

Case No.

02- 1403L

& 02-1405 Consolidated

**In The United States Court of Appeals
For the Second Circuit**

**UNITED STATES OF AMERICA
Plaintiff/Appellant,**

vs.

**ALAN QUINONES, ET AL
Defendants/Appellees**

CAPITAL CASE

ON APPEAL FROM

**the United States District Court for the
Eastern District of New York
Case # S3 00 CR 761 (JSR)**

The Hon. Jed S. Rakoff, Judge, Presiding

**MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICUS CURIAE*,
SACRAMENTO AREA COALITION AGAINST THE DEATH PEN-
ALTY, IN SUPPORT OF APPELLEE* WITH APPENDIX**

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* See member organizations inside front cover.

The Sacramento Area Coalition Against the Death Penalty is an affiliate of Death Penalty Focus of California, and is comprised of the following:

MEMBER ORGANIZATIONS

General or Statewide

California Catholic Conference
California Council of Churches
Catholic Center for Restorative Justice
Church in the World Commission, Episcopal Diocese
Friends Committee on Legislation in California
Friends of California State Public Defenders
Grandmothers for Peace
Women's International League for Peace & Freedom
 Sacramento Valley Branch
Lutheran Office of Public Policy— California
Presentation Sisters
Salvatorians of the U.S. Western Region
Sisters of Social Service
Wives, Families & Friends of People on Death Row in California

Auburn

Mercy Sisters of Auburn
Placer County Peace & Justice Community

Davis

Davis Friends (Quakers)
St. James Gospel Justice Committee

North Highlands

St. Lawrence Social Concerns Committee

Sacramento

Amnesty International
 Group # 283
 Christian Brothers High School Chapter
 Loretto High School Chapter
Buddhist Peace Fellowship
Christian Bros. H.S. Social Justice Committee
Central America Action Committee
Community of Reconciliation/FOR
Death Penalty Roundtable/
 Indigent Criminal Defense Panel/SBCA
El Heraldo Católico
Friends of Sacramento County Public Defenders
Friends of the Cathedral
Loaves & Fishes
Methodists for Justice
New Jewish Agenda, Sacramento Chapter
River City Pax Christi
Sacramento Catholic Worker
Sacramento Friends Meeting
Sacramento Poetry Center
St. Francis Peace & Justice Committee
St. John the Evangelist Group, Carmichael
St. Philomene's Gospel Justice Action Group
Solidarity House
The Catholic Herald
West Sacramento
Holy Cross Paris Youth Groups

In compliance with FRAP, r. 26.1 and 29, I hereby certify that the above represents a complete disclosure of the *amici curiae*

Dated: September 15, 2006

JAMES JOSEPH LYNCH, JR.
Attorney At Law
Counsel for *Amici curiae*

QUESTION PRESENTED BY AMICI

Based on exhaustive research on the use of the death penalty, should the death penalty be declared unconstitutional, or in the alternative, should the government be required to show that it cannot control defendant's conduct by incarceration, on the grounds that the death penalty is excessive force in the protection of society?

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Defendants/Appellees

CAPITAL CASE

**MOTION FOR LEAVE TO FILE AMICI
CURIAE BRIEF**

The SACRAMENTO AREA COALITION AGAINST THE DEATH PENALTY (hereinafter, SACADP) moves for leave to file a brief in support of the petition on the grounds there are issues, and refinement of issues, not adequately dealt with, *amicus curiae* is comprised of specialists in capital sentencing law, social work, psychology, public policy, to name a few, and believe that this brief covering the additional issues will aid this court in reaching a just result in this case, and a capital Petitioner should have as much help as possible. Counsel fax'd a copy of this document and called Counsel of Record, but neither takes a position at this time

Amici curiae were previously informed that Appellees brief was not due until September 30, 2002. Pursuant to FRAP rule 29(e) this application is due no later than October 7, 2002, s Monday. Should Appellees have filed earlier, and this brief is not within 7 days, the *Amici curiae* hereby apply, pursuant to Rule 29(e) for later filing due to mistake or inadvertence.

