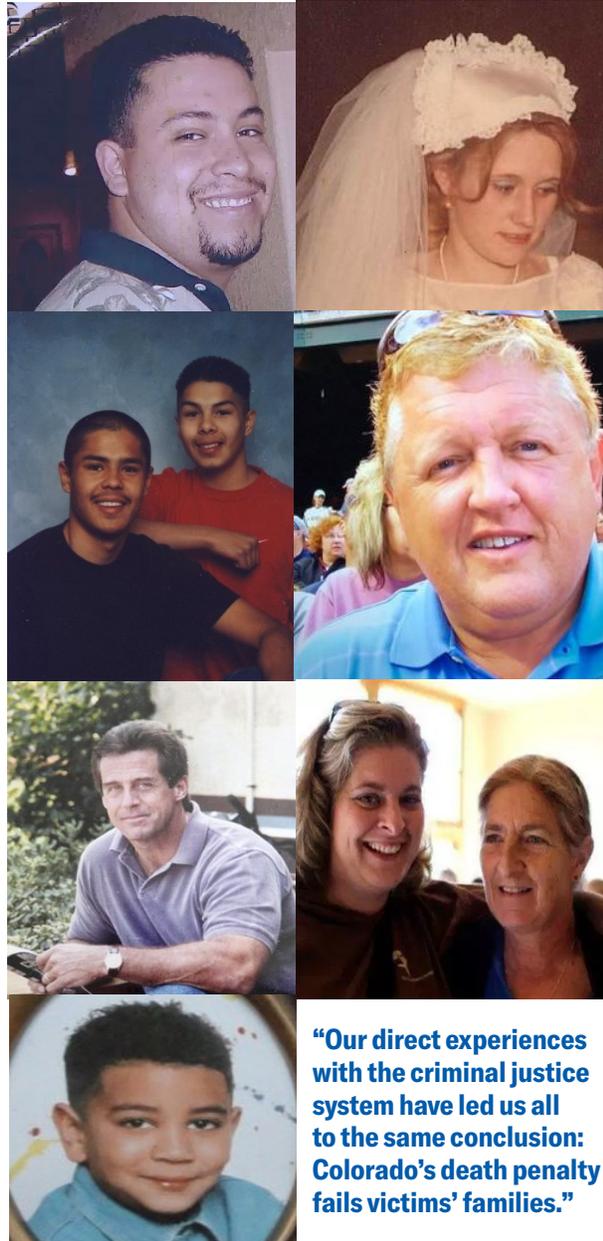
**Arlis Keller and Brian Keller, sister and brother in law of murder victim, Dwight Tobyne**

**Rosemary Harris Lytle and Frank D. Lytle, daughter and son in law of murder victim, Johnnie Banks Sr.**

**Bob Rice and Gail VanderJagt Rice, brother in law and sister of murder victim, Bruce VanderJagt, Denver police officer**

**Tim Ricard, Katie Benson Smith and Kelvin Smith, Jr., husband, daughter and grandson of murder victim, Sergeant Mary K. Ricard**

**Babette Romero Miller, aunt of murder victim, Antonio Ray Davalos**



## IN THEIR OWN WORDS:

### THE IMPACT OF DEATH PENALTY

“After the penalty of death is pronounced by the courts, the victims’ families must endure a long road of reliving the facts time and time again, reiterated by the news media and the courts, which keeps the wounds fresh and festering. Then there’s the constant uncertainty of when the death sentence will actually be carried out - if ever. Instead of being able to leave the judicial system behind to begin the healing process, we must live with the constant reminder of the horrific details of our murdered loved ones and the assailants’ bid to escape the penalty of death through taxing and agonizing episodes of appeals, which are automatic, long and financially costly.”

– *Lieutenant Hollis, whose niece, Faye Johnson, was murdered in Aurora*

“For the vast majority of cases where the death penalty is used, families endure years of highly publicized trials, appeals, and waiting for an execution.”

– *Brenda Carrasco of Denver, whose cousin, Brandon Cruz-Sigala, was murdered*

“I felt helpless during my son’s trial. I can’t imagine if I had been involved in a capital trial with years of appeals and a seemingly-endless wait for resolution. It makes me mad when prosecutors say they are representing the victims. In my experience, the needs and desires of victims take a back burner to many other things in criminal proceedings. I hope that we’ll end the death penalty and begin focusing on how we can help all victims move forward with their lives.”

– *Jean Gregory of Denver, whose son, Steve (Nick), was murdered*

“I am grateful we did not encourage the prosecutor to pursue death. Had we done so, the trial would have been longer, the appeals relentless, and the wait for an execution more than I think we could bear. As a non-capital case, it still took a year to come to trial. The worry and doubt that crept in over that year were a tremendous burden to bear. We were forced to relive that awful crime throughout every step of that legal process. When the killer was eventually sentenced to life, our family had legal resolution. Only after all the legal maneuvers were over, did we have the space to breathe and focus on our grief. Life without possibility of parole provides us relatively speedy trials that come to an end and allow families to move forward.”

– *Babette Romero-Miller of Lochbuie, whose nephew, Antonio Ray Davalos, was murdered in Littleton*

“Over the past six years we have met with the District Attorney multiple times, to express the fact that killing my mom’s murderer is not justice. It wasn’t justice to sit inside courtroom after courtroom for seven years. It was a six-hour round trip drive to court. It was a huge burden financially and also on our time. It was a revictimization to continuously relive my mom’s murder. I have learned that the legal process will never end. Once the murderer is finally sentenced, the entire litigation process will begin again under state and federal appeal laws. The appeals process will take many more years until it is completed. If it had not been the death penalty, it would have been over much quicker, which would have been justice for my mom.”

– *Katherine Smith, whose mother, Sgt Mary Katherine Ricard, was murdered at the Arkansas Valley Correctional Facility in Crowley, Colorado*

2000 and 2013, the death penalty was sought in just 0.75% of Colorado homicides.<sup>18</sup> During that period, there were 2,092 homicides in the state, and the death penalty was sought in only 17 of these cases.<sup>19</sup> This means that the vast majority of victims' family members are told that their loved one's murder is somehow "less than" or not worthy of the resources and attention put toward capital cases.

The death penalty divides families when they need each other most.<sup>20</sup> The death penalty can force them to engage in a polarizing and heart-wrenching debate. In cases with multiple victims, the death penalty can bring further pain and bitterness. Instead of supporting each other and finding solace in another family navigating the same horrors, families with conflicting views on the death penalty will be at odds. And in cases where the defendant and victim are related, the state forces families to decide whether to seek the death penalty against a loved one who murdered another loved one. Children have been forced to live through the murder of one parent, only to then watch another parent executed by the state.

Tragically, prosecutors routinely pursue the death penalty even when victims' families strongly oppose it. The District Attorney for Colorado's 16th Judicial District, James Bullock, sought the death penalty for the murder of corrections officer Mary Ricard, despite the family's strong opposition. The state spent over \$1.6 million on a death penalty case, forcing the family into a seven-year ordeal that ultimately ended without a death sentence.<sup>21</sup> If the prosecution had not pursued the death penalty, the family would have been spared almost a decade of court appearances, seeking an execution they did not support.

Studies have found that the death penalty can harm the very people it is supposed to benefit.

In 2012, the Marquette University Law School conducted a study examining the experiences of murder victims' families. They found that those navigating the legal process in a state without the death penalty exhibited better psychological and physical health, as well as a higher overall satisfaction with the criminal legal system, compared to those facing the same challenges in a state with the death penalty.<sup>22</sup>

## **UNBEARABLE BURDEN: THE COST OF THE DEATH PENALTY**

The complex legal, procedural, and constitutional factors at play in death penalty cases require the attention of the judicial system's most experienced lawyers, scientists, experts, and clerks. Meanwhile, state statute, case law, court rules, and even the U.S. Supreme Court mandate additional steps because of the ultimate nature of the death penalty.<sup>23</sup> As a result, the cost of defending a capital case averages about 23 times the cost of defending a non-capital first degree murder case.<sup>24</sup> At the trial level alone, a death penalty case costs Colorado taxpayers approximately \$3.5 million versus \$150,000 for a non-capital first degree murder trial.<sup>25</sup> Following this lengthy and expensive trial process, there are decades of mandatory appeals.

A death penalty trial requires more court time. A University of Denver study found that a death prosecution in Colorado takes, on average, almost four years longer in district court than a non-capital first degree murder prosecution and requires over six times more court days.<sup>26</sup> A death penalty trial takes an average of 148 days in court, compared with only an average of 25 days in court for a non-capital first degree murder trial.<sup>27</sup> Worse, death penalty cases are plagued by significant delays. While a non-capital first degree murder trial case takes on average 526 days from charge to imposition of

the sentence, a death penalty trial case takes on average 1,902 days from start to finish – 1,376 days longer.<sup>28</sup> A death penalty trial extends the financial burden and hardship for victims’ families, attorneys, jurors, judges, and others.

Capital trials are expensive and time-consuming, and there is no guarantee that they will result in an execution. Out of a dozen death sentences imposed since 1976 and tested on appeal, only three cases were not reversed or vacated. Since 1999, there have been thirteen “failed” death penalty cases that went through trial but did not result in a death sentence. In all these cases, taxpayers first must pay for the extra cost of capital trials and then must pay the full cost of lifelong incarceration.<sup>29</sup> Since 1980, Coloradans have paid for over 130 death penalty prosecutions while only one man has been executed.<sup>30</sup> Capital punishment trials and the decades of appeals cost millions and yield almost no death sentences – only two in this century, in fact.

The considerable costs of the death penalty undermine the resources of district attorneys’ offices. For example, the Boulder District Attorney’s office has a budget of \$4.6 million a year. With those funds, the office prosecutes about 1,900 felonies a year, and in 2012, it prosecuted six homicides. A single death penalty case would cost over \$1 million, consuming much of the resources they use to prosecute other cases.<sup>31</sup> Capital trials can increase a county’s spending by more than \$2 million, draining its limited resources.<sup>32</sup> This can force a county to raise taxes or can leave it with fewer police officers, fewer drug rehabilitation programs, and more unsolved crimes.<sup>33</sup>

The Denver Post reports that jailing, evaluating and prosecuting the case of the Aurora theatre shooting cost at least \$3 million. This cost rises to \$7 million when including the salaries

of judges, prosecutors, sheriff’s deputies and other government employees who worked on the case.<sup>34</sup> Even this amount does not represent the full cost of the case.<sup>35</sup> Meanwhile, the Chuck E. Cheese case has cost the state around \$18 million in trial costs and attorney fees.<sup>36</sup> Both of these trials cost the taxpayers millions of dollars and still did not result in a death sentence.

