

ILLINOIS COALITION AGAINST THE DEATH PENALTY
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ILLINOIS COALITION AGAINST THE DEATH PENALTY
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Since the flood of exonerations of death row inmates and the declaration of a moratorium on executions in 2000, the state of Illinois has been engaged in an historic reexamination of capital punishment. This past year was marked by then-Governor George Ryan's unprecedented actions to remedy the flaws and injustices that have plagued the Illinois capital punishment system and legislative efforts that attempt to reform the death penalty process.

Today, the Illinois Coalition Against the Death Penalty issues its report on the course of capital punishment in 2003. What has this year brought?

Our study found that state's attorneys continue to aggressively pursue the death penalty in dozens of cases around the state. In Cook County alone, 175 currently pending cases are considered capital, with another 25 in other parts of the state. Rather than learning from the mistakes of the past, they are being repeated in many cases. However, skepticism is growing over the use of capital punishment among the public and jurists hearing capital trials.

This ongoing change in public opinion was clearly reflected in the following:

- Two-thirds of the voting public would either be more likely to support or would not be opposed if their legislator voted to abolish the death penalty. Only 54% of Illinois voters now support the death penalty. Opposition to the death penalty has risen to 41%. National support for the death penalty is at a 25-year low.
- Local citizens publicly challenged their State's Attorneys' seeking of the death penalty during several downstate trials.
- Only two death sentences were handed down in 2003. Four out of the five juries who considered the death penalty in 2003 rejected it.

Skepticism is justified when one considers that prosecutors continued to use questionable tactics and evidence during capital trials and sought the death penalty in cases so weak that at least half a dozen of them ended in acquittals or with the charges dismissed.

- Specifically, prosecutors in capital trials continue to use testimony of jailhouse snitches and co-defendants who have made deals in exchange for their testimony. They also continue to use questionable confessions.

Our examination of capital trials has also shown that arbitrariness continues to plague the death penalty in Illinois. Both the 2003 death sentences involved the

murders of white victims, and were tried in rural counties. Those two factors were cited by the Commission on Capital Punishment as arbitrary influences on who gets the death penalty in Illinois. Convictions for similar crimes in urban counties or where the victims were racial minorities did not result in the death penalty.

In our review of the workings of capital punishment, the Coalition found a pattern of capital prosecutions against defendants who suffered from serious mental illness. Both defendants who received the death penalty in 2003 suffered from mental illness. Others were convicted but spared the death penalty. There are many more mentally ill defendants awaiting trial. It is disturbing that prosecutors are seeking the death penalty against defendants whose culpability level and also whose ability to properly defend themselves is impaired by illness.

2003 was also marked by efforts in the General Assembly to reform the capital punishment process. There is no doubt that these reforms will improve certain aspects of the process. However, many well-documented and pervasive problems were virtually ignored. Reforms passed by the legislature did not include proposals to correct the arbitrariness in the Illinois capital punishment system. Other problems, such as co-defendant and jailhouse snitch testimony, crime lab bias and flawed witness ID's, were addressed only partially. Further, only very limited measures were enacted to increase the accountability of police and public officials for misconduct during capital trials.

This past year also saw the legislature grapple with the worst budget crisis in recent memory. Given the difficult funding choices faced by the General Assembly, the continued expenditure of enormous sums on maintaining the death penalty is even more sharply called into question. Just how much was spent?

- An estimated \$32 million was spent to try capital cases in 2003, resulting in only two death sentences. The cases of the two men sentenced to death have cost \$1.7 million so far, and appeals will raise that figure to an estimated \$3 million. This is more than double the estimated cost for these cases if the death penalty were not involved – even if life without parole were sought in every case.
- These expenses came in a year marked by cutbacks for programs vital to crime prevention and control, including schools, mental health and drug treatment.

Fortunately, increased skepticism of the death penalty process led to a drastic drop in the number of death sentences handed out in 2003. However, this only highlights more sharply the expenditure of millions of dollars in scarce resources to maintain the machinery of execution in our state. When 37 of 39 capital cases are satisfactorily resolved short of the death penalty, we have to ask ourselves whether capital punishment is really necessary. Further, while reforms may improve the system, they can never eliminate all mistakes and misconduct. And the reforms will inevitably add to the cost of administering the death penalty.

Given these ongoing problems, it is clear that Illinois would be better served by the use of alternative sentences such as life in prison without the possibility of parole. Public safety will be maintained and scarce resources preserved for use in constructive crime prevention measures. And our state will no longer be haunted by the specter of the execution of an innocent person.

**QUESTIONING A BROKEN SYSTEM:
CAPITAL PUNISHMENT IN ILLINOIS IN 2003**

HIGHLIGHTS

Public opinion continues to move away from the death penalty:

- Two-thirds of the voting public would either be more likely to support or would not be opposed if their legislator voted to abolish the death penalty.
- Only 54% of Illinois voters now support the death penalty. Opposition to the death penalty has risen to 41%. National support for the death penalty is at a 25-year low.
- Local citizens publicly challenged their State's Attorneys' seeking of the death penalty during several downstate trials.

Judges and juries repeatedly rejected the death penalty:

- At only two, the number of death sentences in Illinois this year is the lowest since the death penalty was reinstated in 1977. Of 39 capital cases resolved in 2003, 37 were concluded without a death sentence.
- In Cook County, of 22 cases where the state's attorney sought the death penalty to the conclusion of the case, not a single death sentence was handed out during 2003.
- Seventeen capital cases were resolved in downstate Illinois in 2003. Fifteen ended without a death sentence.
- Four out of the five juries who considered the death penalty in 2003 rejected it.

Capital trials continue to exhibit serious flaws:

- Prosecutors in capital trials continue to use testimony of jailhouse snitches and co-defendants who have made deals in exchange for their testimony.
- Prosecutors also continue to use questionable confessions, sometimes obtained by police officers with prior histories of obtaining wrongful confessions.
- In at least one current death penalty trial, prosecutors did not produce police reports that were at odds with officers' testimony at the trial. No mistrial was granted.
- In at least seven capital trials in 2003, prosecutors sought the death penalty in cases so weak that the defendants were ultimately acquitted or charges against them dropped.

- Prosecutors sought the death penalty in many cases where the defendant suffered from serious mental illness.

The death penalty process continues to drain scarce crime-fighting resources:

- An estimated \$32 million was spent to try capital cases in 2003. The cases of the two men sentenced to death cost over \$3 million.
- This is more than double the estimated cost for these cases if the death penalty were not involved – even if life without parole were sought in every case.
- These expenses came in a year marked by cutbacks for programs vital to crime prevention and control, including schools, mental health and drug treatment.

Reforms enacted in 2003 are not sufficient to prevent future injustices:

- Arbitrariness continues to plague the death penalty in Illinois. Both the 2003 death sentences involved the murders of white victims, and were tried in rural counties. Those two factors were cited by the Commission on Capital Punishment as arbitrary influences on who gets the death penalty in Illinois. Convictions for similar crimes in urban counties or where the victims were racial minorities did not result in the death penalty
- Reforms passed by the legislature ignored Commission proposals to correct this arbitrariness. Other problems, such as co-defendant and jailhouse snitch testimony, crime lab bias and flawed witness ID's, were addressed only partially.
- Several highly publicized reforms – including videotaped interrogations and penalties for police who lie under oath – remain untested as to enforcement and long-term effect.

Efforts to investigate past wrongful convictions are incomplete, while new exonerations have brought further problems to light:

- Cook County prosecutors have repeatedly resisted attempts to investigate police torture under Cmdr. Jon Burge and other abuses, despite the exoneration of four Death Row prisoners interrogated by Burge.
- The official probes of the Ford Heights Four case found grave errors by police and prosecutors, but did not result in any charges against those responsible or changes in the system.
- Exonerations and lawsuits raised issues including written “confessions” in English from Spanish-speaking suspects; suspects held for interrogation for days without a lawyer and unreliable witness testimony

**QUESTIONING A BROKEN SYSTEM:
CAPITAL PUNISHMENT IN ILLINOIS IN 2003**

INTRODUCTION

Illinois has been at the center of the reexamination of the death penalty since the exoneration of over a dozen death row inmates led to the exposure of shocking and systemic flaws in its criminal justice system. On January 31st, 2000, following the release of the thirteenth wrongfully convicted man from Death Row Illinois Governor George Ryan declared a moratorium on all executions in the state until, as he stated, "I can be sure with a moral certainty that everyone sentenced to death in Illinois is truly guilty and that no innocent man or woman is facing lethal injection."

The purpose of this report, prepared by the Illinois Coalition Against the Death Penalty, is to review the course of the death penalty in Illinois in the year since the Governor Ryan granted pardons to four innocent death row inmates and commuted the sentences of all other condemned inmates in Illinois. The findings cast grave doubt on whether the "moral certainty" that must be a part of any capital punishment scheme can ever be achieved and highlight the need for public officials to implement alternatives to the death penalty that ensure the public's safety but do not risk the execution of an innocent person by the state.

The report covers the following:

- The reaction of the public to the commutations and pardons, and the effect of the ongoing death penalty crisis on public opinion **(Section I)**;
- The results of State's Attorney's offices bringing death penalty cases in greater Illinois **(Section II)**;
- The results of the Cook County State's Attorney office bringing death penalty cases **(Section III)**;
- The costs associated with continued use of the death penalty **(Section IV)**;
- Legislative efforts to reform the capital punishment system **(Section V)**
- Exonerations and investigations of the capital punishment system **(Section VI)**

I. PUBLIC OPINION

On January 31, 2000, Illinois Governor George Ryan, after reviewing the state's shameful record of wrongful death penalty convictions, declared a moratorium on executions. In doing so, he recognized that Illinois' capital punishment was so fraught with error that it risked the ultimate nightmare, the state's taking of innocent life.