Dated September 15, 2006

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COUNSEL FOR AMICI CURIAE

INTEREST OF *AMICI CURIAE*

The SACADP¹ is an unincorporated non-profit organization whose members are scattered throughout California. Counsel for the *amici curiae* is a member of SCADP and has a similarity of purpose, to wit, an attorney admitted to practice law in the highest court of the State of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court, and who has taken an oath to uphold and defend the Constitution of the United States and to defend the poor, down trodden, and oppressed. He has presented a similar *Amicus Curiae* Brief in *Hill v. Florida*, 522 U.S. 907 (1997) (Cert. Den.) He is a former professor of Law, Lorenzo Patiño School of Law, University of Northern California. He has concentrated his practice in the areas of Civil Rights Law, Human Rights Activities, Constitutional Law, and Criminal Defense. He lived four years in England where he engaged in a self-directed study of the English Political System from the inception of the *Magna Carta* (1215). He is a graduate of McGeorge School of Law (1978). He has attended the Natitonal Habeas Corpus Institute's Post Judicial Remedies in Capital Cases.

The Abolitionist are convinced that the finality of the death penalty is inappropriate in a civilized society such that

¹ SACADP submits this document in accordance with FRAP, 29 (b) (motion), (e) 7 days after principal brief; leave for later time), and Local Circuit Rules 31 (10 copies filed), 32(a) (pamphlet format). Counsel for *amicus curiae* authored this brief in its entirety. No person or entity, or than *amici curiae*, its supporters, or its counsel, made any monetary contribution to the preparation or submission of this brief.

it should be abolished altogether, and in the alternative, limited in application to those whose conduct cannot be controlled by incarceration.

STATEMENT OF THE CASE AND FACTS

Amici Curiae adopts by reference Appellee's statement of the case and facts

SUMMARY OF ARGUMENTS

"We, the People," are the sovereignty. Scott v. Sanford. Our federal system is one of delegated powers.9th and 10 the Amendments

At common law, a person could, and currently can, delegate only those powers, which the person had. At common law, a person had, and still has, the right to self-defense with reasonable force, and deadly force only if reasonable. Once the aggressor is reduced to helplessness, the right to use force ceases.

As the government has only delegated power to defend society with reasonable force, and deadly force only if reasonable, it follows that once the person is arrested and incarcerated, the right to use further force, i.e. death penalty, ceases.Lynch, Emerging Standards of Decency and Sovereignty(1988)

ARGUMENTS

I.

EMERGING THEORIES SUGGESTS THAT THE DEATH PENALTY CANNOT CONSTITUTIONALLY BE APPLIED TO THOSE WHOSE CONDUCT CAN BE CONTROLLED BY INCARCERATION

A. INTRODUCTION; THE EMERGING PRINCIPLES

The constitutional prohibition against cruel and un-

usual punishment “is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by humane justice.” *McCleskey v. Kemp*, 481 U.S. 279 *citing Weems v. United States*, 217 U.S. 349, 378 (1910). “[T]he ‘basic concept underlying the 8th Amendment’ in this area is that the penalty must accord with the ‘dignity of man.’” *Id.*, *citing Trop v. Dulles*, 356 U.S. 86, 99, 100 (1958). Decisions in this area have been informed by “contemporary values concerning the infliction of a challenged sanction.” *McCleskey*, *citing Gregg v. Georgia*, 428 U.S. 153 (1976), 173.

A survey of “contemporary values concerning the infliction” of the death penalty suggests there are three objective evolving standards of decency which restrict when the death penalty may be inflicted: (i) a re-examination of the 8th Amendment in the context of the amount of force which a Government may use to defend its citizens; (ii) a historical retreat from infliction of the death penalty in all felonies to those limited circumstances when a victim is killed, and there is the requisite culpability; (iii) a historical retreat from public executions.

B. CONSTITUTIONAL PREMISE & FRAMEWORK; THE PEOPLE CAN ONLY DELEGATE REASONABLE FORCE FOR THE PROTECTION OF SOCIETY.

Sovereignty resides in the People. U.S. Constitution,² Preamble [“We, the People”].³ The federal powers are

² In the solution of constitutional questions the same rule of interpretation, and sources of judicial information, may be resorted to as in the construction of statutes and other instruments granting power. *Adams v. Storey*, 1 Paine (U.S.) 79, 1 Fed. Cas. No. 66 (1817) . The constitution and the law are to be expounded without leaning one way or the other, according to those general principles which usually govern the construction of fundamental or other laws. *Bank of the United States v. Deveaux*,

expressly recognized as being delegated powers. U.S.Const., 10th Amendment. 1 Rotunda, *Treatise on Constitutional Law* §§ 3.1, 3.2. By its terms, the 10th Amendment implies that powers are delegated by the People to the Government.⁴