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**As a result, the cost of defending a capital case averages about 23 times the cost of defending a non-capital first degree murder case.**

All three nonpartisan fiscal notes prepared for the Colorado legislature in 2009, 2017, and 2019 concluded that repealing the death penalty would result in considerable cost savings. The 2009 death penalty repeal bill’s fiscal note found that eliminating capital punishment would save Coloradans over a million dollars a year.<sup>37</sup> Repeal would save money for the Office of the Alternate Defense Counsel (OADC), which provides representation for death penalty trials and appeals. Between January 1997 and January 2009, the OADC spent \$11.5 million defending clients in death penalty cases.<sup>38</sup> Additionally, former State Public Defender Doug Wilson estimates that abolition would save the Public Defender at least \$1 million each year.<sup>39</sup>

His former office spent at least \$6.3 million on 10 death penalty cases over the past thirteen years.<sup>40</sup> The fiscal notes also predicted cost savings for the Department of Corrections. Taxpayers spend \$12,231 more each year to house defendants on death row.<sup>41</sup>

The death penalty wastes money that would be better invested in programs that address the underlying factors contributing to crime and violence. Research has found that improving early education, developing programs targeting at-risk youth, and expanding mental health services and substance abuse treatment programs have reduced violent crime, incarceration, and recidivism.<sup>42</sup>

While the death penalty consumes approximately \$3.5 million for a small handful of cases, the real needs of the vast majority of victims' families are ignored.<sup>43</sup> Victims' families continue to speak out, explaining that the millions of dollars spent on the broken death penalty system would be better spent on expanding victims' services, including grief and trauma counseling, funeral costs, crime scene cleanup, school tuition or scholarships for orphaned children, medical treatment, professional leave to attend court proceedings, and financial support.<sup>44</sup> Additionally, victims' family members assert that the many law enforcement hours currently spent chasing death penalty sentences could instead be used to investigate the 1,300 unsolved murder cases in Colorado.<sup>45</sup>

While some suggest that expediting death sentences would save some of these additional costs, the fact is that the extensive procedures are legally required by the courts and clearly needed given the number of wrongful convictions.<sup>46</sup> Additionally, enormous costs associated with the death penalty occur prior to and during the initial trial, not merely during the system of appeals. A study by the Death Penalty Information Center found that states with a death penalty spend an average of \$10 million a year enforcing it and that 70% of the expense stems from legal work that is not necessary in non-capital cases.<sup>47</sup> Coloradans



spend millions to retain the death penalty, despite almost never carrying out executions. It is time for the Colorado legislature to repeal the death penalty and invest Colorado taxpayer money in fiscally responsible ways that save lives and increase public safety.

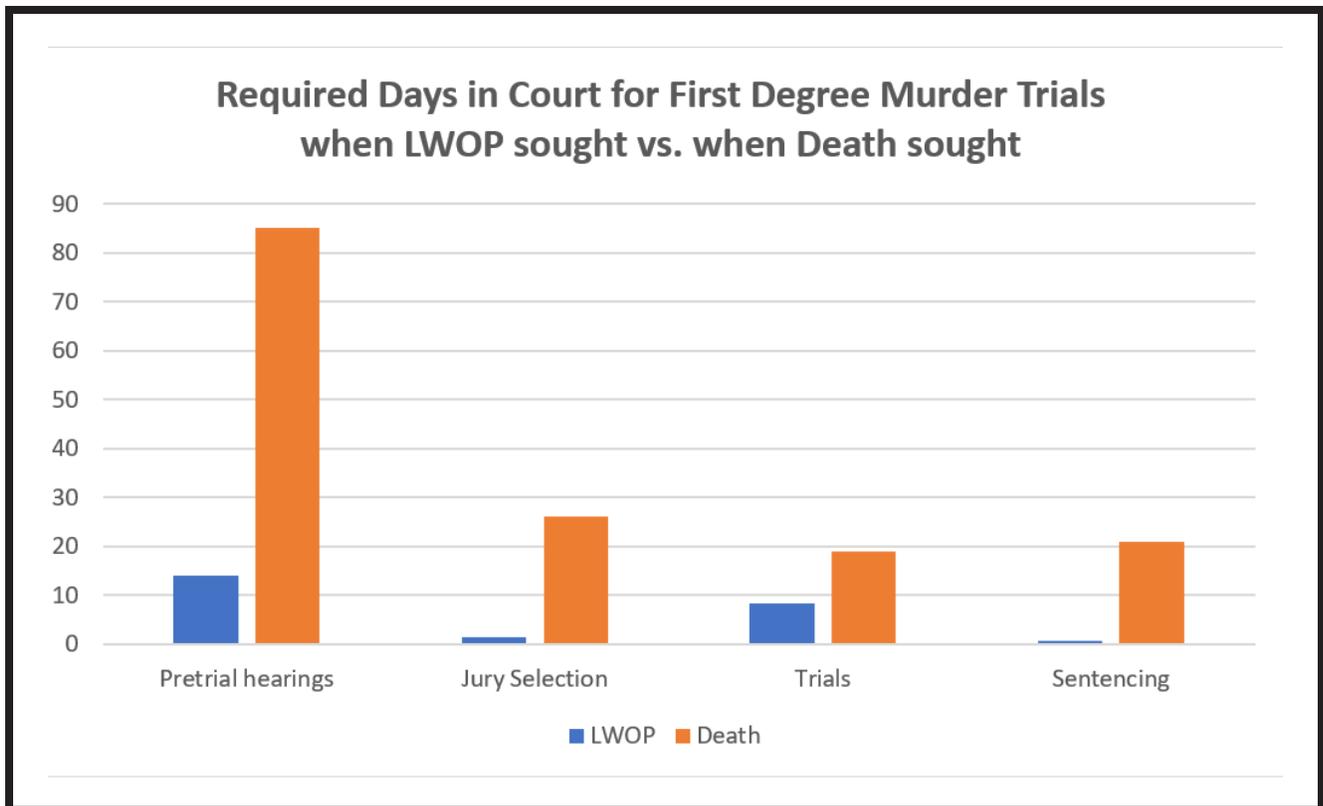
# RARE AND UNFAIR: COLORADO'S DEATH PENALTY

Only one person has been executed in Colorado since 1967.<sup>48</sup> During the same period, more than 8,100 homicides were committed in the state.<sup>49</sup> In the Supreme Court decision *Furman v. Georgia*, Justice Douglas argued that the rarity of death sentences and the high discretion left in the hands of prosecutors would lead to an arbitrary application of the death penalty that “discriminates... by reason of his race, religion, wealth, social position, or class.”<sup>50</sup> Colorado’s death penalty system reflects these concerns. It is applied randomly and discriminatorily, violating the constitutional guarantee of equal protection.

Systemic racism taints capital trials from beginning to end, working against justice for defendants of color and pushing them towards

execution. Virtually all nationwide studies conducted on race and the death penalty have concluded that race influences whether someone is sentenced to death.<sup>51</sup> Since the revival of the death penalty in the mid-1970s, about half of those on death row at any given time have been black.<sup>52</sup> In Colorado, prosecutors are five times more likely to seek the death penalty against defendants who are people of color. Between 1999-2010, people of color in Colorado faced 91% of death prosecutions.<sup>53</sup> Even when prosecutors intend to act fairly, the definition of “death eligible” is broad, and there is little guidance for prosecutors seeking to decide who should face the death penalty. This lack of guidance provides room for bias.

Also, people are more likely to be executed when the victim is white.<sup>54</sup> In the 110 death penalty cases in Colorado between 1980 and 1999, the odds of a capital prosecution were 4.2 times higher for those suspected of killing white people than for those suspected of killing people of



HOLLIS WHITSON

## IN THEIR OWN WORDS: THE COST OF THE DEATH PENALTY

“The death penalty costs far more than alternatives and it diverts tremendous resources away from all victims. Instead of putting so much focus on one or two high profile capital cases in our state, I would love for us to put the money we would save in repealing the death penalty towards helping all victims’ families heal. After my mom was killed, I went through a deep depression. There were no resources for the therapy that was so desperately needed for myself and my whole family. I believe that seeing all victims taken care of with services, instead of focusing on the short-term punitive results of the death penalty, would benefit more victims’ families in this state in the long term.”

– *Patsy Bjork of Colorado Springs, whose mother, Shirley, was murdered*

“It was so hard for me to keep my family together, process my grief, and help my other children process theirs. Good, professional help could have made a big difference to us. For everyone who experiences the trauma of murder, there are so many needs, and these needs go on for years. For many in Colorado, these needs aren’t met. And yet we spend millions of dollars on the death penalty. To me, this is wrong. It would have made a world of difference to have more resources to help my family. Why should that money instead be used to prosecute and defend a tiny number of capital cases? It breaks my heart to know that while my other children didn’t get all the help they needed after losing their brother, Colorado was spending millions of dollars on the death penalty.”

– *Antoinette Martinez of Lakewood, whose son, Davey, was murdered in Denver*

“Millions of dollars are siphoned from resources that could be invested in victim assistance. We were doing fundraisers, trying to come up with money for my cousin’s funeral, when we really should have been together in mourning. For my aunt, losing her son was really hard. We didn’t know how to give her professional grief counseling because our family just didn’t have the money. The last figures I have are in 2011, there were 149 murders in Colorado, and we spent \$1.9 that year on death penalty cases. That would have been \$13,000 to the surviving members of each murder victim in our city. They could have funeral expenses, or mental health help. We need to stop concentrating on these perpetrators, put them away where they belong, and concentrate on healing our communities.”

– *Brenda Carrasco of Denver, whose cousin, Brandon Cruz-Sigala, was murdered*

“We needed a lot of things when my aunt was killed. We needed help raising her daughter. We wanted answers about what happened in her last moments. The death penalty wouldn’t have provided us any of these things. All the money and time we pour into the death penalty are resources that should be used to give victims things we actually need. It breaks my heart that we pay for a few multi-million dollar death penalty cases when hundreds of families, like mine, would give anything for more resources to help solve our cold cases.”

– *Chena Rabb of Lakewood, whose aunt, Yvonne, was murdered*

“Over \$1.9 million has been spent on capital punishment cases. The amount of money spent on capital crimes can be used in other ways - towards the treatment for the family of murdered victims and to invest in other programs to prevent crime.”

– *Linda Burks-Brown, whose brother, Willie – Frazier, was murdered in Denver*

“I think they spend way too much money on trying to put someone to death and keeping them healthy to kill them, rather than just giving them life without parole. Because all that other money can go to other things, for DNA retesting or for people that may be innocent on death row.”