After two years of exhaustive study, the non-partisan Governor's Commission on Capital Punishment, in April 2002, released a comprehensive condemnation of the Illinois death penalty system, carefully outlining the flaws in the death penalty and larger criminal justice process. It recommended 85 reforms to the Illinois capital punishment process, while acknowledging that no system could be devised that would guarantee that an innocent person was never again sentenced to death. The Illinois General Assembly took no action to implement any of the proposed reforms during the 2002 legislative session.

Then in January 2003, acknowledging fundamental problems related to the accuracy and fairness of the Illinois capital punishment system, Governor Ryan pardoned four innocent men, and commuted the sentences of all remaining 167 death row inmates. The pardoned inmates, Aaron Patterson, Madison Hobley, Stanley Howard and Leroy Orange, maintained that they were convicted based on confessions extracted through brutal torture administered by Chicago police officers under the command of Lieutenant Jon Burge. The commutations changed 164 sentences to life in prison without the possibility of parole and three others were given sentences of terms of years (ranging from 30-40 years) to bring their sentences in line with those received by co-defendants.

Response to Commutations

Support for the pardons and commutations came from distinguished organizations and individuals from throughout the world, including Nobel Peace Prize laureates Nelson Mandela and Desmond Tutu, the American Bar Association, the late United States Senator Paul Simon, the International Commission of Jurists, representing judges and lawyers in 60 nations, Walter Schwimmer, secretary general of the Council of Europe, President Vicente Fox of Mexico, Amnesty International and Human Rights Watch.

The Chicago *Defender* praised the commutations, as did African-American legislators. The Illinois Branch of the National Association for the Advancement of Colored People recognized Gov. Ryan with an award at its 2003 annual meeting. The St. Louis *Post-Dispatch*, called the commutations "historic and courageous." Three days later it called on Governor Bob Holden to learn from the actions of his colleague in Illinois and suspend executions in Missouri.

Religious leaders across Illinois had urged Ryan to commute all death sentences, and the move was hailed by groups such as the Evangelical Lutheran Church of America, the Catholic Conference of Illinois and the Jewish Federation of Metro Chicago. Governor Ryan's aides reported that they had not received a single letter from a religious group opposing the commutations.

Others questioned the blanket nature of the commutations, including many Illinois States' Attorneys. Addressing the press in the wake of Ryan's pardons, Cook County States' Attorney Dick Devine said, "The system is broken, and the governor started to break it today." He called the pardons "outrageous and unconscionable" and denounced the pardoned men as "evil." His office had been fighting for years to keep the men on death row despite the growing evidence of systematic torture of many suspects over many years by Chicago police.

Commutation Challenge

Following Governor Ryan's commutation of all existing death sentences, Illinois Attorney General Lisa Madigan, joined by 10 of the 102 Illinois States' Attorneys, filed suit to challenge a portion of the commutations based on the contention that (a) 16 inmates were not under a sentence at the time of the commutation because their death sentences had been overturned by a reviewing court; (b) 21 inmates did not sign their clemency petitions. Current Governor Rod Blagojevich and former Governor Jim Thompson, who signed Illinois' death penalty into law, defended the commutations in the suit. On January 23, 2004, the Illinois Supreme Court unanimously upheld the Governor's commutations.

Changing Public Opinion

The exposure of the deep flaws in the Illinois capital punishment system has caused the public to question the death penalty in a way it had not been willing to in the past.

--Two-thirds of the voting public would either be more likely to support or would not oppose their legislator voting to abolish the death penalty;

--41 percent of the Illinois voting public now opposes the death penalty outright. Only 54% support capital punishment, the lowest since reinstatement of the death penalty in 1977;

--Nationally, support for the death penalty is at a 25-year low, according to the latest Gallup poll taken in October 2003;

--The number of death sentences handed out around the state has dropped sharply in the past several years, and the rush to fill death row after the commutations has not materialized. Only two death sentences were given out in Illinois in 2003. As late as 2000, ten death sentences were handed down in Illinois;

--There has been a growth in anti-death penalty activities and organizing around the state, including the formation of local anti-death penalty organizations in smaller downstate communities such as Decatur, Peoria and Bloomington-Normal. Local citizens publicly opposed the capital trials of Anthony Mertz in Charleston and Earl Owens in Decatur.

Growing Consensus Among Public Officials of Deep Flaws in System

One of the most significant developments in 2003 was the willingness of high-ranking legislators and other public officials to admit the deep systemic flaws in Illinois' criminal justice system. Reform legislation passed both houses of the General Assembly by a virtually unanimous vote. In contrast, not a single recommendation of the Governor's Commission on Capital Punishment was enacted in the 2002 legislative session. In the wake of the passage of the reform legislation package, Gov. Blagojevich cautioned against moving quickly in lifting the moratorium, describing the capital punishment system as "broken" and its problems pervasive.

In another significant development in 2003, House Bill 213, which would abolish the death penalty and replace it with the maximum penalty of life in prison without the possibility of parole, passed the House Judiciary II Committee by a vote of 8-4. This was the first time an abolition bill has made it out of committee since the death penalty was reinstated in Illinois in 1977.

Commutations—A "Banner Year"

Ten individuals were exonerated and released from death row in the United States in 2003, the most in one year since 1987. This includes the four Illinois men pardoned by Governor Ryan, namely Aaron Patterson, Stanley Howard, Leroy Orange and Madison Hogley. The flaws in the ten cases that led to the wrongful convictions reflect the ongoing flaws in the criminal justice system. These include unreliable confessions obtained through torture, the withholding of exculpatory evidence by

the prosecutor, the discovery of crucial evidence just weeks before a scheduled execution, the discovery of new evidence regarding conflicting witness statements, and the recantation of the testimony of all witnesses to a murder.

The Trend Away From Capital Punishment

The growing skepticism of the death penalty system is reflected in national trends. The number of death sentences handed out by juries around the United States declined for the fourth consecutive year. Approximately 138 death sentences were given out in 2003. This is 20 below the figure for 2002 and less than half the number handed out annually during the 1990's. In federal death penalty trials, where the Justice Department under Attorney General John Ashcroft has aggressively pursued the death penalty, often over the local U. S. Attorney's recommendation, juries and judges have rejected the death penalty in 23 of 27 cases.

Further, only 11 states carried out executions in 2003. Just three states, Texas, Oklahoma and North Carolina, accounted for 68 percent of all executions in the United States in 2003. There were 65 executions in 2002, down from 71 in 2002. 89 percent of all executions occurred in the South.

The juvenile death penalty has also been increasingly scrutinized and questioned over the last year. In the most prominent capital prosecution of a juvenile in 2003, a Virginia jury spared the life of Lee Boyd Malvo, one of the Washington, D.C. sniper defendants. Malvo was seventeen at the time of the sniper murders.

In Washington state, prosecutors chose to forego the death penalty in the case involving the so-called Green River Killer, Gary Ridgeway, notwithstanding his admission of guilt in the murder of 48 women. Ridgeway accepted a sentence of life in prison without the possibility of parole and in exchange provided prosecutors with the location of the remains of several of his victims in order to assuage the suffering of their families. This decision fueled the debate on the arbitrary nature of the death penalty.

II. THE DEATH PENALTY IN ILLINOIS – STATEWIDE

By the end of 2003, only two new prisoners sat on Illinois' Death Row. It was the lowest number of sentences for any year since the death penalty was restored in 1977 – either before or after the January 2000 moratorium. This was not the outcome most observers had predicted. “The Illinois death row will be empty in a month,” wrote the *New York Times* on January 14, 2003. “But prosecutors say they plan to start filling it up again immediately.” Lawyers and journalists on both sides of the issue wondered if Gov. Ryan's mass commutations would spark a backlash that would make death sentences more likely.

Most State's Attorneys said they would continue to seek death sentences in the same way they had before, and that they were confident that it could be done fairly. Kane County's Meg Gorecki spoke for most when she told the *New York Times* that she would not allow a political decision by a governor “to change a process and a system that has worked.”

The record shows, however, that many of the problems in capital prosecutions chronicled by the Governor's Commission report remained pervasive in 2003. Illinois prosecutors brought a similar number of capital prosecutions. However, a growing number of juries and judges began to reject the death penalty, including in cases, such as police killings or multiple murders, where its use had been most accepted. In the end, only two death sentences were handed out in the entire state.

Of the 17 death penalty cases ICADP found outside of Cook County that concluded in 2003, 15 ended without a death sentence. Two men were acquitted or had charges dropped; one was found unfit for trial; in three cases the death penalty was dropped prior to trial. Three defendants pled guilty in exchange for dropping the death penalty; two were found guilty but not eligible for the death penalty, and four were found eligible, but sentenced to life in prison instead.

At least five of the 17 cases involved the testimony of co-defendants with plea agreements, jailhouse snitches or other unreliable witnesses. Two cases involved allegations of police coercion. Two others involved serious evidence problems: in one case, police were accused of planting evidence; in the other, key items disappeared and then resurfaced without explanation. Another five involved mentally ill defendants.