5 Cranch (9 U.S.) 61, 85 (1809) . No word or clause can be rejected as superfluous or unmeaning, but each must be given its due force and appropriate meaning. *Wright v. United States*, 302 U.S. 583, 588 (1938) . Words and terms are to be taken in the sense in which they were used and understood at common law and at the time the constitution and the amendments were adopted. *Veazie Bank v. Fenno*, 8 Wall (75 U.S.) 533, 542 (1869) ; *Locke v. New Orleans*, 4 Wall (71 U.S.) 172, (1866) ; *Gibbons v. Ogden*, 9 Weat. (22 U.S.) 1, 188-189 (1824) ; *United States v. Harris*, 1 Abb. (U.S.) 110, 26 Fed. Ca. No. 15,312 (1866) ; *United States v. Block*, 4 Sawy. (U.S.) 211, 24 Fed.Cas. 14,609 (1877) ; *Pardoning Power of the President*, 5 Opinion U.S. Atty. Gen. 532, 535 (1852) . Where there are several possible meanings of the words of the constitution, that meaning that will defeat rather than effectuate the constitutional purpose cannot rightly be preferred. *United States v. Classic*, 314 U.S. 707 (1941).

³ While the result in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), may be correct, its *ratio decidendi* does not square with the Preamble and Article I §§ 9 & 10. Clearly, the President does not stand in the shoes of the King, because titles of nobility were abolished for an intended purpose. Farrands 28-33; *Federalist Papers*, ## 32, 39;. The framers placed sovereignty in the People. *Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857) .

⁴ The United States was established in the light of the Hobbs/Locke Theory of Social Contracts wherein the Government is established to protect the welfare of its citizens at home. 1 Rotunda 3.12 n.2 (2nd ed. 1992). This is an internationally recognized duty. Verdross, *Jus Dispositivum land Jus Cogens in International Law*, 60 AJIL 55 (1961); Verdross, *Forbidden Treaties in International Law*, 31 AJIL 571-577 (1937); recognized in the Preamble; and Art. I, § 8; of the U.S. Constitution. See also, California Constitution, Preamble ["We, the People"];

It has always been recognized that a Person could only grant that estate which he possessed. Blackstone, Commentaries on the Laws of England, Vol. 2, page 290;. Cheshire, THE MODERN LAW OF REAL PROPERTY, p. 660 (Citing common law principles).⁵ At the time the constitution was drafted, an individual could use only reasonable force for self-defense, and deadly force only when met with deadly force and its use is reasonable. If the attacker retreats or abandons the fray, then the victim can no longer use deadly force. Foster, CROWN LAW 273-277 (1762); *Brown v. United States*, 256 U.S. 335 (1921); Perkins, CRIMINAL LAW AND PROCEDURE (1972) 660-667; *Tennessee v. Garner*, 471 U.S. 1 (1986) (fleeing felon statute struck down.).

Because a person at common law could only use reasonable force, and deadly force if reasonable [*Foster*], that is all the power the people collectively could delegate to the government, hence the Government may only use reasonable force, and deadly force only if reasonable.⁶ *Garner, supra*.

Cal. G.C. § 100(a).

⁵ Blackstone; is a recognized source of the common law in interpreting the Constitution. Rotunda §§ 6.1 n.2, 15.11 n.4, & 23.8; n.1, para. 5 (p. 484, left column) (2nd ed. 1992)

⁶ Statutes or practices inconsistent with the Constitution, however numerous, can create neither a power which the Constitution does not bestow nor furnish a construction which the Constitution does not warrant. *Field v. Clark*, 143 U.S. 649, 691 (1891); 3 Rotunda, Treatise on Constitutional Law § 23.33, p. 512 (1992). The Court, with characteristic good grace, invalidated its own Rules of Court, in part, based on a Congressional Statute requiring attorney's to take an oath with respect to their activities before the civil war, when it was pointed out that the provision was in fact unconstitutional. *Ex Parte Garland*, 4 Wall. 333 (1867). Faced with the Constitutionality of "separate but equal facilities, a practice in existence throughout the south for nearly 60 years, and sanctioned by the Court, the Court overruled, and rightfully so, *Plessy v. Ferguson*,