– *Robert Dewey, an innocent Coloradan who spent 17 years in prison on a wrongful murder charge*

“Today, my sister’s murder remains unsolved. There are so many ways my family’s trauma could have been reduced if there had been more energy and resources devoted to victims’ services. Instead of spending millions of dollars on the death penalty, my family would have benefited greatly from a first responder delivering the horrible news in person to ease the shock. Additional money to properly investigate and solve cases like ours could give our family the peace of knowing what happened to Polly that day.”

– *Linda Gruno of Westminster (deceased), whose sister, Polly Elizabeth Sullivan, was murdered in Aurora*

“It saddens me that the death penalty diverts resources that could do so much good for victims struggling with their grief and trying to rebuild their lives. Instead of investing millions in a death penalty case that strings along victims for years, we should invest that money in services that will help all victims.”

– *Babette Romero-Miller of Lochbuie, whose nephew, Antonio Ray Davalos, was murdered in Littleton*

“It’s time that we realize that we simply cannot afford a death penalty. \$20 million in 20 years, and Nathan Dunlap is still alive. There’s three on death row now. That’s \$60

million. Montour may come back on death row. We had another corrections officer that was killed, and they’re probably going to pursue the death penalty. So, what we’re looking at is possibly \$80 million more on five individuals, when our state is in dire need of resources. This doesn’t make any sense to me as a victim’s father or as a taxpayer. We have no sense spending millions upon millions of dollars on a failed public policy.”

– *Bob Autobee of Denver, whose son, Sgt. Eric Autobee, was murdered in the Limon Correctional Facility*

“Millions of dollars are gobbled up by a few death penalty trials that would be much better spent providing resources to help healing for victims’ families, resolving unsolved murder cases and on programs to prevent further violence.”

– *Arlis Keller of Greeley, whose brother, Dwight T Byrne, was murdered*

“A death penalty case is much too costly both emotionally for the victim’s family and financially for the taxpayers. The cost in a death penalty case in Colorado averages somewhere in the range of \$3 million dollars, which may take many, many years, if, in fact, he/she is ever actually executed. That’s twenty times more than the cost of a non-capital case. In the aftermath of losing my niece, who was so brutally murdered, we needed a lot of financial assistance, which we did not receive. Imagine how useful and cost effective a portion of \$3 million dollars would be in restoring a hurting family to some sense of normalcy – though our loss will never really be restored.”

– *Lieutenant Hollis, whose niece, Faye Johnson, was murdered in Aurora*

color.<sup>55</sup> In 82% of cases where a death sentence was sought, the victim was white. This is true nationally as well. Since 1977, over 80% of death row defendants have been executed for killing white victims, even though black people make up about half of all homicide victims.<sup>56</sup> Latinx people are murdered at twice the rate of white people nationally, but less than 7% of victims in pending death penalty cases are Latinx.<sup>57</sup>

This racial discrimination extends beyond sentencing bias, as people of color are also more likely to be wrongfully convicted. Of the 166 death row exonerees, 60% are black or Latinx.<sup>58</sup> Black people convicted of murder are 50% more likely to be innocent than white people convicted of murder.<sup>59</sup>

U.S. law has failed to eradicate discrimination in jury selection, and people of color continue to be excluded from capital juries at alarming rates.<sup>60</sup> In Colorado, Sylvester Garrison, a black man who spent 11 years on death row before he was paroled, explained, “I had 16 strikes against me – 13 jurors, two prosecutors and the judge. They were all white.” In a national study of over 100 felony cases, prosecutors were twice as likely to remove black jurors compared to white jurors.<sup>61</sup>

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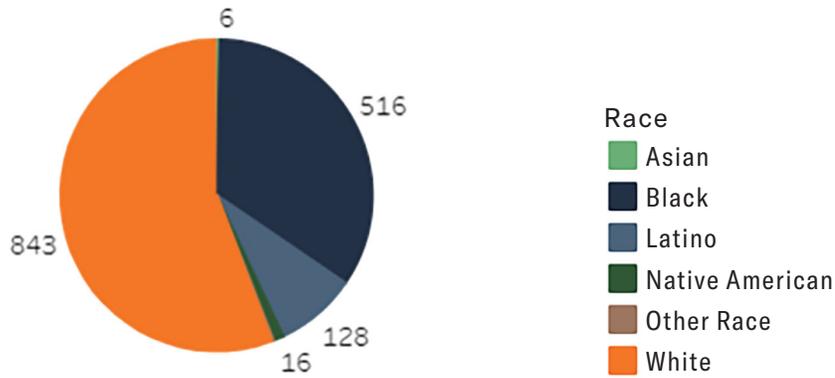
**Between 1999-2010, people of color in Colorado faced 91% of death prosecutions.**

Additionally, people who do not support the death penalty are not allowed to serve on capital juries. Death-qualified juries are more likely to favor a guilty verdict, increasing the risk of wrongful convictions.<sup>62</sup>

Finally, people of color are less likely to receive a plea deal. A 2000 study of federal cases found that federal prosecutors were about 50% more likely to offer a plea bargain, allowing them to avoid the death penalty, to white murder suspects than black suspects.<sup>63</sup> A 2011 summary of the research on race and plea bargaining published by the Bureau of Justice Assistance concluded that “the majority of research on race and sentencing outcomes shows that black people are less likely than white people to receive reduced pleas.”<sup>64</sup>

The death penalty system is inconsistent and unfair. Amnesty International explains, “Local politics, the location of the crime, plea bargaining, and pure chance affect the process and make it a lottery of who lives and dies.”<sup>65</sup> In Colorado, defendants in Arapahoe, Douglas or Lincoln counties are nearly four times more likely to face the death penalty than defendants elsewhere in the state, even if they have committed nearly identical crimes. People of color in Arapahoe, Douglas or Lincoln counties are 14 times more likely to face the death penalty than white defendants elsewhere in the state.<sup>66</sup>

In Colorado, nine out of ten murderers between 1999-2010 were death eligible, meaning the defendants could have faced the death penalty. Yet, only three of these 539 defendants are on death row. All three are black and were under 21 at the time of the crimes. They are from the same county and they all attended the same high school.<sup>67</sup> At a national level, the majority of the country’s executions have come from just 2% of all counties.



CURRENT U.S. DEATH ROW POPULATION BY RACE.

Whether or not one faces the death penalty also depends on income, making executions almost exclusively reserved for the poor. Approximately 90% of defendants who face the death penalty are unable to afford their own attorney.<sup>68</sup>

There have been numerous instances where accomplices were sentenced to different punishments for the same crime. Often in these cases, one defendant is able to afford quality counsel, while the other is unable to pay for their own attorney and is sent to death row.<sup>70</sup>

Appointed attorneys are often underpaid and overworked, making it difficult for them to properly represent their clients. Not surprisingly, a poorly represented defendant is much more likely to face the death penalty, and prosecutors are more likely to seek the death penalty against these defendants.<sup>69</sup>

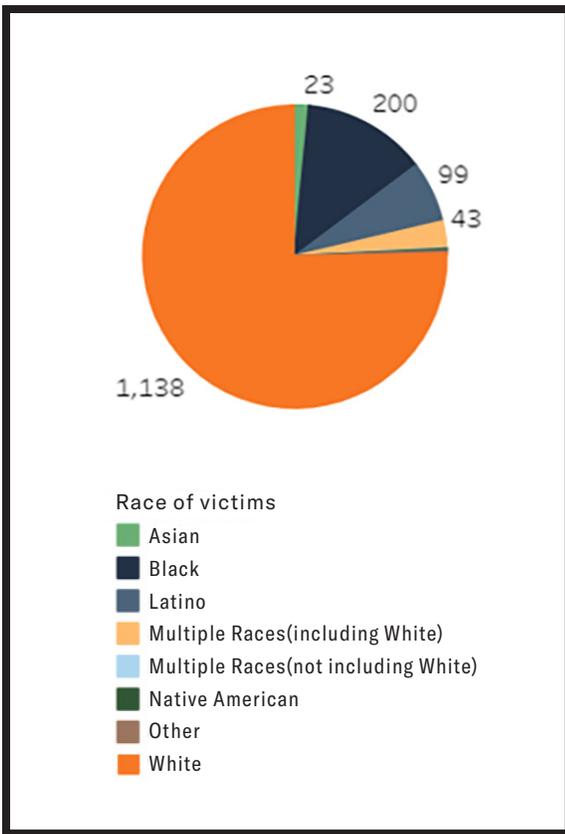
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**People of color in Arapahoe, Douglas or Lincoln counties are 14 times more likely to face the death penalty than white defendants elsewhere in the state.**

Many of the most high-profile murder cases do not result in a death sentence because the defendant has the best attorneys.

Our criminal legal system should treat all people equally. In reality, the death penalty is applied unevenly and unfairly, even in similar crimes. Each year, thousands of Americans commit death-eligible crimes, but only a small handful are ever sentenced to

death. The factors influencing whether someone will be executed are not legal. Instead, they are accidents of race, class, and geography.



EXECUTIONS BY RACE OF VICTIM.

## LETHAL INJECTION: CRUEL AND UNUSUAL PUNISHMENT

Executions make the Colorado government complicit in the torture of its own people and can cause additional harm for the corrections officers tasked with performing executions. Since 1976, when the modern death penalty era began in this country, over 1,300 people have been executed by lethal injection.<sup>71</sup> Lethal injection is Colorado's method of execution, yet it is increasingly difficult for the state to obtain lethal injection drugs from a domestic supplier, and it is illegal for the state to purchase the drugs from a foreign supplier. Lawsuits concerning lethal injection protocols have halted numerous executions, and drug shortages have caused considerable delays to others.<sup>72</sup>

## IN THEIR OWN WORDS: THE DEATH PENALTY IS UNFAIR

"If a person is poor, the chances of the death penalty being administered are much greater. Also, people of color are on death row and are killed at a much higher rate than white people are. There's no fairness in the death penalty."

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

"We only have three people on our death row. They are all black. And they're from the 18th Judicial District. Fewer than 1 % of the homicide cases in Colorado result in a death sentence. In a sad attempt to explain why the death penalty is so rarely given, we tell ourselves this story about needing to keep the death penalty for the worst of the worst crimes. But we know that in Colorado, demographics and bad luck are what determines who will get death sentences."

– *Lieutenant Hollis, whose niece, Faye Johnson, was murdered in Aurora*

"I am deeply troubled by the numerous studies that have found racial bias in death sentencing. Effective counsel isn't available to the poor, and in our society, racial minorities are disproportionately poor. 90% of those on death row could not afford to hire attorneys when they were tried."