Death Sentences in 2003

No logical pattern explained why Anthony Mertz and Curtis Thompson were singled out; defendants found guilty of crimes just as heinous were spared death in other 2003 trials, including men with worse criminal records. These two cases did, however, fit several patterns identified in the Governor's Commission report. Both took place in rural areas where murder cases are relatively rare, and involved white victims – two factors that arbitrarily and dramatically raise the risk of a death sentence. Both men also had serious mental health problems, which were ultimately rejected as mitigating factors.

Anthony Mertz was sentenced to death in **Coles County** on Feb. 26 for the June 2001 murder of a fellow Eastern Illinois University student, Shannon McNamara. The evidence at trial raised doubts that he was fully in control of his actions, much less a calculating killer. His early life was marked by physical abuse and what one expert called “catastrophic neglect.” While serving in the Marines, he was dosed with an anti-malaria drug, Lariam, which has been linked to long-term violent, suicidal and psychotic symptoms. Mertz had sought treatment for alcoholism and suicidal thoughts. He had also drunk massive amounts of alcohol on the night of the murder, and testified at his sentencing hearing that he had “blacked out”, remembering nothing the next day.

Special prosecutor, Ed Parkinson of the State's Attorneys Appellate Prosecutors office (SAAP), tried the case. Crime scene expert Patrick Wright testified. Wright's testimony—based on controversial

and unproven theories—was used to link Mertz to an earlier unsolved murder for which he was never charged, and to assert that Ms. McNamara’s killer had been rational and “well-organized.” Three jailhouse snitches also testified.¹

Curtis Thompson, a 61-year-old retired coal miner from Toulon in rural **Stark County**, was sentenced to death in August for the shooting deaths of three people. Many other townspeople had tangled with Thompson in the past; he had numerous minor run-ins with police on misdemeanor charges, and was nicknamed “The Glare” in town for the angry stare he would fix on people he thought had wronged him. His reputation in the town was extensively reported in the media, and Thompson was labeled “the bully of Toulon”. His attorneys argued that he could not get a fair trial in Stark County, and the case was moved to Dixon, Illinois.

Psychiatrist John Day testified that Thompson had suffered from classic paranoid delusions for years, and could not appreciate the wrongfulness of his actions. Thompson’s own conduct seemed to bear this out. He was suspicious of his attorneys, quarrelsome and disruptive in the courtroom, and often referred to the countywide “conspiracy” against him. The prosecution cast this conduct as proof of Thompson’s violent nature and lack of remorse, and called a Department of Corrections psychiatrist who declared him sane. The jury found him guilty; a Stark County judge sentenced him to die three days later.

In contrast to Thompson, at least three defendants in urban areas convicted of killing three African-American victims (Willie Buckhana, Avery Binion and Ronald Macon) did not receive the death penalty.

These two cases proved the exceptions, however. A large majority of defendants in 2003 received lesser sentences, and two were cleared entirely. The trend away from capital punishment was seen across the state, including in areas often assumed to be law-and-order strongholds. It occurred despite emotionally loaded cases that involved elderly victims, prison killings or the murders of policemen, or that stirred community anxieties about gangs and drugs.

Capital Prosecutions in Northern and Central Illinois

In suburban **Kane County**, a murder case built on the plea-bargained testimony of codefendants came to a close after four years. It involved a 1999 shootout in Elgin, allegedly gang-related, that killed three men. Three of the eight men arrested pled guilty and agreed to testify for the state. Of the remaining five, three were targeted for death sentences: Avery Binion, Willie Buckhana and Sherman Williams.

Prosecutors conceded they could not show that any of the three had fired the fatal shots. Binion had not even been at the scene. Buckhana was convicted; Binion’s and Williams’ trials ended in hung juries. On the eve of their second trials, Williams also made a plea deal, agreeing to testify against Binion in exchange for a twenty-year sentence, and Binion was convicted. However, Kane County judges declined to impose the death penalty against either Buckhana or Binion in a case where codefendants—among them, presumably, the actual shooters—received leniency. Both were sentenced to life in prison.

On January 6, prosecutors in **Kankakee County** dropped the quest for a death sentence they had sought for six years. Aureliuse “Buddy” Piper was awaiting his third trial for a triple murder in 1997. Two earlier trials had ended in hung juries. Given the public furor over innocent men sent to death

¹ The Mertz case provided one more lesson for those who believe that executions can deter other would-be murderers: Shannon McNamara was killed on the night of June 11, 2001. The highly publicized execution of Timothy McVeigh had taken place that morning just twenty miles away in Terre Haute, Indiana – and Anthony Mertz testified at trial that he had been in Terre Haute that day.

row in Illinois, special prosecutor Ed Parkinson decided the odds of a guilty verdict would be greater with the death penalty off the table. In February, Piper was convicted and sentenced to life in prison.

In **Vermilion County**, prosecutors ended their nine-year pursuit of the death penalty for Camerun Blaylock, charged with codefendant Arnell Render in a 1993 murder. Render pled guilty and was sentenced to life; Blaylock's first trial ended in a hung jury. A second trial was delayed for several years when a box containing crucial evidence disappeared from the county courthouse, only to resurface two years later. Blaylock pled guilty on October 27, 2003 in exchange for a 38-year sentence. "After 10 years, it's good for the family to have closure," said State's Attorney Frank Young.

On February 26th, a jury in Rockford, **Winnebago County**, found William Buck guilty of the murder of off-duty police officer Kevin Rice. However, Buck was found not eligible for the death penalty when the jury rejected a key prosecution contention: that Rice was acting as a police officer and that Buck knew this when he shot him. On the night he confronted the 19-year-old Buck, Officer Rice was on vacation leave and without a badge, uniform or gun. Buck and his sister both testified they had been beaten and threatened by Rockford police after his arrest. Buck was sentenced to 60 years in prison.

Another jury would refuse to impose the death penalty in a **Peoria County** case that also involved a police officer. Jarvis Neely was convicted of murder in the shooting death of Peoria policeman Jim Faulkner. However, the jury spared Neely of the death penalty. Neely was 18 years-old at the time of the shooting. He did not have a violent history and expressed great remorse for his actions. State's Attorney Kevin Lyons later stated that the life sentence would spare the Faulkner family the painful publicity of a death sentence.

On June 21, Jeremy Pontious of **Effingham County** was acquitted of murder by a jury in nearby Clinton County. Pontious had been arrested ten months after the crime, when an earlier suspect, Robert Stewart, pled guilty and named him as the actual killer. Stewart's plea-bargain spared him the death penalty. He later sought to withdraw the plea, and in 2002 he committed suicide in prison. The case also included a jailhouse informer and a suspect confession given by Pontious after three days in police custody.

In November, **Logan County** dropped murder charges against Royce Sykes in the 2002 stabbing death of Brian Bobb, 18, of Lincoln. State's Attorney Tim Huyett had sought to link Bobb's murder to drug trafficking, which could make it a capital crime. Sykes was arrested in February after codefendant Melissa Colvin, who had earlier told a grand jury she had seen nothing, told police that Sykes had killed Bobb. Ultimately a third codefendant, Jason Daniels, pled guilty to killing Bobb in exchange for a 30-year sentence.

In October, a **Macon County** jury found Earl Owens of Decatur guilty of the murder of his neighbor, Mary Ann Wright, 64, three years earlier. However, they did not find him guilty of the additional charge of rape, making him ineligible for the death penalty. Unease over statewide problems with the death penalty was recognized as a major factor in the jury's verdict. A few weeks later, State's Attorney Scott Reuter decided not to seek the death penalty against Brandon Beers, 19, charged with murder in the death of a toddler he had been babysitting.

In northwestern **Lee County**, a judge spared the life of Dixon prison inmate Eric Rayfield after finding him guilty but mentally ill in a bench trial. In prison for murder since age 17, Rayfield had been transferred to the psychiatric unit at Dixon due to his worsening mental illness. There he killed fellow inmate Carlos Colon, at the urging of another inmate. In reply to the prosecution's claim that a life sentence was too lenient, Judge Tomas Magdich wrote, "What sane person would trade places with the defendant? Eric Rayfield lives in a world where he is tormented by demons conjured up by his psychoses. His early life condemned him to a living mental hell and in that hell he remains today."

Southern Illinois

On July 31, prosecutors in **Perry County** also dropped the death penalty against a mentally ill defendant. Jason Cook, who had a long history of manic-depressive illness, killed his girlfriend Sheila Sims and her six-year-old daughter in May 2002. Cook pleaded guilty and accepted two life sentences. The Sims family expressed satisfaction with the outcome.

A few weeks later, a judge in **Saline County** halted the capital prosecution of Freddie Hogan, 51, by declaring him unfit to stand trial. Hogan's case was similar in many ways to Curtis Thompson's; he had killed his sister Rose Riegel and wounded her grown son because of paranoid delusions. Hogan was committed to a state hospital. If declared fit at a later date, the prosecution could resume.

In **Williamson County**, a murder case that began in June 2000 also ended without a death sentence. Three local youths—David Hernandez, 18, Lucas Duvall, 19, and Christopher Anderson, 21—originally faced capital charges for killing an elderly woman, Maxine McKenzie, while burglarizing her home. In July State's Attorney Charles Garnati withdrew the death penalty in Anderson's case, in order, he said, to spare McKenzie's family by shortening the trial process. Duvall then pleaded guilty in exchange for a 75-year sentence; Hernandez accepted a similar deal in October. In December Anderson was found guilty by a jury; a 75-year sentence is expected.