C. INTERNATIONAL LAW PROSCRIBES THE USE OF UNREASONABLE FORCE IN DEFENSE OF GOVERNMENT INTERESTS

The rules of self-defense apply to states in International Law.⁷ United Nations Charter, Chapter VI [commencing with Article 33]. It is considered a rule of *jus cogens*, vis peremptory norm of international law, from which no Government may derogate. Verdross, *Jus Dispositivum and Jus Cogens in International Law*, 60 AJIL 55 (1961), 60, #3; Id, *Forbidden Treaties in International Law*, 31 AJIL 571-77.⁸ The concept is preserved in the United States Constitution, Art. I, § 1 (No Government shall, ... engage in War,

163 U.S. 537 (1896) in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) (*Brown I*). *Accord, Bolling v. Sharpe*, 347 U.S. 497 (1954). Moreover, where the importance of the question is great, and touches sensitive issues which need to be resolved once and for all, this court has not allowed the fact that some issues were not properly addressed in the courts below from ordering further argument on the omitted issues so that the continuing controversy could be settled. *Brown I*, 347 U.S., at 488-89, 496 (1954); *Brown v. Bd. of Education*, 349 U.S. 289, 294, 298 (1955) (*Brown II*) (Nature of remedy to be utilized).

⁷ Courts are bound by the law of Nations as part of the law of the land. *The Nereide*, 13 U.S. 388 (1815); *INS v. Cardozo-Fonesca*, 480 U.S. 421 (1987); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir, 1980); U.S. Const., Art. VI, cl. 2.

⁸ In *People v. Ghent*, 43 Cal.3d 739 (1987), the court rejected an argument that the United Nations Charter and Declaration on Human Rights precludes the imposition of the death penalty, and in any event before those documents may be utilized, they must either be implemented by Congress or self-executing. However, rules of *jus cogens* are recognized by multinational pact as self-executing. The United Nations Conference on the Law of Treaties [Vienna Convention], Art. 43 [Obligations imposed independently of treaty], Art. 53 [*jus cogens* and void treaties], U.N. Doc. A/Conf. 39/11; Verdross, *supra*.

unless actually invaded ... imminent Danger ...). It has been tacitly recognized by *stare decisis*. *Tennessee v. Garner*, 471 U.S. 1 (1986) [Striking down Government's fleeing felon statute].

Once an individual is incarcerated, that is all the force required to protect society from further harm and the death penalty⁹ therefore would be cruel and unusual punishment, unless the Government shows, in a given case, beyond a reasonable doubt that society cannot protect itself by mere incarceration.

D. WHERE PERSONS ARE A DANGER TO SOCIETY, INCARCERATION IS THE NORM.

In *Barefoot v. Estelle*, 463 U.S. 880 (1983) it was held that it was proper for the jury to consider whether or not defendant would commit criminal acts in the future and thus pose a threat to society. However, the court went on to say in *Solem v. Helm*, 463 U.S. 277 (1983), that we will not assume that there is no rehabilitative opportunity. *Accord, Hitchcock v. Dugger*, 481 U.S. 393 (1987) [reversing death penalty for refusal to consider mitigating circumstances].

Every day we incarcerate People who pose a threat to society. See generally, LPS Act, Welfare & Institutions Code § 5000, *et seq.*; Probate Code, § 1400, *et seq.*; Conservatorship and Wardship, Welfare & Institutions Code § 200, *et seq.*; Generally, NOTE, PROBATE CODE CONSERVATORSHIPS: A LEGISLATIVE GRANT OF NEW PROCEDURAL PRO-

⁹ The International Covenant on Civil and Political Rights, Part III, article 6(2), declares: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime" Ratified by the U.S. and 71 other countries, effective March 23, 1966. *E.g., People v. Ghent*, 43 C.3d 739 (1987) (Dissenting Opinion by Broussard and Mosk, JJ).

TECTIONS (1977) 8 Pacific L.J. 73. Thus, the relevant inquiry is not whether the defendant poses a future threat to society, an entirely speculative and subjective opinion of what may happen, but whether or not society can effectively control the behavior by incarceration, with a possibility of rehabilitation. That is to say, the emerging standards of decency is such that the Government may not exact the death penalty unless it demonstrates beyond a reasonable doubt that it cannot protect society by mere incarceration.