– *Brenda Carrasco of Denver, whose cousin, Brandon Cruz-Sigala, was murdered*

“Justice is about fairness and the death penalty has never been fair. The death penalty is supposed to be reserved for the worst of the worst but that’s not how it happens. Some of the perpetrators of the most heinous crimes are able to get off because they have lawyers who can negotiate whereas defendants with little money have lawyers that can’t defend them and they get sentenced to death for lesser charges. The death penalty is carried out primarily against society’s poorest and most vulnerable. The geography of where the crime takes place and the race of the offender and the victim play a big part in whether a person lives or dies. Many of the death penalty cases come from only a small handful of states and only one or two counties within the state.”

– Gail Rice, whose brother, Denver Police Officer Bruce VanderJagt, was murdered while on duty

Advocates of capital punishment describe lethal injection as a humane, medical procedure. It is not. Administering an execution is unethical for medical personnel because it conflicts with the profession’s ethical commitment to save lives and “do no harm.” Virtually all professional medical organizations have official policies in opposition to lethal injection.<sup>73</sup>

Executions can be traumatic for prison workers tasked with carrying them out. At least seven Colorado wardens have stated their opposition to the death penalty.<sup>74</sup> The act of taking a human life can have devastating consequences for public servants. Numerous wardens, executioners, and corrections officers suffer from PTSD and other mental health issues as a result of their involvement with executions.<sup>75</sup> Ron McAndrew, a retired warden from Florida State Prison, said, “At night I would awaken to visions of executed inmates sitting on the edge of my bed.”<sup>76</sup>

Reliance on untrained staff to carry out executions can lead to horribly botched executions and even more trauma for the public servants involved.<sup>78</sup> If the executioner injects the drugs into a muscle instead of a vein, if

SYLVESTER GARRISON, A COLORADAN SENTENCED TO 11 YEARS ON DEATH ROW BY AN ALL-WHITE JURY.



the needle becomes clogged, if the mixture of drugs is wrong, or if the person does not react normally to the drugs, the prisoner can experience extreme pain.<sup>79</sup> A national study found that executioners botch 7% of lethal injections, with executions lasting between 20 minutes to over an hour.<sup>80</sup> Many sentenced to die have vein damage resulting from drug use. In at least 23 cases, executioners spent over an hour probing for a vein.<sup>81</sup>

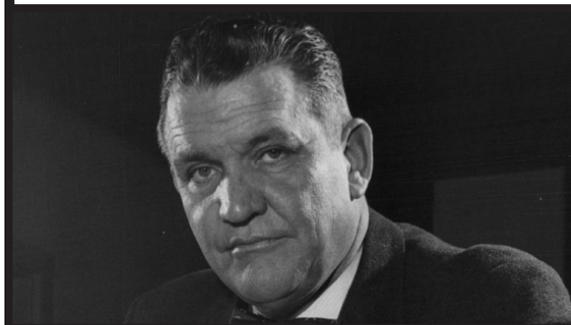
The drugs used in executions are also controversial. When a person is executed in Colorado, they are tied down to a gurney while inexperienced technicians insert two needles into their veins, inject a saline solution, and, at the warden's signal, pump sodium thiopental - an anesthetic - into their veins. The executioners then inject pancuronium bromide, which paralyzes the muscle system and stops their breathing. Finally, a flow of potassium chloride kills them.<sup>82</sup>

However, if the first drug is improperly administered, the inmate will remain conscious, but will be unable to express pain as the third drug causes burning, suffocation, and cardiac arrest. As the U.S. Court of Appeals

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**Executions make the Colorado government complicit in the torture of its own people and can cause additional harm for the corrections officers tasked with performing executions.**

## COLORADO WARDEN WAYNE PATTERSON



GETTY

Warden Wayne Patterson was forced to pull the lever in an execution where the inmate told him, “You are a good man and a good warden” and described the experience as emotionally wrenching. “It was a terrible experience,” he recalled. Despite the state’s attempts to make executions “humane” to ease people’s discomfort, Patterson called such efforts “a sham.” “No execution is any more humane than any other,” he said. “You’re dead when it’s over.” Patterson explained that when Coloradans chose the death penalty, “You had your hand on that lever just as much as I did.” However, he believed that the death penalty would soon end in Colorado. “Colorado likes to have the law on the books, but they don’t want to use it,” Patterson said. “There were 30 years between executions — what does that tell you?”<sup>79</sup>



ORGANIZATIONS THAT OPPOSE MEDICAL PARTICIPATION IN LETHAL INJECTIONS.

observed, “Even a slight error in dosage or administration can leave a prisoner conscious but paralyzed while dying, a sentient witness of his or her own asphyxiation.”<sup>83</sup> The American Veterinary Medical Association has rejected the use of paralyzing agents in animal euthanasia for exactly this reason. Over 30 states have banned the use of pancuronium bromide for use on animals, yet it is used on humans for executions.<sup>84</sup> Witnesses have reported seeing prisoners gasping for air, grimacing, and convulsing during executions. Autopsies have shown chemical burns up to a foot long on executed inmates.<sup>85</sup> Despite the excruciating suffering imposed by the state as a result of this form of execution, lethal injection is condoned by the state of Colorado.<sup>86</sup>

Execution drugs are increasingly hard to obtain. At the international level, European countries have blocked the export of lethal injection drugs to the United States.<sup>87</sup> In the past five years in the U.S., two dozen companies making thirteen different drugs, have blocked their use in lethal injections. Hospira Inc., the sole U.S. manufacturer of sodium thiopental, which Colorado uses in executions, terminated production of the drug so that it would not be used for lethal injections.<sup>88</sup>

Some states have replaced sodium thiopental with pentobarbital, which is listed as a backup drug in Colorado’s lethal injection protocol. Lundbeck, Inc., the only U.S. company that produces it, opposes its use in executions and announced that it would no longer sell to prisons. In response, prisons switched to propofol, until Fresenius Kabi, Teva, and Hospira, the companies that produce the drug, announced they would no longer sell to prisons.<sup>89</sup>



THE EXECUTIONER GAVE UP AFTER TWO HOURS SPENT SEARCHING FOR A USABLE VEIN.

DEATH PENALTY INFORMATION CENTER.

Due to restricted access, some drugs set for use in executions are not submitted for medical testing. In desperate attempts to continue executions, prisons substitute untested drugs, making inmates essentially guinea pigs for new



DREAM PHARMA, A COMPOUNDING PHARMACY THAT SUPPLIED UNTESTED DRUGS TO AT LEAST FIVE STATES.

forms of lethal injection. States seeking to carry out executions face expensive legal challenges, or have been unable to obtain the drugs they need because of resistance from drug companies.<sup>90</sup>

Anxious to shield the drug-producing companies and prisons from public oversight, states have passed laws to shroud execution procedures in secrecy, denying the public any right to know which drugs are used in executions, if there is any evidence of the drugs' efficacy, or if these drugs are FDA approved.<sup>91</sup> States also resort to unsafe sources from foreign companies.<sup>92</sup> Such extreme and questionable tactics by officials underscore the deeply flawed nature of how the death penalty is administered in America.

States have also attempted to use compounding pharmacies in their desperation to find lethal injection drugs, but these sources also pose great risks. Compounding pharmacies combine, mix or alter drugs and can act as large, unregulated drug manufacturers. They do not

have to register with the FDA, inform the FDA what drugs they are producing, or get their drugs approved.<sup>93</sup> As a result, there are serious concerns about the safety and efficacy of compounding pharmacies' products, since their drugs could be impure, expired, or unsafe. Despite this, in 2013 the Director of Colorado's Department of Corrections wrote a letter to 97 compounding pharmacies in the state, seeking sodium thiopental for an anticipated execution.<sup>94</sup> When states are pushed to the extreme, unethical procurement of untested drugs, it is a clarion call for change.

## EXECUTING THE VULNERABLE: MENTAL ILLNESS, INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, AND THE DEATH PENALTY

It is wrong for the government to continue to execute the most vulnerable Americans and those who do not understand that the execution is connected to the crime. Many of those on death row with mental illness did not have access to much-needed psychiatric care before their crime took place.<sup>95</sup> The failures of the mental health system to treat the mentally ill are compounded by the failures of the criminal legal system, which executes those with mental illness at a higher rate than those without mental illness. Instead of investing millions in death penalty trials, the Colorado government should invest in mental health care treatment and crime prevention.

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**When states are pushed to the extreme, unethical procurement of untested drugs, it is a clarion call for change.**

A Public Policy Research poll found that Americans oppose the use of the death penalty on people with mental illnesses by a 2-to-1 margin.<sup>96</sup> Juries in Colorado feel similarly. A jury declined to give a death sentence in the Aurora movie theater shooting because of the defendant’s long-term mental illness.<sup>97</sup> In the international community, the U.S. is an anomaly for continuing to execute those with mental illness. In fact, the execution of those with mental illness is illegal under international law.<sup>98</sup>

Mental illness is prolific among executed inmates. One study found that between 2000 and 2015, 43% of executed inmates had received a mental illness diagnosis at some point in their lives. Of inmates executed in the U.S., 20% were diagnosed with a personality disorder, 8.9% were diagnosed with antisocial personality disorder, 4% were schizophrenic, 13% were depressed, and 6% had PTSD.<sup>99</sup> This is likely an underrepresentation of those with mental illness on death row. Many inmates do not receive thorough medical examinations due to a lack of funds, and their mental illness may never be diagnosed.<sup>100</sup>

Tragically, numerous people executed in the United States suffered from severe PTSD as a result of their service in the military.<sup>101</sup> Among executed inmates, around 40% were abused during childhood.<sup>102</sup> CDC researchers have repeatedly found that childhood trauma can result in a higher likelihood of disrupted neurodevelopment, cognitive impairment, mental illness, and becoming the perpetrator or victim of violence.<sup>103</sup>

Colorado has executed people with mental illnesses. Both David Early and John Bizup were diagnosed with severe mental illnesses, yet they were executed. Guiseppe Alia was severely mentally ill and could not afford a mental health defense. He too was executed. Mental Health America explains, “The criminal justice system’s failure to guarantee due process for people with mental illnesses makes discriminatory application of the death penalty more likely.”<sup>104</sup>

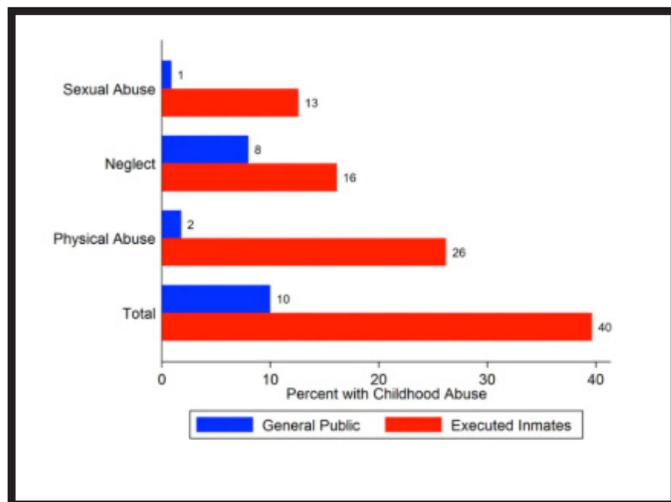
Years on death row frequently exacerbates existing mental illness. Around 13% of death row inmates choose suicide by death penalty.<sup>105</sup>

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**The failures of the mental health system to treat the mentally ill are compounded by the failures of the criminal legal system, which executes those with mental illness at a higher rate than those without mental illness.**

In a study of death row volunteers from 1976 through 2003, 88% had a mental illness or substance abuse disorder. Among the volunteers executed from 2000 to 2015, 32% had attempted suicide and failed before being executed.<sup>106</sup> Colorado executed Luis Jose Monge, who fired his attorneys, gave up on his appeals, and asked to be executed.