Fewer than 25 of Illinois' 102 counties had active death penalty cases in 2003. Those with no cases included relatively large counties such as **McHenry, Lake, Champaign, Tazewell, DeKalb** and **Rock Island**. Only eight counties—**Cook, Coles, Winnebago, Lee, Kane, Stark, Macon** and **Peoria**—saw actual death penalty trials. At least four counties considered but ultimately rejected seeking the death penalty in murder cases this year: Putnam County (Matthew Archer case); Ogle County (case of Michael Pinion and David Klein); Henry County (Jim Richardson case) and Boone County (Dennis Rogers case).

In several cases, prosecutors cited compassion for the victim's family as a reason not to seek the death penalty, acknowledging that the years of appeals and publicity which precede an execution force relatives to relive their grief. This marked a departure for many who had once argued that the death penalty was the only way to grant "closure" to a murder victim's loved ones.

III. THE DEATH PENALTY IN COOK COUNTY, 2003

With 5.8 million residents and the nation's largest local court system, Cook County continues to bring the majority of the state's capital cases. Twelve of the 17 men exonerated from Illinois' Death Row were prosecuted by Cook County. In the wake of the commutations, State's Attorney Dick Devine, like his colleagues, said he would continue to seek the death penalty. His office told the press they expected their first death sentence within 3 weeks, against a young man convicted of killing his girlfriend's child. Devine also launched a program of reforms, including special training for prosecutors in detecting false confessions, to tackle the problem of wrongful convictions.

But by year's end not a single death sentence had been issued in Cook County courts. Christopher Parker, the man expected to receive the first death sentence, instead received fifty years; in over 20 subsequent cases, judges and juries also rejected the death penalty. Cook County prosecutors, however, continued to vigorously seek convictions based on coerced confessions and questionable testimony. This record, and the large number of death penalty cases sought, raise doubts that the errors of the past are being recognized and rooted out.

The ICADP found 175 currently pending cases where the death penalty was being sought as of December 2003. While some were multiple murders or other extreme cases, many were difficult to distinguish from hundreds of others where no death penalty was sought. **Blacks made up 74% of defendants; 15% were Latino, and 11% were white. About 25% were 21 or under at the time of arrest.** About 30% have been awaiting trial for three years or more, with a few still waiting after over seven years. Roughly 20% have private lawyers; 80% are represented by public defenders.

Twenty-two closed cases were identified where the state's attorney had sought the death penalty to the conclusion of the case. This does not include cases in which the death penalty was filed and then withdrawn before trial, or dropped in exchange for a guilty plea. Five of these 23 defendants were acquitted or had the charges dropped; four were found not guilty of murder but convicted of lesser charges; 14 were found guilty of at least one count of murder. Four of the defendants were women, all accused in the deaths of children.

At least six cases involved suspect confessions or testimony from highly unreliable witnesses, including codefendants with plea bargains. Four cases involved both. In many of these 23 cases, little or no information was publicly available, and so these figures must be regarded as conservative.

Not guilty: On May 3, Judge Vincent Gaughan dismissed charges against **Bill White** after hearing only 15 minutes of the state's case. Charges against codefendants **Roland Gray** and **Otis English** were dropped within days. Known as the "Wrigleyville Three," the men had been jailed for five years on charges of killing a North Side couple in 1997. The case against the Three centered on one witness who claimed to have heard Bill White confess; in 2003 the state decided to proceed with the case despite evidence of contradictions in the witness' story. The prosecutor, Laura Morask, has been rebuked by appeals courts in three cases over the past four years, including one in which the verdict was overturned. The case also involved coerced confessions.

Charges against **Mikel Pernell** were dropped in April 2003 after Judge Marcus Salone threw out the confession on which the state's case was almost entirely based. Pernell was arrested in June 2000 for the gang-related shooting of a couple in Englewood. Three other men charged in the shooting pled guilty to lesser charges and offered to testify against Pernell. In exchange, they received sentences of two to four years. In September, Pernell sued the county and Chicago police, alleging he was interrogated at the Wentworth station for 66 hours without access to a lawyer.

A jury acquitted **Cortez Gray** of murder in July, rejecting the word of three co-defendants who testified against him. Those three had been arrested shortly after the 1996 murder; when Gray was arrested

in 1999, plea bargains were offered to the original defendants in return for their testimony against Gray. Marcus Jackson, the lead witness against Gray, was sentenced to 40 years in October.

Charges reduced: On June 29 a jury found **Kevin Dean** not guilty of murder in the death of Chicago policeman James Camp. Camp was killed by a bullet from his own gun while he and another undercover officer struggled with Dean during a late night arrest in 1999. The jury convicted Dean of disarming the officer, as well as driving a stolen car. Dean was later sentenced to 60 years, the maximum sentence for his crimes.

Two defendants were convicted of involuntary manslaughter in homicide cases where prosecutors had sought the death penalty. A jury ruled in October that **Centoria Ashford** had caused the death of a toddler in her care by negligence and roughness, but had not intended to kill or injure the child. In March, **Chavez Key** was found guilty of manslaughter in the death of a relative during a domestic argument in 1997. Both were sentenced to ten years.

Convicted: The February 14th conviction of **Veronica Diaz**, a young Mexican immigrant, on first-degree murder charges in the drowning death of her three-year-old son drew criticism from Latino activists, the Mexican Consulate and death penalty opponents. At the center of the case was a written confession in English signed by Diaz, who did not speak English. Both the detective who prepared the "confession" and the pathologist who testified at trial face lawsuits for their roles in prior wrongful convictions; however, their backgrounds were ruled not admissible at trial. Judge Preston Bowie ruled that the English confession could be used, as it was not "coerced." However, the judge did not find Diaz eligible for the death penalty. In October he sentenced her to life; the conviction and sentence are being appealed.

Eleven other defendants were found guilty of murder but received sentences of less than death. Their sentences ranged from 22 years for a single count of murder, to several who received life without parole. Finally, one man facing the death penalty was released from Cook County Jail due to a clerical error. **Juan Alvarez**, a Mexican immigrant, was accused of hiring three other men to kill a rival. By the time the error was discovered, he had been deported to Mexico.

Mental illness: In at least two cases, prosecutors asked for death sentences against defendants with mental illnesses. **Calandra Hulitt** was convicted of suffocating her two-year-old daughter in 1999. A psychiatric expert found that Ms. Hulitt suffered from severe pre- and post-partum depression and a family history of schizophrenia; however, Judge Bertina Lampkin granted a state motion to exclude his testimony at trial. She did find Hulitt ineligible for the death penalty; she received 30 years. **David Harwick** was convicted of killing his mother in 1998 in a struggle over money for drugs. Judge Evelyn Clay ruled that mental problems due to years of drug addiction warranted sentencing Harwick to life without parole rather than death.

ICADP found a disturbing number of defendants in Cook County and downstate who have been targeted for the death penalty despite severe mental illness. In some cases, battles over the defendant's mental fitness went on for years before the death penalty was finally dropped; two men were in state mental hospitals when notices of intent to seek death were filed in their cases. Ongoing cases also involve defendants with serious mental illness.

The death penalty for those with serious or severe mental illness is increasingly being called into question. The National Mental Health Association (NMHA) "believes that mental illness can influence an individual's mental state at the time he or she commits a crime, can affect how "voluntary" and reliable an individual's statements might be, can compromise a person's competence to stand trial and to waive his or her rights, and may have an effect upon a person's knowledge of the criminal justice system." (Statement of NMHA Association, 3/10/01). Thus, the NMH Association and the American Psychological Association both have called for a moratorium on the use of the death

penalty until improvements are made in identifying and assessing mental illness during the criminal justice process. The National Alliance for the Mentally Ill has taken the position that the death penalty should never be used against persons with severe mental illness.

What's Ahead in 2004

On January 6, a motion by Assistant Appellate Defender Stephen Richards to subpoena all 102 county state's attorneys was denied in Cook County Circuit Court. Richards was seeking information on the outcomes of first-degree murder cases across the state, to test a defendant's claim that the Illinois death penalty law resulted in arbitrary sentencing patterns. In response, prosecutors argued that the records would not be relevant, because recent reforms meant that defendants now faced a much fairer and more limited system than in past years. However, a look at Cook County's 175 pending cases suggests that many old problems continue to dog the system.

Two trials involving the **killing of Chicago police officers** opened in the first week of January 2004. James Scott is on trial in the 1999 shooting of Officer James Knight; Aloysius Oliver is charged with shooting Officer Eric Lee in 2001. Both victims were plainclothes police working undercover, both suspects were arrested or pursued at night, and the cases may well be as complex as that of Kevin Dean.

On January 16, State's Attorney Bernard Murray disclosed police reports in the Oliver case which defense attorneys had not previously been given; the following day, similar documents surfaced in the Scott case. The prosecutor in the Scott case then claimed that he had previously tendered the report. In both cases the reports were at odds with police testimony already heard by the juries. Both attorneys asked for mistrials; both were denied. Oliver was convicted on January 23.

Police brutality and false confessions are alleged in several cases. In October, Leratio Smith and co-defendant Charles Taylor were convicted of fatally shooting a man during a 1998 armed robbery at a Northwest Side tavern. Both signed confessions after being interrogated at Area 5 police headquarters by Detective Jon Woodall, one of a group of corrupt officers led by gang crimes specialist Joseph Miedzianowski who are now in federal prison. (See "Investigations".) Because the state decided not to call Woodall as a witness, however, no evidence of his record was allowed at trial. Smith has been found eligible for the death penalty; his sentencing resumes February 24, 2004.