E. THERE HAS BEEN A GRADUAL WITHDRAWAL OF THE DEATH PENALTY AS A FORM OF PUNISHMENT, AND WITHDRAWAL FROM PUBLIC VIEW WHEN USED.

At common law, all felonies, regardless of whether death resulted, and in theft cases, regardless of the amount taken, warranted the death penalty, except mayhem for which mutilation was substituted. Perkins, *Criminal Law and Procedure* (Foundation press, 4th Ed., 1972), p. 4-5. Whipping was substituted for death as the penalty for petite larceny, a change from the common law resulting from an early statute. *Id.* Statute of Westminster, 1, c. 15 (1275). In the words of Blackstone, “the true criterion of felony is forfeiture.” 4 Bl.Comm. *97. Modernly, few felonies are recognized as capital crimes. Perkins, at p. 5; *generally*, 4 Encyclopædia Britannica 847 (1971). Moreover, and notwithstanding *Apodaca v. Oregon*, 406 U.S.404 (1972), there is not a single jurisdiction left which allows the infliction of the death penalty with less than a unanimous jury verdict.¹⁰

The United States Supreme Court has recognized fur-

¹⁰ When *Apodaca* was decided, only two jurisdictions allowed the death penalty on less than a unanimous decision. Oregon required a 10-2 decision. Louisiana now requires a unanimous decision. ALI, MPC, p. 154.

ther restrictions upon the utilization of the death penalty. Thus in non-fatal felonies, the court held that the imposition of the death penalty was unconstitutional. *Coker v. Georgia*, 433 U.S. 584 (1977); *Eberhardt v. Georgia*, 433 U.S. 917 (1977). Similarly, in *Enmund v. Florida*, 458 U.S. 752 (1982), the court held that in felony-murder cases, the death Penalty was unconstitutional where the accomplice did not commit murder, nor intend that death result. Then in *Tison v. Arizona*, 481 U.S. 137 (1987), the Court distinguished *Enmund* on the basis that in *Enmund* “the degree of participation **was so tangential** that it could not be said to justify a sentence of death”,¹¹ and held that “the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result.”¹²

Congress abolished the death penalty in 1984¹³ and reinstated it in 1994.¹⁴ 12 States of the United States have

¹¹ The court noted in *Tison* that in *Enmund* it conducted its own proportionality analysis. How about world wide proportionality analysis. Vis, England, Ireland, Canada, and France have all abolished death penalties. How many other countries? How many still have it? See Brennan's dissent.

¹² *Enmund* was outside in the getaway car, hence he was not in a position to stop the homicides by co-defendants even had he wanted to stop it. In *Tison*, on the other hand, the defendants were at the scene of the homicides, and made no effort to curb their father.

¹³ Pub.L. 98-473, Title II, §§ 212(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987-2020, 2031, eff. 11/1/87, adopting Chapter 227 - Sentences, 18 U.S.C. §§ 3551, et seq.

¹⁴ 18 USC Sec. 3596.

abolished it. AC Appendix, p. 9. Of 20 Latin American Countries, 10 have abolished it. *Id.* All but 4 Mexican States have abolished it. *Id.*¹⁵

At common law, and the early days of this Country, executions were a public affair designed as a deterrent. 3 Encyclopædia Britannica 404 (1971) [except heads of Government]; 4 *Id.* 847; 6 *Id.* 825; 11 *Id.* 64; 18 *Id.* 556.] At the restoration, Cromwell's body was exhumed, and his head displayed on a spike at the gates as a warning to all. 6 Encyclopædia Britannica 802. Common Law displays of execution have become a relict of the past. The last public execution occurred in Kentucky in 1936. 11 Encyclopædia Britannica 64. Under modern statutes, the public is excluded, witnesses limited to those found by law necessary to be present to assure the Government that the law had been obeyed.¹⁶ Former 18 U.S.C. § 3566 [Chap. 227]; California Penal Code § 3605. Thus, the deterrent effect, if any, is gone.¹⁷ AC App., p. 8.