The impulsivity, suggestibility and extreme compliance associated with certain forms of mental illness makes defendants more vulnerable to police pressure and more likely to falsely confess and be wrongfully convicted.<sup>107</sup> Studies have found that mentally ill defendants have significant difficulties understanding their Miranda rights. As a result, those with mental illness are more likely to waive their right to counsel and represent themselves, and are less likely to have access to effective legal counsel.<sup>108</sup> The symptoms of mental illness can include hallucinations and delusions, disorganized thinking, deficits in cognitive processing, and disruption of memory and perception, all of which impact one's ability to understand the consequences or wrongfulness of their actions and make rational decisions.<sup>109</sup> As a result, once convicted, defendants with mental illness are frequently unable to understand the purpose of their execution.

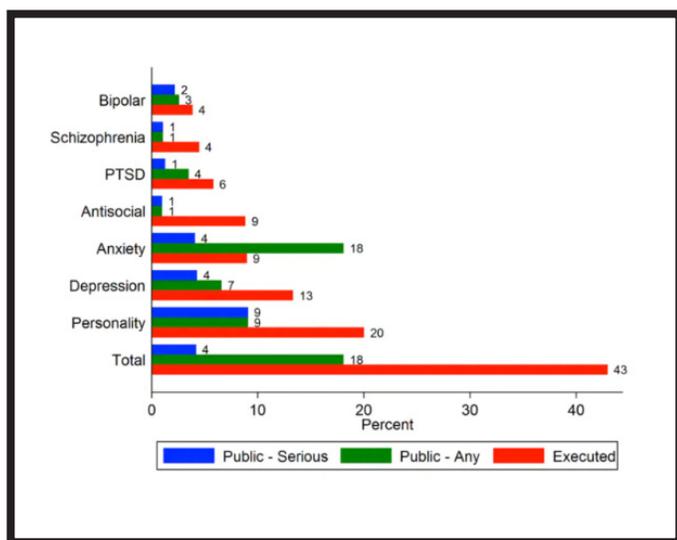


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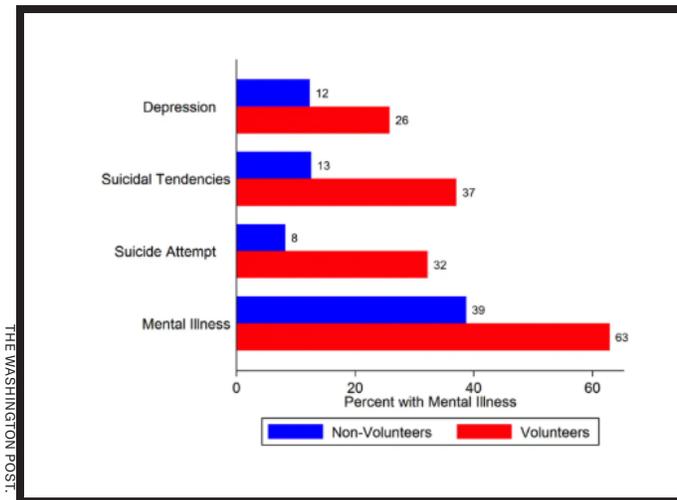
The inequities of the criminal legal system are compounded in capital cases when mental illness is involved. Inadequate legal representation has left juries unaware of defendants' mental illnesses. Defense counsels often lack sufficient time, experience with mental illness, and resources to recognize that a mental health condition might have played a role in the charged offense.<sup>110</sup> Defendants with mental illnesses may be paranoid, distrustful, and unwilling to cooperate with their attorneys or their doctors.

A defendant may present their mental illness as "mitigating evidence," or evidence that would serve as a basis for a sentence other than death. Although it can be powerful mitigation, jurors may view mental illness as an indication of future dangerousness, despite the evidence to the contrary.<sup>111</sup> Prosecutors too frequently use evidence of a mental illness as proof that someone is dangerous.<sup>112</sup> All too often, jurors treat mental illness as a reason to vote for death, rather than evidence of reduced culpability.

In *Ford v. Wainwright*, the Supreme Court ruled that the execution of the insane violates the U.S. Constitution's Eighth Amendment ban on



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“cruel and unusual punishments.”<sup>113</sup> However, the court’s failure to establish procedures for states to determine whether a defendant is insane or if they are “competent” for trial has resulted in minimal protections for the seriously mentally ill, different standards across states, and great uncertainty. The competency test is a low bar and, as a result, severely mentally ill defendants have “passed” the test.<sup>114</sup> In several cases, defendants were only executed after they were deemed “competent” following time in a psychiatric hospital and in response to antipsychotic medication.<sup>115</sup> Additionally, under-resourced defense lawyers may struggle to “prove” insanity and juries frequently reject insanity defenses despite strong evidence that the defendants were suffering from serious mental illness.<sup>116</sup>

People with intellectual and developmental disabilities also face a higher risk of wrongful convictions and death sentences. This is despite the fact that, in *Atkins v Virginia*, the U.S. Supreme Court ruled that it is unconstitutional to execute people with intellectual and development disabilities. Despite the constitutional protections laid out in these cases, the death penalty is still applied to people with intellectual and developmental disabilities, usually because they are unable to meet the burden of proof, or because of technicalities

in state laws.<sup>117</sup> It can be difficult to prove that defendants have intellectual and developmental disabilities because developmental disabilities vary. Additionally, defendants who were not well served by traditional community services, such as schools, service providers, facilities or family members, may lack the educational records or IQ testing and documentation they need to receive intellectual and developmental disabilities status.<sup>118</sup>

People with intellectual and developmental disabilities are more likely to falsely confess to a crime, as they may want to please the authorities investigating them.<sup>119</sup> They also face impairments in their ability to process information, communicate, engage in logical reasoning, control their impulses, abstract from mistakes, understand the reactions of others, and learn from everyday experiences.<sup>120</sup> As a result, they are less able to fully cooperate with their attorneys in their defense. Some may not understand the importance of their intellectual and developmental disabilities to the outcome of their case and do not tell their attorneys.<sup>121</sup>

Colorado has a history of executing people with severe intellectual and developmental disabilities. Joe Arridy spent the last seven years of his life in an institution. He did not ask for a last meal because he did not understand he was going to die. Not only did he have intellectual and developmental disabilities, but there was also strong evidence that he was innocent.<sup>122</sup> Leonard Belongia, John Sullivan, and Walter Hammil were all executed despite physician testimony that they had intellectual and developmental disabilities. Leroy Adolph Leick was executed following a six-year battle over his mental competence.



TINA MORRIS WITH THE BODY OF HER MENTALLY ILL BROTHER, JAMES COLBURN, MINUTES AFTER HIS EXECUTION IN TEXAS.

## AN AMERICAN ANOMALY: THE DEATH PENALTY'S VIOLATION OF HUMAN RIGHTS AND INTERNATIONAL LAW

Seventy-one years ago, in the wake of World War II and under the strong leadership of the United States, the newly formed United Nations adopted the Universal Declaration of Human Rights (UDHR) to promote and affirm “the dignity and worth of the human person.”<sup>123</sup> While the United States was once in the vanguard of advancing civil rights and individual liberties, it has fallen behind in protecting the universal human rights recognized by the UDHR. One glaring example of this is our use of the death penalty.

The death penalty is strongly condemned under international law. Under Article 3 of the UDHR, life is a human right.<sup>124</sup> The death penalty, a form of state-sponsored violence that strips its people of the right to life, is the most fundamental human rights violation. The Center for Constitutional Rights argues, “As long as governments have the right to extinguish lives, they maintain the power to deny access to every other right enumerated in the Declaration.”<sup>125</sup>

Today, 158 nations have abolished the death penalty or are abolitionists in practice, meaning they have performed no executions in the last ten years.<sup>126</sup> All told, over 80% of the world’s nations have abolished the death penalty in law or practice; only 37 retain it.<sup>127</sup> The U.S. is the only Western democracy to have the death penalty.

While the world’s great democracies commit to defending the fundamental right to life, adherence to capital punishment has compelled the U.S. to abstain from signing major international treaties. In 1989, the UN General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, which called for total abolition of the death penalty.<sup>128</sup> The U.S. has yet to join the 86 countries that are parties to the protocol. In 2018, with the support of 121 nations, the United Nations General Assembly called for a worldwide moratorium on the death penalty.<sup>129</sup> Meanwhile, since 2005, the United States has been in the top ten countries with the most executions, in the company of Saudi Arabia, Yemen, North Korea, Iran, and China.<sup>130</sup> By retaining the death penalty, the U.S. has aligned itself with many of the world’s dictatorships and against the world’s democracies.

The death penalty threatens the international support that the U.S. needs to resolve critical global and regional problems. In 2014, the UN

## IN THEIR OWN WORDS:

### MORAL OPPOSITION TO THE DEATH PENALTY

“Justice has nothing to do with the death penalty. Laws are more than just words in the book. They’re about what’s right and what’s wrong. Killing is wrong and you can’t rationalize the taking of human life. I met the person that killed my son and he apologized. He has written me letters about how wrong he was and how he helps other inmates understand what they did. The Lord gave me the strength to forgive.”