James Davis is charged in the 1998 killing of a North Side couple that coroners had initially ruled a murder-suicide. Davis and his two codefendants all claimed the confessions they signed six months after the killings were coerced. All originally faced the death penalty. The other two have since pled guilty; one is serving life, while the other has been offered a reduced sentence in return for her testimony against Davis.

DeWan White is one of four young men who have awaited trial for six years in the murder of a 15-year-old boy during a break-in at his home. White's attorney has moved to exclude the confession signed by his client, alleging it was coerced by police. White and Robert Seals face the death penalty. The records of many other defendants contain motions to suppress statements made to the police, although the reasons for them could not be ascertained. Cook County prosecutors usually succeed in defeating such motions, and suspects' claims seldom reach the press. As a result, it is hard to know how often such allegations are made in death penalty cases, let alone how many are valid.

Mental illness/disability: At least seven pending cases involve serious evidence of mental illness or disability. **Keon Lipscomb**, charged three years ago in the brutal murder and sexual assault of his girlfriend's two-year-old daughter, has been diagnosed with schizophrenia and declared unfit for trial by three experts. Prosecutors nonetheless fought for and won a fourth opinion this year; their expert declared Lipscomb fit. A special fitness hearing will be held early this year. Prosecutors have rejected offers for a guilty plea in return for life imprisonment in the case.

After three years awaiting trial, **Teodoro Baez** pled guilty in June 2003 to a double murder. Although insisting he did not commit the crime, he asked the court to give him the death penalty so that he could have “closure.” A chronic addict by age thirteen, Baez has been diagnosed with “borderline personality disorder with paranoid and schizoid features.” In August, Judge Bertina Lampkin found him fit to plead guilty, “fit for sentencing with medication” and eligible for the death penalty. His sentencing hearing will resume February 2 after several delays.

In March 2003, a notice of intent to seek the death penalty was filed against **Alonzo Hoover**, charged with killing an elderly man during a burglary. Hoover was living in a Harvey nursing home due to psychiatric problems. At least four other defendants with serious mental illness, including **Randall Jarrett, Tony White, James Davis** and **Peggy Anderson** face the death penalty, and, given the problems with identifying mental illness in the criminal justice process, there are likely more.

Downstate: At least 18 upcoming murder trials outside Cook County involve a potential death sentence. They include the retrials of two former Death Row inmates whose convictions were thrown out by the Supreme Court. **Cecil Sutherland’s** conviction was based on unreliable forensic evidence which the court ruled had been misrepresented to the jury as foolproof. His retrial, set for April, has been moved from Jefferson County to Belleville. In **Daniel Ramsey’s** case, in Hancock County, the court ruled he had been denied a fair hearing for his insanity defense.

Use of the death penalty continues to vary widely from one county to the next; Kankakee County and St. Clair County have five pending cases each, while some larger counties have no cases at all. In Perry County, one potential case—the murder of 19-year-old Marshall Irvin—has led prosecutors to name three potential capital defendants. A motive has not yet been publicly alleged.

IV. THE COST OF ILLINOIS' DEATH PENALTY: \$32 million a year and growing?

The total cost of Illinois' death penalty in 2003 is not easy to estimate. However, in a year marked by public employee layoffs and social service cutbacks, it was substantial. The Capital Litigation Trust Fund, created by the General Assembly in 2000 to lower the risk of more wrongful convictions, is one source of funds. The two death sentences in 2003 cost the state a total of \$705,000 in Trust Fund outlays. About \$383,000 was spent in the Anthony Mertz case, while the Curtis Thompson case cost at least \$321,000.

These expenditures do not give the full picture, however. The Fund pays only for special expenses not otherwise available from local or state government, such as outside attorneys, expert witnesses, investigators and forensic testing. State's attorneys are paid from county budgets, and can rely on local law enforcement, the State Police and federal agencies for expert investigative work. Both the Attorney General and the State's Attorney's Appellate Prosecutor also devote resources to capital prosecutions, including special prosecutors in county-level trials.

County public defenders' offices, particularly in urban counties, also use their staff and resources to defend death penalty cases, and in 2000 the State Appellate Defender established a death penalty trial assistance program. Defense lawyers are still more likely to need special assistance, however. Unlike state's attorneys, they have no access to state crime labs or police resources. In many small counties the public defenders themselves are private attorneys; as a rule, the fees they earn for public defense work are well below what they can earn in private practice.

An estimate of the total cost of the William Buck capital prosecution in Rockford, made by the State Appellate Defender's office, provides a clearer picture of the death penalty's real costs. From the start of jury selection January 9 to March 5, when the jury found Buck not eligible for the death penalty, the trial lasted about eight weeks. It was preceded by eighteen months of preparation. If the jury had found Buck eligible for the death penalty, a capital sentencing hearing would have prolonged the trial for at least another week.

Costs of the William Buck Case

Capital Litigation Trust Fund

Death Penalty Trial Assistance:	
State Appellate Defender staff (2 attys, 2 investigators, 1 social worker)	\$132,139.95
Experts	52,880.00
Travel & miscellaneous	16,644.57
Paid to Public Defender	74,360.95
Paid to State's Attorney	<u>50,490.98</u>
Total	\$325,517.11

Winnebago County*

Jury and miscellaneous expenses	\$125,849.00
Judges and court reporters: salaries and expenses	\$157,297.00
Public Defender's Office: 2 attys, 1 investigator	\$104,000.00
States Attorney's Office: 2 attys, 1 investigator	<u>\$137,911.71</u>

TOTAL

\$850,574.82

* not including costs of Illinois State Police crime scene techs or Rockford Police man hours.

Trust Fund money accounted for just under 40% of total expenses in the Buck case. If the proportions were roughly the same in the Mertz and Thompson cases, those two death sentence may have cost the people of Illinois over \$1.76 million. In addition, previous estimates of death row costs in Illinois concluded that the cost of appeals in a death penalty case was \$600,000 higher than for a non-capital murder case, and that keeping a prisoner on death row cost an extra \$50,000 over the course of ten years – the average interval between conviction and execution. Post-trial costs for Mertz and Thompson will add at least \$1.5 million to the bill. Thus, the long-term cost of executing these two men will likely be over \$3 million.

When the cost of the more than 20 other capital cases in 2003 is considered – those where a death sentence was sought but not obtained – the figure becomes much larger. Those cases can be assumed to have an average cost well below that of Mertz' or Thompson's, since in many cases the death penalty is dropped before trial. Still, using the Buck case as a model, the \$12,772,000 budgeted for the Capital Litigation Trust Fund in fiscal 2004 could represent about 40% of a total year-end cost of \$32 million.

Without the death penalty, it is estimated these cases would cost between one-third and one-half that amount—even if a life sentence were sought, and a first-class, well-funded defense provided, in each case.² Any increase in death sentences in future years will multiply the costs – as will each reform measure added to prevent wrongful conviction. The death penalty will continue to cost the taxpayers far more than imprisonment, even for life. The only way to make it cheaper would be to slash the number of appeals and the legal resources offered to defendants. Such a course would have sent at least seventeen innocent men to their deaths in Illinois; the actual dimensions of such a disaster would likely be even greater.

The reform legislation passed in 2003 sets up a study commission which, among other tasks, will examine the costs associated with newly-enacted death penalty reforms.

² This estimate is based on the cost of Buck's trial, minus the cost of one public defender, one state's attorney and all Capital Litigation Trust Fund moneys, and with court costs reduced by one-third due to the shorter duration and much simpler jury selection process in non-death penalty cases.

V. EFFORTS TO REFORM THE ILLINOIS CAPITAL PUNISHMENT SYSTEM

Illinois legislators, after failing to ratify a single reform in the 2002 legislative session, took up during the Spring 2003 session the 85 reforms to the capital punishment and criminal justice system proposed by the Governor's Commission on Capital Punishment. Legislation was introduced to implement virtually all the reforms proposed by the Commission. However, the General Assembly in the end enacted only some recommendations, while ignoring key proposals and watering down others. Most important, reforms dealing directly with the arbitrary application of the Illinois capital punishment scheme were not enacted by the legislature.

The reforms address some areas where capital prosecutions have gone wrong in the past, including a requirement of reliability screening of jailhouse snitch testimony in capital cases and disclosure of information about the credibility of snitch and other witnesses in capital trial, including inducements to testify. It also eliminates eligibility for the death penalty when the only evidence in the case is the uncorroborated testimony of jailhouse snitches, a single eyewitness or single accomplice.

The measure also include a pilot project in three jurisdictions to improve eyewitness identifications by reducing bias in line-up procedures as well as the provision of access to pre-trial and post-conviction DNA database searches. The legislation also empowers the Illinois Supreme Court to overturn death sentences it deems "fundamentally unjust" as applied to a particular case. Finally, it makes mentally retarded defendants ineligible for the death penalty, as mandated by the United States Supreme Court.

Key targets for reform were virtually ignored by the legislation. The Commission report found that the death penalty was being applied arbitrarily, specifically that murders committed in rural counties and the murder of white victims substantially increased the likelihood of a death penalty. The Commission recommended sharply reducing the number of eligibility factors for the death penalty as a key to reducing arbitrary and unequal sentences. The reform bill left these factors virtually unchanged. In one key category, felony murder, the addition of "inherently violent" felonies to the list of qualifying felonies may in practice have expanded the number of crimes that could qualify. The legislature also failed to create a statewide panel to review potential capital charges to ensure uniformity across the state.