The emerging standards of decency has seen the withdrawal of the death penalty from all felonies to those felonies in which the victim dies as a proximate result of culpable personal conduct of the defendant. Where the death penalty

¹⁵ See footnote 6.

¹⁶ We can literally say "We have swept the death penalty under the carpet and out of view."

¹⁷ The ALI Committee set out some rather stale statistical studies that failed to conclusively prove that capital punishment was or was not a deterrent. ALI, MPC, part II, vol. I, pp. 112-114. In the table hereinafter, using more current statistics, based upon the number of murders per hundred thousand, the rate remains fairly constant over the years with or without capital punishment suggesting inelasticity for capital punishment. AC Appendix, p. A8. A statistician would be better qualified to render an expert opinion.

is imposed, it is hidden from the public eye, therefore lacks any significant impact on deterrence.

F. CONCLUSION

Capital punishment is no longer a universally recognized means of controlling human behavior. It has been withdrawn as a public spectacle, and restricted to a narrow class of cases in which a victim dies as a proximate result of the defendant's personal culpable conduct. Most jurisdictions that do allow capital punishment require a unanimous verdict. Just as *Tison* teaches that some homicides are justifiable, anthropologists can show in recent modern times cultures that recognize cannibalism as socially acceptable. Youths who are left unguided, misguided by parents, or abused by others may well have grown up with maladaptive behavior through no fault of their own.

The sum total of the foregoing, implicit in *Garner*, is that the Government may not use any more force than is reasonable under the circumstances, and the death penalty only if it has demonstrated beyond a reasonable doubt that it cannot protect society by incarceration.

CONCLUSION

WHEREFORE, *Amici Curiae* pray, for all of the reasons and arguments set forth herein, this court affirm the judgment, and remand for further proceedings not inconsistent with this court's opinion, and such other and further relief as the court deems just and proper under the circumstances.

Dated: September 15, 2006

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE [FRAP 32(a)(7)(C); LR 29]

I hereby certify that this brief uses a proportionately spaced 14 point Times New Roman type, with 2 points leading between the lines, and 6 pts between paragraphs. Microsoft Word reports that the body of the brief has 13 pages with 4519 words for an average of 58734 words per page.

Dated: September 15, 2006

James Joseph Lynch, Jr
Attorney At Law SBN 85805
COUNSEL FOR AMICI CURIAE

EXCERPTS FROM
2 Farrand, Max, The Constitutional Debates*
[129]

COMMITTEE OF DETAIL, I

[Proceedings of the Convention, June 19 -- July 23.]
[152]

COMMITTEE OF DETAIL, IV

VI

We the People of (*and*) the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New. York, New. Jersey, Pennsylvania, Delaware, Maryland, Virginia, North. Carolina, South. Carolina and Georgia do ordain declare and establish the following Constitution for the Government of ourselves and of our Posterity.

1.

[163]

* Pages from Farrand's are indicated at the beginning of the page in []. All punctuation and capitalization is exactly as found in Farrand's which faithfully follows the manuscript originals in Madison's book. All footnotes were omitted unless deemed important to the issues under consideration. The most commonly omitted footnote says "Found among the Wilson Papers and in Wilson's handwriting." Portions in parentheses represent parts crossed out. Italics represent later insertions."

COMMITTEE OF DETAIL, IX

IX

We the People of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare and establish the following Constitution for the Government of ourselves and our Posterity.

1.

[177]

Monday	MADISON	August 6
--------	---------	----------

MADISON

Monday August 6th. In Convention

<Mr. John Francis Mercer from Maryland took his seat.>

Mr. Rutlidge <delivered in> the Report of the Committee of detail as follows: < a printed copy being at the same time furnished to each member.>

We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

Article I

A2

[193]
TUESDAY, AUGUST 7, 1787.
JOURNAL
Tuesday August 7, 1787.

[To refer the report to a Committee of the whole Ayes -- 5;
noes -- 4.

Delaware being represented during the Debate a question
was again taken on ye Committee of ye whole Ayes --- 3;
noes --- 6.]

On the question to agree to the Preamble to the con-
stitution as reported from the committee to whom were re-
ferred the Proceedings of the Convention -- it was passed
unan: in the affirmative [Ayes -- 10; noes --- 0.]

[196]

Tuesday	MADISON	August 7
---------	---------	----------

MADISON

Teusday August 7th. In Convention

The Report of the Committee <of detail being> taken
up,

The <preamble> of the Report was agreed to nem.
con. So were Art: I & II.