– *Bob Autobee of Denver, whose son, Sgt. Eric Autobee, was murdered in the Limon Correctional Facility*

“An eye for an eye leaves us all blind. It’s not going to help with my grief. I’m not going to miss my cousin any less.”

– *Erin McNally-Nakamura, whose cousin, Colleen O’Connor, was murdered in the Chuck E. Cheese’s shooting*

“The death penalty is vengeful. How can I support the deliberate killing of another human being? What I was contemplating was discarding my humanity and becoming a person not unlike the person who murdered my brother. I don’t want to become a person who is obsessed with the death of another person. I don’t want to allow any more of my life to thinking about the person who committed this murder. She is serving a

prison sentence for the rest of her life. That is a punishment and she can never hurt another person. I want to heal and move on with my life and not be consumed by hate and anger.”

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

“There was no death penalty in Wisconsin where Chris lived. The state’s attorney vigorously pursued the highest penalty that the state allowed. We didn’t have to go through the stress of knowing that there were decisions being made about whether her death warranted a death penalty. After the trial, we felt the anxiety of an inevitable appeal, but we didn’t have to go through that very long and we didn’t have to go through a series of hearings wondering when or if the ultimate sentence was going to be carried out, because the sentence was life imprisonment and it began as soon as the trial was over. Chris’ baby grew up knowing that the people who were raising her had not been seeking to have her biological father killed. We never felt that our own healing or grief would be helped by her killer being killed. Chris’s legacy is about life and not death. She believed in life. We believe in it, too.”

– *Dale Beck of Estes Park, whose sister-in-law, Christine Ann Clark, was murdered*

“We tell people, you can’t kill but then we kill them. I fail to see how any human can condone the taking of a life. Execution is just another word for murder. I don’t know of a single case -- and I have looked through peer-reviewed journals, because I work in a library -- about people who actually had a peaceful sense of satisfaction after the person who murdered their loved one was executed; there’s a sense of emptiness there as well. The human spirit doesn’t flourish from revenge. I miss my sister every day. Executing her killer wouldn’t change any of this.”

– *Linda Gruno of Westminster (deceased), whose sister, Polly Elizabeth Sullivan, was murdered in Aurora*

“If I view murderers as no longer being fit to live, setting aside their humanity, I am not only denying one of the core beliefs of my Christian faith, I am also holding an attitude like the one many murderers hold in perpetrating their crimes, who don’t feel as though their victims’ lives are valuable. The death penalty cuts off the possibility of forgiveness, redemption, and reconciliation that Christ always wants me to work toward. It is a violent act of retribution and revenge. I’ve met many murder victims’ family members, some of whom have seen the killers of their loved ones executed. I’ve never heard one of those

people say, “I’m so glad that the execution took place. Now I have closure.” Instead, they lament the whole death penalty process, which has caused them so much pain and misery.”

– *Gail Rice, whose brother, Denver Police Officer Bruce VanderJagt, was murdered while on duty*

“My belief is that violence begets violence. No one has the right to take another life, whether it be a person or a state. My family never had to go through the long and drawn-out process of the death penalty phase of a court trial because the man that killed my mother also killed himself. I’m grateful that our family was saved this process as I’ve seen in Colorado how capital cases drag on for years and years. My heart broke not just for my family and our loss, but for the family of the man who killed her. I knew that they were not only dealing with the loss of their loved one, but the added pain and shame of what he did.”

– *Patsy Bjork of Colorado Springs, whose mother, Shirly, was murdered*

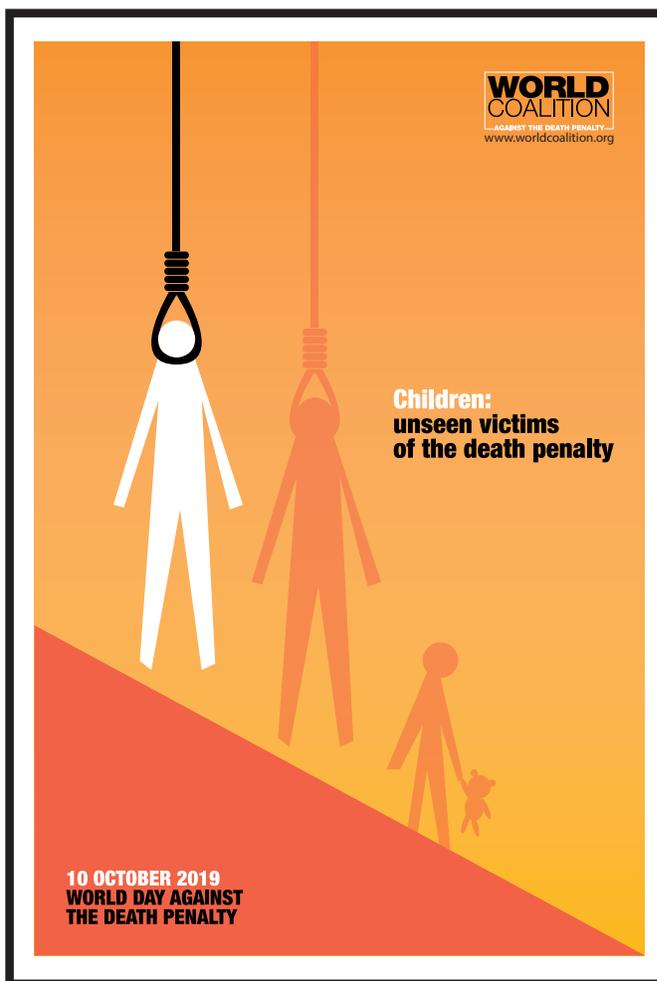
Human Rights Council condemned the capital punishment system in the U.S. and expressed concern over the high number of people wrongfully sentenced to death, racial disparities in death penalty sentencing, the arbitrary nature of the death penalty, inadequate compensation after wrongful convictions, the lack of oversight of lethal drug providers, and the number of botched executions resulting in prolonged and painful deaths.<sup>131</sup> The death penalty's pattern of cruelty and discrimination has provoked international concern and weakened American soft power and influence.

The death penalty has exposed the U.S. to accusations of international human rights violations and undermined U.S. commitment to international agreements.<sup>132</sup> The U.S. ratified the Vienna Convention on Consular Relations (VCCR) along with 180 countries. Under Article 36 of the VCCR, local authorities must inform all detained foreigners "without delay" of their right to notify their consulate of their detention.<sup>133</sup> Yet, out of 160 total reported death sentences given to foreign nationals, there were only seven cases in which the U.S. was in compliance with Article 36.<sup>134</sup> In most of the remaining cases, detained nationals learned of their consular rights weeks, months, or even years after their arrest.

In response, the Inter-American Court of Human Rights and the International Court of Justice have condemned the U.S for violating its Article 36 obligations.<sup>135</sup> Around 128 foreign nationals representing 33 nationalities are currently on death row in 16 jurisdictions, and many have raised VCCR violation claims.<sup>136</sup> Denying foreign nationals access to consular assistance strips them of recognized human rights that the U.S. Department of State considers to be required under international law.

This refusal to respect the rights of foreign nationals in the U.S. has undermined its ability to defend the rights of Americans abroad. Every

year, more than 6,000 Americans are arrested by foreign authorities.<sup>137</sup> Without the VCCR, these Americans would have to navigate their case, find an attorney, and pay legal fees, all without consular support in a country where they may not understand the language or legal system. When the U.S. disregards its obligations under the VCCR, it results in concerns of retaliation from even close allies such as Britain, Canada, the European Union, Germany, Mexico, and Paraguay.<sup>138</sup> By continuing to ignore the rights enshrined in the VCCR, American states put the lives of Americans detained abroad at risk and undermine national security.



WORLD DAY AGAINST THE DEATH PENALTY IS SUPPORTED BY THE EUROPEAN UNION, THE UNITED NATIONS AND NUMEROUS NGOS. EACH WORLD DAY AGAINST THE DEATH PENALTY FOCUSES ON A PARTICULAR THEME.

Overall, the use of the death penalty has hurt U.S. leadership by forcing it to renege on its word, distance itself from its allies, and face criticism from the international community for its human rights record. By executing foreign nationals and denying them the right to speak with their consulates, not only does the U.S. place detained U.S. citizens abroad at risk, but the U.S. has shown that its treaty obligations and policies can be unpredictable, unenforceable, and unreliable. By denying its people the very right to life, the U.S. government has turned its back on the system of universal human rights it so boldly forged over 70 years ago.

**“ Overall, the use of the death penalty has hurt U.S. leadership by forcing it to renege on its word, distance itself from its allies, and face criticism from the international community for its human rights record. ”**

## **THE DETERRENCE MYTH: COLORADO’S DEATH PENALTY IS A PUBLIC SAFETY FAILURE**

The claim that the death penalty keeps society safe and is a deterrent to violent crime is a dangerous myth used to justify a failed public

policy. A *New York Times* study found that during the last 20 years, homicide rates in states with the death penalty have been 48-101% higher than in states without the death penalty.<sup>139</sup> The experience of individual states reflects this national data. One study found that homicide rates in Wisconsin and Iowa (non-

## **LIST OF DEATH PENALTY RETAINING COUNTRIES**

Afghanistan  
Bahrain  
Bangladesh  
Belarus  
Botswana  
Chad  
China  
Egypt  
Equatorial Guinea  
Gambia  
Indian  
Indonesia  
Iran

Iraq  
Japan  
Jordan  
North Korea  
Kuwait  
Libya  
Malaysia  
Nigeria  
Oman  
Pakistan  
Palestinian Territories  
Saint Kitts and Nevis  
Saudi Arabia

Singapore  
Somalia  
Sudan  
South Sudan  
Syria  
Taiwan  
Thailand  
United Arab Emirates  
United States  
Vietnam  
Yemen

## COUNTRIES WITH THE MOST CONFIRMED EXECUTIONS IN 2018

1. China
2. Iran
3. Saudi Arabia
4. Vietnam
5. Iraq
6. Egypt
7. United States

Leading experts agree that the death penalty does not deter crime. A 2009 study found that over 88% of the nation's top criminologists did not believe that the death penalty deters murder.<sup>145</sup> In a 2009 survey, 500 police chiefs ranked the death penalty last among effective ways to reduce violent crime. The officers agreed that death penalty cases are hard to close and take up a lot of police time, that the death penalty is one of most inefficient uses of taxpayer dollars in fighting crime, that the risk of getting caught is a much better deterrent than the death penalty, and that murderers do not think about the death penalty before committing homicides.<sup>146</sup>

death-penalty states) were half the rate of their neighbor, Illinois, which retained the death penalty.<sup>140</sup> These stark differences in murder rates are also found at the international level. The U.S., which utilizes the death penalty, has a higher murder rate than the countries in the European Union or Canada, which do not.<sup>141</sup> Studies conclude that the death penalty does not deter crime. The prestigious and nonpartisan National Research Council reviewed more than three decades of research and found no credible evidence that the death penalty deters violent crime.<sup>142</sup> Similarly, the Brennan Center for Justice released a report regarding the dramatic drop in crime in the U.S. and found that the death penalty did not contribute to this decline.<sup>143</sup> The authors wrote, "capital punishment is too infrequent to have a measurable effect on the crime drop."<sup>144</sup>