In another key area, despite pervasive problems with evidence reliability, it did not create an independent forensic science lab separate from police agencies or implement independent oversight of forensic labs or change forensic lab procedures to require true double-blind testing.

In separate legislation, taping of interrogations in homicide cases will be required after an implementation period. Like other reforms, the final legislation included compromises to ensure its passage.

All of these reforms remain untested. A study committee established by the legislature will conduct a 5-year review of the effect of the reforms on the capital punishment system, including their effect on the role of race in the system, arbitrariness, the accuracy of convictions and, importantly, the cost of the reforms to the state. Until the results of such a study are known, it is impossible to say whether the proposed reforms will be effective.

Many of the reforms proposed by the Commission also relate to improved training of those involved in capital prosecutions, including judges, attorneys and the police. In this area, study will also be necessary to ensure that the training is being carried out and that it is effective in eliminating current problems.

VI. EXONERATIONS AND INVESTIGATIONS OF THE CAPITAL PUNISHMENT SYSTEM

Burge torture cases: The January 2003 pardons of Madison Hobley, Aaron Patterson, Stanley Howard and Leroy Orange focused new attention on the independent investigation into torture of suspects by Chicago police commander Jon Burge. All four former Death Row inmates had alleged torture by Burge in the 1980's. In April of 2002, Judge Paul Biebel had ruled that the Burge torture cases and their subsequent cover-up could not be investigated by State's Atty. Dick Devine, who had a conflict of interest based on representation of Burge while in private practice. He appointed retired jurists Edward Egan and Robert Boyle as special prosecutors.

Attorneys for the Burge victims urged Egan and Boyle to use their subpoena powers to compel the testimony of police and state's attorneys close to the case. Noting that 18 of Cook County's felony judges were former prosecutors with links to the Burge affair, they also called for outside judges to hear the appeals of Burge's victims. They also asked that Devine's offices be removed from handling the appeals of any cases involving allegations of torture. While denying the request for outside judges, Judge Biebel granted the second request in April 2003, ordering the Attorney General's office to take over the appeals.

Hobley, Patterson and Howard all filed multi-million dollar lawsuits in 2003; Leroy Orange filed suit in early 2004. In June, Patterson posted a \$100,000 cash bond for another former Death Row inmate. **Nathson Field's** murder conviction and death sentence had been overturned by the Illinois Supreme Court in 1996, in part because of the corruption and bribe-taking that had sent the sentencing judge, Thomas Maloney, to federal prison in the Greylord case. Prosecutors were ordered to either re-try Fields or set him free; for six years he had waited in Cook County Jail while the State's Attorney's office stalled. Fields' trial is still pending.

Ford Heights Four: On May 5, Judge Gino DiVito finally issued the report of his five-year probe of the case of the Ford Heights Four. The results of a parallel federal investigation were issued the same day. The case involved the wrongful conviction of four young black men in the murder of a south suburban couple in 1979. Both investigations pointed to a pattern of catastrophic errors and miscarriages of justice; Gino DiVito called the case a "perfect storm." However, both reports declined to recommend any criminal or civil misconduct charges against police or prosecutors, despite the suppression of evidence that pointed to the real killers. In 2001, Cook County had paid \$36 million to settle the four men's wrongful conviction lawsuit.

Other exonerations: On December 19, 2002, murder charges against Omar Aguirre, Santos Duarte, Roberto Gayol and Luis Ortiz—all convicted in the 1997 murder of Sindulfo Miranda—were dropped, after a separate federal investigation turned up the actual killers. None of the four spoke English, yet all had signed confessions written in English and "translated" for them by police. In March 2003, the four filed suit against the Chicago Police, Det. Alfred Vargas and Cook County. An October report by the Chicago *Tribune* revealed that such confessions had been used before in Cook County, including in the Veronica Diaz trial and other death penalty cases. The same detective named in the Aguirre suit had questioned Diaz. A dubious English "confession" had also helped send Gabriel Solache to Death Row in 2000.

The Area Five police district, where many of the English confessions were obtained, came under further scrutiny in 2003 from community activists, foreign consulates and attorneys. In January, gang crimes officer Joseph Miedzianowski was sentenced to life in prison for crimes including selling drugs, cooperating with gang leaders and planting evidence. Five of his colleagues, including Det. Jon Woodall, drew lesser prison terms. In October Angel Rodriguez, freed from prison in 2001 after an appellate court threw out his murder conviction, sued Woodall and the police department for wrongful conviction. The suit charged that the sole eyewitness to the crime had been manipulated by Woodall into identifying Rodriguez.

Several other exonerated men filed wrongful prosecution or wrongful conviction lawsuits in 2003. They included the "Roschetti Four", freed in 2001 after DNA tests cleared them of the 1986 murder of Lori Roschetti, as well as the "Wrigleyville Three" and Mikel Pernell, exonerated in 2003.

In October, attorneys for fourteen Chicago men asked a federal judge for leave to file a class-action suit against the Chicago police for interrogating them long past the 48-hour limit established by courts. Several charged the police with extracting coerced confessions from them; some had spent months in Cook County Jail before charges were eventually dropped. State's Attorney spokesman John Gorman defended such tactics as vital in getting suspects to "slowly give up the truth." He urged the courts to look at the "totality of the circumstances" in cases where police held suspects as long as four days without a lawyer. A decision on class-action status is expected early in 2004.

In June, the double murder conviction of a former Death Row inmate was overturned in U.S. District Court. Randy Steidl of downstate Edgar County, who was resented to life in 1987, has fought since 1983 to prove his innocence. "Acquittal was reasonably probable if the jury had heard all of the evidence," Judge Michael McCuskey wrote, in an order that also granted DNA testing on hair evidence from the crime scene. Attorney General Lisa Madigan's office is reviewing the case to determine if Steidl should be retried or set free. Meanwhile, Illinois State Police officials were sued by a former investigator who claimed he had been demoted when his review of the Steidl case in 2000 concluded that ISP had bungled the original investigation.

VII. CONCLUSION

From 1995 through January 2000, when executions were halted, an average of two inmates per year were exonerated and released from Illinois' death row. This shocking wave of innocent men condemned to death exposed pervasive and systemic flaws in the way the Illinois criminal justice system was administered and caused the *Chicago Tribune* to conclude in late 1999, after an exhaustive study of the system, that "[c]apital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken[.]"

Since that time, even greater study has been undertaken into the flaws and injustices of the Illinois capital punishment system, including the 2002 Report of the non-partisan Governor's Commission on Capital Punishment. Various reforms have been proposed, and some enacted. However, prosecutors continue to seek the death penalty in this state in numbers that belie any new restraint or concern about the potentially fatal consequences of wrongful convictions in capital cases.

Even after the widespread exposure of the flaws in the administration of justice that led to wrongful convictions, prosecutors continue to use such tactics during capital trials. Prosecutors continue to use unreliable and compromised witnesses, questionable "expert" theories and suspect confessions. Prosecutions that sought the ultimate punishment were so weak in at least a half a dozen cases this year that the defendants were found not guilty or charges against them were dismissed.

While the reform legislation enacted in 2003 improves aspects of the criminal justice system, it cannot make it foolproof. There has been very little change in the scope or severity of sanction for public officials who engage in misconduct that puts innocent people on death row. Until this occurs, there is no guarantee that police and prosecutors will not find novel ways to gain convictions where none is warranted.

In addition, key reforms of the non-partisan Governor's Commission on Capital Punishment were ignored by the legislature. Significantly, one of the findings was that Illinois' system of capital punishment was arbitrary as to application by race of the victim and geographic location of the crime, both of which should be irrelevant to who gets the death penalty. The new law ignores several of the major mechanisms suggested by the Commission to deal with arbitrariness. Further, new problems and patterns of misconduct in the administration of the criminal justice system continue to regularly surface, calling into question our ability to ever root out all sources of wrongful convictions.

Public officials are to be commended for finally confronting the pervasive problems in the Illinois criminal justice system. However, the continuing flaws in the administration of capital punishment in this state make repeal of the death penalty the only prudent response to the death penalty crisis. When one considers the millions of dollars of scarce resources being devoted to a system that ultimately sends only a tiny number of inmates to death row, while dozens of others are sentenced to alternate sentences such as life in prison without the possibility of parole, the ongoing use of the death penalty is not justified. The alternative sentence of life in prison without the possibility of parole, which is regularly used in the Illinois criminal justice system, provides for public safety but avoids the possibility of the execution of an innocent person.

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APPENDIX

A Note On Our Sources

In its April 2002 report, the Governor's Commission on Capital Punishment observed:

Throughout the nearly two years that the Commission has studied the capital punishment system in Illinois, Commission members had to contend with an astonishing lack of data about how the capital punishment system works... [T]he efforts undertaken by the Commission to collect data revealed how important factual information about these case is to a complete understanding of how the system has or has not been working.

Considering this lack of any centralized, comprehensive data source, ICADP sent Freedom of Information Act requests to State's Attorneys in seventeen counties selected for their size or due to press reports of possible death penalty trials in the area. Our request asked for copies of all Notices of Intent to Seek the Death Penalty filed in each county since March 1, 2001. We also asked for any Notices of Withdrawal of death penalty intent filed.

Eleven State's Attorneys complied with our request. Six – in Cook, DuPage, Kankakee, Madison, Peoria and Macon counties – refused. The offices of Dick Devine in Cook County and Joseph Birkett in DuPage both offered to provide information “voluntarily,” outside the framework of an FOIA request. However, the information they provided proved to be incomplete.

Most State's Attorneys who did not comply claimed that the information was exempt from the Freedom of Information Act, although one, in Madison County, suggested that the information was so clearly public record that we should simply visit the circuit court clerk's office to get the documents. However, clerk's offices were unable to produce these documents unless we knew the names of the defendants – which was the information we had sought in the first place.

Beyond the FOIA requests, ICADP volunteers used two methods to complete our analysis. Using the Internet, local papers throughout the state were searched for news of death penalty trials. In Cook County this was clearly not enough; at least 600 murders take place each year, many of them receiving little or no press coverage. The vast majority of trials are not covered. Therefore, we also searched the database of criminal cases available at the Circuit Clerk's office, using a list of murder defendants from the papers and other sources. In some cases, this database contained clear records of motions relating to the death penalty; in many others it did not. We chose to err on the side of caution: cases were counted as capital only when confirmed by the clerk's database or a reliable report from attorneys or the press that a firm decision to seek the death penalty had been made. The data-gathering effort was exhaustive and the results are, we believe, highly reliable. However, the only way to have 100% accuracy and completeness is for the state to undertake the comprehensive data-gathering effort recommended by the Governor's Commission in its 2002 report.

The public has a right to know this information relating to the use of capital punishment. ICADP urges counties to make it available to the public, and encourages other activists, news organizations and elected officials to file their own requests for public disclosure.

**Cases where Death Penalty Sought but Not Obtained
Cook County
January-December 2003**

Last name	First name	Case #	Age	Race	Sentence	Date	Comments
Alvarez	Juan	03 3174601	40	L	N/A	March	Released in error; deported to Mexico
Andrews	Ralph		56	W	Life	May	DP eligible
Asencio	Maria	00 0644902	21	L	22 yrs	Oct	Guilty 1 count murder
Ashford	Centoria	01 1985401	31	B	10 yrs	Oct	Not Guilty of murder; Guilty of manslaughter
Dean	Kevin			B	60 yrs	June	Not Guilty of murder; Guilty of other charges
Diaz	Veronica	97 2053701	21	L	Life	Oct	Not DP eligible; new sentencing hrg Feb. 04
Dickenson	Christopher			B			Not DP eligible
English	Otis	97 3078802		B	N/A	May	Charges dropped
Gray	Cortez	99 1073804	27	B	N/A	July	Not Guilty - 3 codefts testified for state
Gray	Roland	97 3078803		B	N/A	May	Charges dropped
Harwick	David	98 2176701	26	W	Life	May	DP eligible; drug addiction considered
Holloway	Michael	99 1742501	22	B	34 yrs	Aug	DP eligible
Hulitt	Calandra	99 1659701	23	B	30 yrs	Oct	Guilty, not DP eligible Postpartum depression
Jarrett	Darrell	00 0248802	21	B	Life	Feb	DP eligible
Key	Chavez	97 2818101	19	B	10 yrs	Mar	Not Guilty of murder; Guilty of manslaughter
Little	Derrell	01 2351301	22	B	70 yrs	Sept	DP eligible
Macon	Ron	99 2492501	30	B	Life		DP eligible; guilty plea
Pernell	Mikel	00 1644601		B	N/A	April	Charges dropped; 3 codefendants pled
Sterling	Doris (male)	00 1282201		B	70 yrs	Feb	DP eligible
Taylor	Jason			B	Life	Jan	DP eligible
White	Bill	97 3078801	35	B	N/A	May	Charges dismissed
Williams	Travoy	00 0248801	22	B	Life	Feb	DP eligible

NOTE: For Cook County, only those cases are listed where the death penalty was sought to the conclusion of the case. Not included are cases in which the death penalty was withdrawn prior to trial or dropped in exchange for a plea of guilty.

**Cases Concluded Without a Death Sentence
Illinois -- Outside of Cook County
January-December, 2003**

Last name	First name	County	Age	Race	Sentence	Date	Comments
Piper	Aureliuse	Kankakee	40	B	life	Feb	DP dropped at trial
Hogan	Freddie	Saline	51	W	N/A	July	Unfit for trial
Cook	Jason	Perry	28	W	life (2)	July	Guilty plea
Rayfield	Eric	Lee	30	B	life	Aug	judge; DP eligible
Owens	Earl	Macon	31	B	60 yrs	Oct	Jury--guilty but not DP eligible
Buck	William	Winnebago	19	B	60 yrs	Feb	Jury--guilty but not DP eligible
Neely	Jarvis	Peoria	18	B	life	July	Jury--DP eligible
Pontious	Jeremy	Effingham	21	W	N/A	June	Jury--Not guilty; DP dropped at trial
Anderson	Christopher	Williamson	21	W	pending	Nov	DP dropped at trial
Duvall	Lucas	Williamson	19	W	75 yrs	Sept	Guilty plea
Hernandez	David	Williamson	18	W	75 yrs	Oct	Guilty plea
Sykes	Royce	Logan	31	W	N/A	Nov	charges dropped
Buckhana	Willie	Kane	40	B	life	Oct	judge; DP eligible
Binion	Avery	Kane	31	B	life	April	judge; DP eligible
Blaylock	Camerun	Vermilion	23	B	38 yrs	Oct	GP

**Pending Death Penalty Cases in Illinois
(Outside Cook County)
January 2004**

	Last name	First name	County	Race	Victim
**	Runge	Paul	DuPage	W	multiple
*	Tenney	Edward	DuPage	W	second
*	Ramsey	Daniel	Hancock	W	child
*	Rissley	Jeffrey	Henry	W	
*	Sutherland	Cecil	Jefferson	W	child
	Williams	Cayce	Kane	W	child
	Mitchell	Vivian	Kane	W	
	O'Connell	Timothy	Kankakee	W	child
	Dhans	Michael	Kankakee	W	two
	Cole	Joshua	Kankakee	W	two
	Gandy	Aaron	Kankakee	B	two
**	Unknown		Kankakee		
**	Huff	James	Macon	W	child
**	Miller	James	Madison	B	two
	Schertz	Jayson	Peoria	W	
	Scott	Dennis	Sangamon	B	two
	Price	Lee	St. Clair	W	senior
	Oliver	Richard	St. Clair	W	senior
	Younge	Donald	St. Clair	B	multiple
	Dibble	Terry	St. Clair	W	second
	Green	Willie	St. Clair	B	
	Harris	Brian	Union	W	
	Ausby	Emerald	Will	B	
	Nelson	Brian	Will	W	multiple

* **Indicates retrial after conviction overturned**

** **Indicates one of six counties, including Cook, that declined to answer a Freedom of Information Act request from ICADP. Capital Litigation Trust Fund data indicates five death penalty cases pending in Kankakee. Much of the data in this table was obtained from local newspapers.**

**Cook County: Pending death penalty cases
January 2004**

Last Name	First Name	Case#	Age	Race	Judge	Victim
Abrams	Eric	02 2188401	32	B	Porter	
Adams	Leivante	03 1379001	25	B	Sacks	
Adkins	Rodney		41	B	MW	
Allard	Gary	03 1123301	20	W	Clay	
Alonso	Sedronio	02 3174604	45	L	Lampkin	
Alvarez-G	Jesus	02 2762101	30	L	Sumner	
Anderson	Peggy	98 0512502	45	B	Moore	disabled
Anderson	Richard	03 1632201	57	W	Egan	second
Anderson	Robert	03 0735601	22	B	Wadas	
Ashby	Jane	03 0269301	41	B	Suria	multiple
Atkins	William	03 0483602	20	B	Lampkin	
Austin	Lazarek	02 2987403	22	B	Crane	
Baez	Teodoro	00 0586801	23	L	Lampkin	two
Banks	Dion	01 1055301	29	B	Kazmierski	
Bannister	Joseph	01 0646601	32	B	Suria	
Barker	Kevin	02 3005401	32	B	Moran	
Battle	Ronald	03 1366801	21	B	MKO'Hara	
Bell	Terry B.	99 2039501	44	B	Bowie	second
Beltran	Ruben	99 2161201	21	L	Laws	senior
Bowers	Jeffrey	01 1801901	23	B	Darcy	
Brandon	Cordell	01 0986404	23	B	Simmons	
Brown	Ronald	98 3105101	44	B	Porter	
Buford	Anthony	02 1380001	30	B	Jones	
Burks	Jacky	01 0942603	21	B	Dernbach	child
Burnett	Latarolynn	01 2916701	21	B	MKWillis	child
Carrion	Francisco	02 0283101	19	L	RMUrso	senior
Comer	Robert	99 0028101	22	B	Porter	
Cook	Jerone	01 0436901	27	B	Cannon	
Copeland	Anthony	96 1292501	25	B	Bowie	two
Crawford	Andre	00 0546501	36	B	Clay	multiple
Crowder	Gregory	02 1349701	24	B	Kirby	
Cureton	Marcus	03 0734601	20	B	Dernbach	
Davis	James	98 2927903	33	B	Lampkin	
Degorski	James	02 1543001	27	W	Gaughan	multiple
Derrickson	Norman	02 0086201	41	W	Linn	two
Donelson	Anthony	00 1550101	29	B	Lampkin	
Douglas	John	02 0916301	40	B	Holt	
Drexel	Louis	02 1399401	30	B	Sacks	
Edwards-Bey	Dwayne	01 1707901	30	B	Schrier	
Fajardo	Aureliano	01 2347602	19	L	Darcy	inmate
Fields	Leon	98 2030401	21	B	Lampkin	
Figueroa	Miguel	00 2022401	27	L	Suria	child
Foreman	Rufus	01 0986405	50	B	Simmons	
Fountain	Tony	02 1462301	33	B		
Last Name	First Name	Case#	Age	Race	Judge	Victim