The death penalty also fails to deter violence against police officers, corrections officers, and other prisoners. FBI data found that the regions of the country that use the death penalty the least are safest for police officers and corrections personnel.<sup>147</sup> From 1989 to 1998, 292 police officers were killed in the South, where over 80% of executions take place, while 80 were killed in the Northeast, where less than 1% of executions take place. Between 2005 and 2014, all 24 murdered corrections officers were in death penalty jurisdictions.<sup>148</sup> The millions of dollars that are currently wasted on the death penalty would be better invested in improving prison safety, such as removing blind spots, increasing security in high-risk areas, and placing people who are especially dangerous in special units.<sup>149</sup>

## IN THEIR OWN WORDS:

### THE MYTH OF THE WORST OF THE WORST

“Another misconception of this law is that it’s used for the “worst of the worst crimes”. Why? To the murdered victims’ family members there is no worse of the worse. All murders are heinous. Shouldn’t each person’s life count as valuable? When my brother died, all I could think about was that nothing will bring him back by killing another person. It won’t take away the pain that’s left inside of me.”

– *Linda Burks-Brown, whose brother, Willie Frazier, was murdered in Denver*

“People say we need the death penalty for the “worst of the worst.” Why we think it’s okay to classify some losses as worse than others, I’ll never understand. If your loved one is taken by murder, for you, that loss is the worst. To hear politicians or law enforcement say otherwise is hurtful.”

– *Chena Rabb of Lakewood, whose aunt, Yvonne, was murdered*

“A few years ago, a prominent District Attorney stated that the people killed in the line of duty are more important than any other murder. Though I am biased and I love my mother, I do not believe that, in the end, her life is more valuable than any other human’s. My mom was very compassionate to inmates. If Miguel Contreras Perez is sentenced to death, it would be a great dishonor to my mother.”

– *Katherine Smith, whose mother, Sgt*

*Mary Katherine Ricard, was murdered at the Arkansas Valley Correctional Facility in Crowley, Colorado*

“I hear some say, ‘This case is the worst of the worst and we’re going after the death penalty.’ But a murder case is a murder case. It doesn’t matter if they were killed simply or if the details are really horrible. It doesn’t matter because someone’s life ended tragically and the family members feel the same grief, same pain, same anger and despair. Every life is worth the same. To say that one murder is worse than another murder is just so damaging.”

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

“I can’t see how the death penalty is ‘for the victims’ when it doesn’t come into play in the vast majority of cases. With only three men on Colorado’s death row, the death penalty isn’t a part of the experience for the vast majority of victims’ families. But even for just three people, the death penalty costs our state millions of dollars. If a system was ‘for the victims’ wouldn’t it do more to help all of us? The millions we spend on the death penalty could be put toward victims’ services that would be of benefit to far more of us.”

– *Jean Gregory of Denver, whose son, Steve (Nick), was murdered*

The death penalty also does not make people in prison any safer. States without the death penalty have a lower homicide rate among prisoners than states with the death penalty.<sup>150</sup> Between 1992 and 1995, 84% of murdered inmates were in death penalty jurisdictions. Research shows that those serving life sentences are less likely than the average inmate to break prison rules, since additional infractions result in punishment that makes time in prison more difficult.<sup>151</sup> In a survey of corrections workers, 92% said those serving life sentences were more cooperative.<sup>152</sup>

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**The prestigious and nonpartisan National Research Council reviewed more than three decades of research and found no credible evidence that the death penalty deters violent crime.**

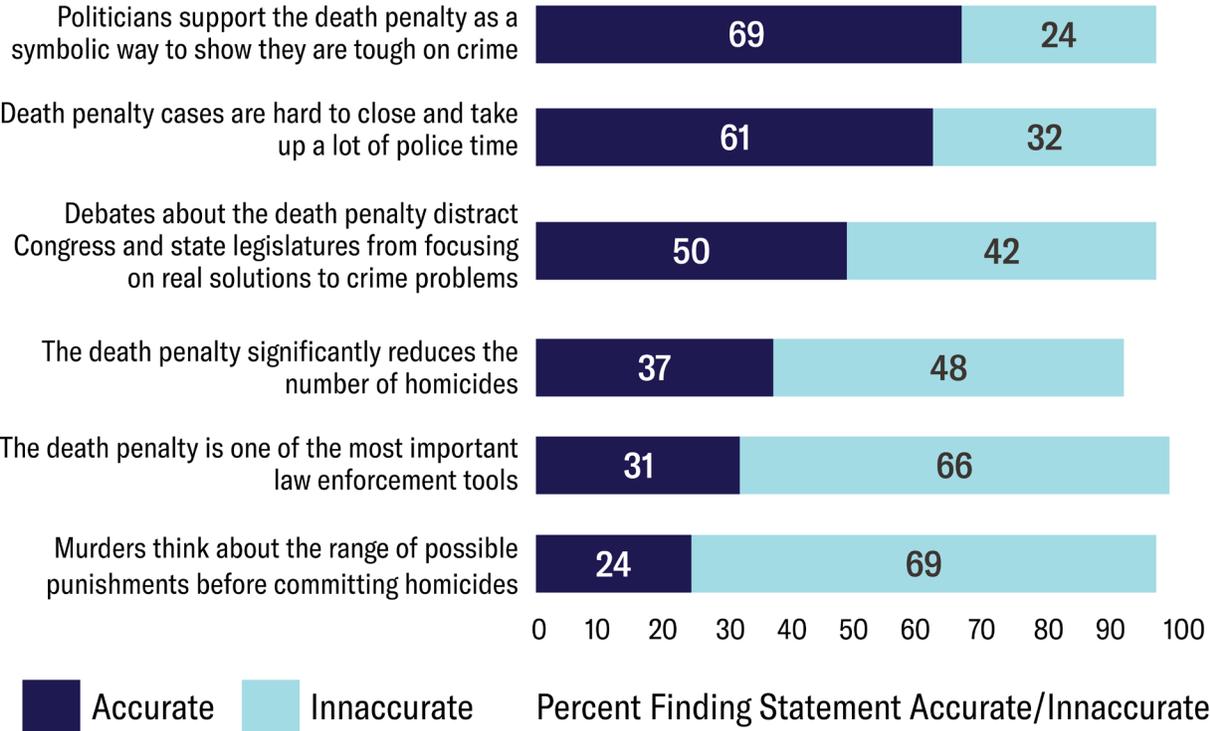
The death penalty is not an effective deterrent. In order to be effective, a punishment must be consistently employed. After all, deterrence is a function not only of a punishment’s severity, but also of its certainty and frequency. The proportion of first-degree murderers who are sentenced to death is small, and an even smaller proportion of those sentenced to death are executed. Given that Colorado’s last execution was in 1997, it is unlikely that people who commit murder are seriously considering that they may face execution.<sup>153</sup>

Capital punishment does not factor into people’s considerations prior to murder. Those who commit terrible acts rarely premeditate their crimes.<sup>154</sup> Capital crimes are often committed during moments of great emotional stress or under the influence of drugs or alcohol. Others panic while committing another crime, such as robbery, and do not stop to weigh the possible consequence of the death penalty before reacting. In all these cases, logical thinking has been suspended, and defendants are not conducting cost-benefit analyses before acting. Even when a crime is planned, the defendant focuses on avoiding detection, arrest, and conviction. The threat of even the most severe punishment will not deter those who plan on never being caught.<sup>155</sup>

Those planning to go out in a “blaze of glory” are unlikely to be deterred by the possibility of the death penalty. According to research published in the *Justice Quarterly* in 2015, 48% of the perpetrators of 185 public mass shootings between 1966 and 2010 died by suicide or were killed.<sup>156</sup> Not only is certainty of death not a deterrent, but for some of these mass shooters, it may actually motivate them to commit the act.<sup>157</sup>

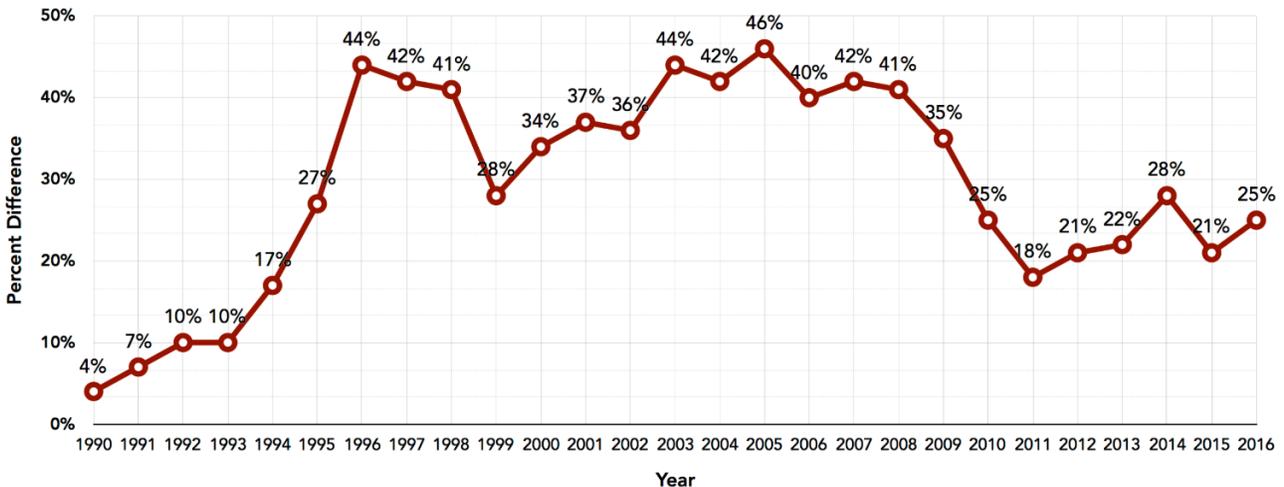
For those who commit a terrible act, the death penalty is no more of a deterrent than the threat of other harsh punishments. Around the country, death sentences have declined 60% since 2000, and Colorado has not executed anyone since 1997. Maintaining the death penalty, where seeking death sentences costs millions and rarely leads to an execution, is increasingly difficult to justify. The money spent on this broken system should be redirected to proven solutions that deter crime and keep society safe.

## POLICE CHIEF'S VIEWS



DEATH PENALTY INFORMATION CENTER

### Percent Difference in Murder Rate Between Death Penalty and Non-Death Penalty States



DEATH PENALTY INFORMATION CENTER

## THE PLEA BARGAIN MYTH: SECURING LIFE WITH DEATH

Death penalty proponents assert that the death penalty is necessary for securing plea deals. Essentially, they argue for the need to threaten defendants with the death penalty in order to force them to plea to life without parole. Yet, states with no death penalty successfully obtain severe sentences in murder cases. Additionally, using executions as a bargaining chip is unethical because it forces defendants to forgo their right to a trial and increases the risk that innocent people will plea to a crime they did not commit.

States do not need the threat of death to secure life in prison. When New York had the death penalty, prosecutors secured plea deals at a greater rate for second-degree murder cases. Clearly, the death penalty was not a useful bargaining chip since it could only be used to force people to plea to first-degree murder cases, and prosecutors secured those at a lower rate than in second-degree murders cases, where the death penalty is not an option.<sup>158</sup> After New Jersey abolished the death penalty in 2007, prosecutors asserted that it did not impact their ability to secure guilty pleas.<sup>159</sup> Alaska completely abolished plea bargaining in 1975 and still successfully charges criminals with serious sentences.<sup>160</sup> A study by the National Institute of Justice found that, “guilty pleas continued to flow in at nearly undiminished rates.”<sup>161</sup>

Some argue that plea bargaining saves money. The mistaken logic is that by threatening defendants with the death penalty, they may accept a plea deal and avoid going to trial, thus saving money. However, plea bargaining with the death penalty does not save money because the cost of preparing for a death penalty

prosecution is very expensive, even if it never goes to trial.<sup>162</sup>

The Death Penalty Information Center released a 2009 report that reviewed thorough cost analyses conducted over the previous 15 years, specifically addressing plea bargaining in North Carolina, Indiana, Kansas, and California. The report concluded that the death penalty added significantly to the costs of the criminal legal system.<sup>163</sup> The author of a 2016 article on plea bargaining concluded that plea bargaining does not “offset the substantial administrative and financial costs” of capital trials.<sup>164</sup>

Additional studies throughout the country have found that costs for capital cases ending in a plea deal were higher than non-capital cases that actually went to trial. A 2014 report from the Kansas Judicial Council Death Penalty Advisory Committee found that the average cost of a death penalty case that was resolved by plea was double that of a non-capital case that ended in a plea, and more than 20% greater than the costs of both a trial and appeal of a non-capital case.<sup>165</sup> Two fiscal reviews by the Indiana Legislative Services Agency found that a death penalty case resolved by guilty plea cost twice as much as a non-capital first degree murder case tried by jury, and that the out-of-pocket expenditures by counties in capital cases that were resolved by plea were almost five times more than in non-capital first degree cases tried to a jury.<sup>166</sup> Seeking the death penalty, even if it results in a plea bargain, is more expensive than leaving it off the table.<sup>167</sup>

Using the threat of death to plea bargain risks convicting innocent people by coercing defendants to falsely confess. According to the Innocence Project, more than one out of four people wrongfully convicted of a capital offense and later exonerated by DNA evidence

## IN THEIR OWN WORDS:

### THE DEATH PENALTY IS NOT A DETERRENT

“If I thought for a moment that we needed the death penalty for its deterrent effect or to keep corrections officials safe, I would certainly render my stance against the death penalty, but there is no empirical evidence that shows the death penalty keeps society safe. In fact, violent crimes and homicide rates have much higher percentages in states with the death penalty than they are in Canada, Western Europe, and the 17 states where the death penalty has been abolished.”

– *Allen Ault, Former Director of the Colorado Department of Corrections*

“I am a psychotherapist to those recently released from prison. Therapy is often the difference between people re-starting their lives in a productive way or re-offending. I want nothing more than to prevent crime and ensure others aren’t harmed. Sadly, in recent years we have seen drastic budget cuts for the therapy provided. This breaks my heart for the offenders who are denied the chance to effectively turn their lives around, and for the future victims of preventable crimes. Yet, we pay for the death penalty in Colorado. Even though study after study has failed to show it has any deterrent value. And even though we know there are programs - like my programs - that could prevent future crimes if they had the resources. It’s time we started being smart

about how we use our limited resources and put them toward programs that will prevent crime from occurring.”

– *Dr. Mary McNeil-Jones of Denver, whose husband, Wayne, was murdered*

“When you speak to a prosecutor, their opinion of the death penalty as being a deterrent always comes up. But if you speak to inmates who are in prison, they were in the moment and trying to not get caught. They never think ‘If I get caught, they’re going to kill me.’ The death penalty is not a deterrent. It didn’t protect my wife.”

– *Tim Ricard, whose wife, Sgt Mary Katherine Ricard, was murdered at the Arkansas Valley Correctional Facility in Crowley, Colorado*

“Sometimes people say that they believe that the death penalty is a deterrent to murder. I know there’s research that says it definitely is not a deterrent to murder. Also, on a personal level, I am positive that the woman who murdered my brother never once thought that she would get caught and never gave a thought to the death penalty.”

– *Arlis Keller of Greeley, whose brother, Dwight Tobyne, was murdered*

“The death penalty does not stop crime, it never will. There are better solutions than the death penalty.”

– *Alice Randolph of Lakewood, who witnessed the murder of her father when she was 5 years old and whose son, Loren Anthony Collins, was murdered in Aurora*

“

**Many prosecutors have spoken out against the use of the death penalty in plea bargaining, arguing that it is unethical and unconstitutional.**

made a false confession.<sup>168</sup> The Death Penalty Information Center found that 13 of the wrongful convictions in 2016 were the result of the use of the death penalty as a threat.<sup>169</sup> United States Supreme Court justice Antonin Scalia wrote that plea bargaining, “presents grave risks of prosecutorial overcharging that effectively compels an innocent defendant to avoid massive risk by pleading guilty to a lesser offense.”<sup>170</sup>

Several Coloradans have spent decades in prison, or were even executed, following false confessions that lead to wrongful convictions. Joe Arridy confessed and was sentenced to death, only to have evidence of his innocence come to light after his execution. Police grilled fourteen-year-old Lorenzo Montoya for over two hours without parents or attorneys present. He spent 13 years in prison following a false confession.<sup>171</sup>

Many prosecutors have spoken out against the use of the death penalty in plea bargaining, arguing that it is unethical and unconstitutional. They argue that defendants have a Sixth Amendment right to trial, and by forcing defendants to plead guilty, prosecutors strip

defendants of this constitutional right. If a defendant refuses to accept a plea deal and goes to trial, the risk that they will be executed increases. The incentive is to never go to trial. The use of the death penalty as a tool to coerce defendants reflects a larger prosecutorial concern with increasing the number of convictions rather than serving justice or applying the statutorily correct charges.

The argument over the use of the death penalty as a bargaining chip underscores the basic indecency of the death penalty. Proponents argue that the state should threaten its citizens with death to extract a guilty plea. This ultimatum from the government is perhaps the most shocking of the flaws of capital punishment as practiced in Colorado. The notion that plea bargaining with the death penalty is the only way to secure convictions is another dangerous myth used to justify a failed policy.

## **IT IS TIME TO END THIS BROKEN SYSTEM.**

More and more Coloradans are speaking up to say that the death penalty is immoral in principle and unfair in practice. Religious leaders representing many faiths have taken the stance that the death penalty is morally reprehensible because it goes against ideals tied to respecting human dignity, seeking forgiveness over vengeance, practicing compassion, and valuing life.

Faith leaders continue to lead the charge for the end of the death penalty, arguing that a society that respects life does not deliberately kill human beings. They reason that it is wrong for the government to kill its own people. In the words of Archbishop

## IN THEIR OWN WORDS:

### THE DANGERS OF PLEA BARGAINING

“The final argument I’ve heard from elected prosecutors is that having the death penalty is necessary to assure that pleas of guilty to first degree murder with life without parole can be obtained on tough cases. This justification surprises me, because there are many practical and ethical problems with this position. Every prosecutor agrees that it is an inappropriate use of the death penalty to threaten or to coerce to get a guilty plea. Doing so is both unethical and immoral.”

– *Stan Garnett, Former 20th Judicial District Attorney*

“So, they were talking about giving me the death sentence at the beginning of this deal, so the mind games were already starting. And if they had, I wouldn’t have been there to get out last year when they got me out for DNA retesting. I’d have already been dead.”

– *Robert Dewey, Coloradan who was threatened with the death penalty and spent 17 years in prison before he was exonerated*

“My role as a prosecutor was to do justice. And to file charges with the intent that it’s going to try to force somebody to plead guilty because they don’t want to face the possibility of the death penalty - it’s not right.”

– *Karen Steinhauser, Former Prosecutor, Denver District Attorney’s Office*

Desmond Tutu, “To take a life when a life has been lost is revenge, not justice.” For many, the moral question surrounding capital punishment in America has less to do with whether those convicted of violent crime deserve to die than with whether the government deserves to execute those whom it has imprisoned. We do not have the moral authority to decide who lives and who dies, yet the death penalty enables the government to do just that.

Some argue that punishments should mirror the crime itself. Essentially, the only fair sentence is an “eye for an eye” or a “life for a life.” But that is a form of “justice” our society has never endorsed. We do not allow torturing a torturer or raping a rapist. We do not even murder every murderer. Of the 539 people convicted of murder in Colorado, only three are on death row.<sup>172</sup> As numerous victims’ family members testify, vengeance does not belong in our criminal legal system.

With each execution, we let the evil acts of a few bring out the evil in all of us. By punishing murder with murder, the death penalty epitomizes the tragic brutality in society. It fosters a culture of hate and anger by sending the message that violence is the most effective solution to problems. We cannot teach that killing is wrong by killing. When the government metes out vengeance disguised as justice, it becomes complicit with those who kill in devaluing human life. The severity of the punishment we inflict has limits – imposed by both justice and our common human dignity. Governments that respect these limits do not use the premeditated executions of their own people as public policy. In a society that aspires to be moral and just, there is no room for the death penalty. It is time for Colorado’s legislators to show the moral leadership necessary to end this unjust system.



THE COLORADO SUN.

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