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Fredrickson	Kristian	02 0146402	24	W	RMFecarotta	child
Fredrickson	Amanda	02 0146401	24	W	RMFecarotta	child
Garza	Gerardo	01 1060001	25	L	Sacks	
Giocondi	David	03 0470301	36	W	Palmer	
Gomez	Carlos	01 0081101	18	L	Crane	senior
Gonzalez	Jose L.	02 1465601	31	L	RMScotillo	two
Gonzalez	Bernardino	03 1351801	34	L	Gaughan	two
Graham	Gary Lin	02 2495301	40	W	SKHoward	child
Griffin	Geoffrey	01 3014901	30	B	Suria	multiple
Griffin	Lester	00 2598301	18	B	Clay	
Groleau	James	00 1834403	26	W	Porter	
Gutierrez	Nicholes	02 3117501	19	L	Lampkin	
Hampton	Milton	01 0694901	42	B	Jones	senior
Harrington	Joe	03 2465901	22	B	Shultz	
Harris	Ricardo	99 1855401	34	B	BVSmerciak	
Harris	Eddie	02 0537801	34	B	Lampkin	
Hart	James	01 0464401	49	W	Kazmierski	
Hernandez	David		24	L	Egan	child
Hill	Johnnie	01 3010901	30	B	Porter	
Hinton	Ronald	99 1236401	26	B	Schrier	multiple
Holman	Marcus	01 3016301	24	B	MWTucker	
Hooper	William	02 3117601	35	B	SKHoward	child
Hoover	Alonzo	03 0093101	40	B	MKNealis	senior
James	Andrew	03 0653601	27	B	Lampkin	
Jarrett	Randall	97 2544702	24	W	Wadas	
Jarrett	Robert	99 2330403	24	B	Reyna	multiple
Jefferson	Lamaine	00 1834401	29	B	Porter	
Jefferson	Oscar	02 3014702	35	B	Wadas	
Jimerson	Daniel	00 0687601	19	B	MKGausselin	
Johnson	Michael	03 0836501	27	B	Cannon	
Jones	Willie	00 1344503	40	B	Kazmierski	
Jones	Lovell	00 0313401	27	B	Bowie	
Jones	Glen	02 2781203	32	B	Crane	two
Jones	Alvin	02 2512901	35	B	Salone	
Jones	Christopher	99 1171801	20	B	Cannon	second
Lake	Anthony	01 2740601	35	B	Shultz	two
Landa	Carlos	00 1345401	19	L	MKRhodes	
Lawrence	Peter J	01 3074202	21	B	Gaughan	
Laws	Mashaun	03 0773101	25	B	MKWillis	
Lewis	Fontaine	01 0228804	27	B	Simmons	
Ligon	Terrence	01 2014301	26	B	Clay	child
Lipscomb	Keon	01 0445001	19	B	Sumner	child
Lloyd	Corey	03 0653602	32	B	Lampkin	
Lomax	Craig	02 2987401	22	B	Crane	two
Long	Jovanie	00 2060102	21	B	Salone	
Loyd	Ivory	03 0483601	48	B		
Luera	Jose	02 3113402	19	L	Suria	two
Luna	Juan	02 1543002	26	L	Gaughan	multiple
Maclin	George	02 1950601	50	B		
Maldonado	Marcelino	99 2385801	23	L	Porter	
Last Name	First Name	Case#	Age	Race	Judge	Victim

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Malek	Lois	00 0116002	43	W	Salone	child
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Mallett	Michael	99 2330401	21	B	Reyna	multiple
Martinez	Edgar	00 0644901	22	L	Porter	
McGee	Laron	02 2367501	25	B	Bowie	
McGowan	Thurman	02 1680601	34	B	Palmer	
McRoy	James	02 1249501	31	B	Darcy	
Melvin	Larry	02 3177001	23	B	MKRRhodes	
Mendez	Armando	01 1334601	24	L	BV	
Meskauskas	Jon	03 0274901	19	W	Brownfield	
Metlock	Manuel	01 0294801	21	B	Salone	
Montanez	Pierre	02 3113401	21	L	Suria	two
Moon	Maria	01 0165701	22	B	Egan	child
Morris	Barry	02 2487001	30	B	Jones	
Mosely	Jovan	00 0769404	19	B	Reyna	
Murchison	Rudolph	01 1145701	40	B	Clay	
Newell	Jerry	02 1638701	31	B	Palmer	
Nichols	Arraafi	01 2170001	25	B	Garcia	
Norfleet	Marc	02 2855301	33	B	Suria	witness
Ochoa	Daniel	03 0153204	20	L	Shultz	
Oliver	Aloysius	01 2268001	26	B	Moran	police
Outlaw	Darren	03 0208401	33	W	Gaughan	senior, 2
Over	Murry	99 2170201	20	B	Linn	
Parker	Dennis	99 2170202	18	B	Linn	
Patterson	Jason	99 2161601	20	B	Moore	child
Patterson	Andre	01 0463503	21	B	Laws	
Phillips	Harold	02 1017601	27	W	Darcy	child, 3
Phillips	Corey	02 0536501	21	B	MWTucker	
Phipps	Demetrius	02 0318102	20	B	MKZelezinski	
Pitchford	Anthony	03 1139901	26	B	Linn	two
Pollard	Ron	00 1280701	39	B	Sacks	
Porter	Antwon	98 2723901	21	B	Porter	two
Powell	Kean	01 2740301	25	B	Dernbach	
Prezzia	Michael	01 0295601	40	W	Toomin	senior
Pugh	Emmanuel	01 2680701	20	B	Porter	
Ramirez	Marcos	01 1927301	22	L	Gaughan	two
Ramos	Alfredo	01 1927302	20	L	Gaughan	two
Reed	Devin	02 0341303	36	B	Porter	
Richardson	Terrence	99 1974701	25	B	Sacks	
Richardson	Chevelle	02 2039402	29	B	Cannon	
Rivera	Martin	99 2161202	34	L	Laws	
Rivers	Eugene	99 2330402	28	B	Reyna	multiple
Roach	Duane	02 0537802	34	B	Lampkin	
Robinson	Anthony	01 2100301	19	B	Kazmierski	
Runge	Paul	01 1792901	31	W	Kazmierski	multiple
Russell	Russzell	00 1175901	30	B	Lampkin	
Sanders	Michael	99 0869202	25	B	Schrier	multiple
Scott	James	99 0309001	25	B	Crane	police
Scott	Mario	00 2564701	21	B	Darcy	child
Scott	Dennis	01 1498001	21	B	BVSterba	
Scott	Larry	00 2625701	40	W	Sumner	senior
Last Name	First Name	Case#	Age	Race	Judge	Victim
Seals	Robert	98 0562504	19	B	Lacy	
Sesson	David	02 1969701	21	B	Salone	

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Shines	Steven	02 2512903	43	B	Salone	
Slack	Larry	01 3019901	42	B	Sumner	child
Slack	Constance	01 3019902	42	B	Sumner	child
Slaughter	Oludah	02 2987402	27	B	Crane	
Smith	Leratio	99 0111101	22	B	Lampkin	
Smith	Robert	01 0165702	32	B	Egan	child
Smith	Tyrin	02 2024901	24	B	Sumner	
Smith	Frederick	03 0748601		B		child
Stephens	Nathaniel	01 2842701	21	B	Moran	child
Taylor	Michael	02 2415801	40	B	Shultz	
Taylor	Kevin	01 2267801	27	B	Suria	multiple
Thomas	Terrell	96 1349101	21	B	Wadas	
Thompson	Anthony	01 3113101	29	B	Lampkin	
Tisden	Charles	01 0892101	19	B	Lacy	
Trevino	Luis	01 1506501	23	L	MWKipperman	
Verdusco	Carlos	01 2347601	41	L	Darcy	inmate
Vivar	William	02 2573901	26	W	Salone	
Walker	Frederick	00 1807301	28	B	Simmons	
Wash	Richard	96 1593301	22	B	Bowie	two
Washington	Charles	01 0986401	35	B	Simmons	
Weems	Giovanni	01 2614501	25	B	Dernbach	
Wells	Larry	00 2187601	27	B	Reyna	
White	Clarence	02 2512902	44	B	Salone	
White	DeWan	98 0562502	22	B	Lacy	
White	Tony	02 2367701	36	B	Gaughan	two
Wiley	Diante	01 0463401	22	B	Bowie	child
Williams	Leslie	99 2249101	24	B	Gaughan	
Wright	Jeremiah	99 2602001	18	B	Bowie	
Zeledon	David	02 2825701	49	L	Wadas	

**MW = Maywood; MK = Markham; BV = Broadview;
 RM = Rolling Meadows; SK = Skokie**

*** Indicates deft found guilty**

available for all cases; it is presented here only in cases where the number or type of victim is a legal allowing the death penalty to be sought in the case. factor allowing the death penalty to be sought.