[209]

Tuesday	MADISON	August 7
---------	---------	----------

MCHENRY

Augt. 7.

The preamble or caption and the 1. and 2. article passed without debate,

[565]

COMMITTEE OF STYLE

Proceedings of Convention Referred to the Committee of Style and Arrangement.

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare and establish the following Constitution for the Government of ourselves and our Posterity.

ARTICLE I.

[590]

COMMITTEE OF STYLE

Report of Committee of Style

WE, the People of the United States, in order to form

a more perfect union, to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Consti-

tution for the United States of America.

ARTICLE I.

[604]
THURSDAY, SEPTEMBER 13, 1787.
JOURNAL
Thursday September 13, 1787.

Resolved that the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a Convention of Delegates, chosen in each Government by the People thereof, under the recommendation of it's Legislature; for their asent and ratification. ***

[604]

[To postpoin the report respecting the 22nd and 23rd Ayes --- 9; noes --- 1.]

To strike out the word "to" before establish justice
Ayes --- 8; bites --- 2,]

[641]
MONDAY, SEPTEMBER 17, 1787.
JOURNAL
Monday September 17, 1787.
Detail of Ayes and Noes

[Oitted]

MADISON
Monday Sepr. 17. 1787. In Convention

The engrossed Constitution being read, ...

Docr. Franklin rose with a speech in hand

[643]

... --- He then moved that the Constitution be signed ...

[644]

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to by all the States answering ay.

[649]

MCHENRY
Monday Sepr. 1787.

Read the engrossed Constitution. Altered the representation in the house of representatives.

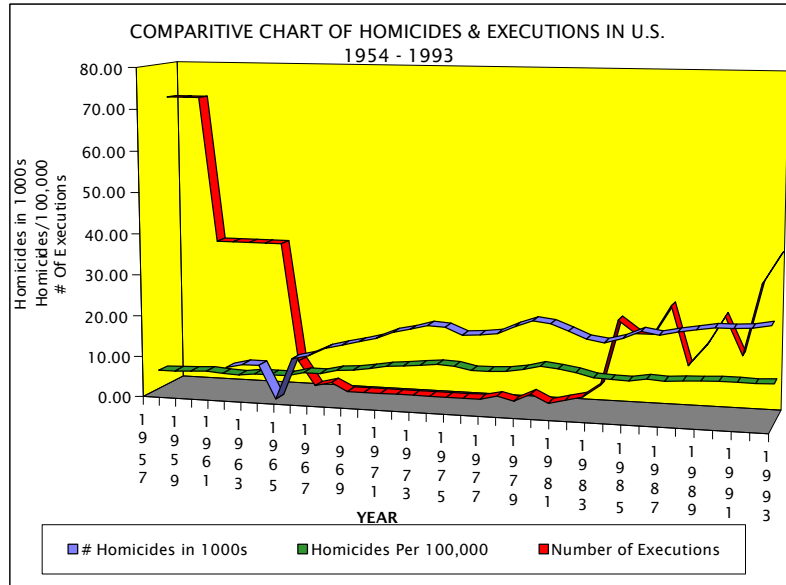
[651]

THE CONSTITUTION
OF THE UNITED STATES

We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the

United States of America.

ARTICLE I.



Source: STATISTICAL ABSTRACT OF THE UNITED STATES, 1963 (Table 197), 1969 (Table 199), 1976 (Tables 252 & 299), 1986 (Tables 279 & 329), 1996. Total Murders represent number of murders committed in United States. Number per 100,000 represents the number of murders per 100,000 persons in the United States.

There are currently 38 states with the death penalty

Alabama	Idaho	Montana	Oklahoma	Washington
Arizona	Illinois	Nebraska	Oregon	Wyoming
Arkansas	Indiana	Nevada	Pennsylvania	
California	Kansas*	N. Hampshire*	S. Carolina	Plus
Colorado	Kentucky	New Jersey*	S. Dakota*	U.S. Gov't.
Connecticut*	Louisiana	New Mexico	Tennessee	U.S. Military*

Delaware	Maryland	New York*	Texas
Florida	Mississippi	N. Carolina	Utah
Georgia	Missouri	Ohio	Virginia

* Indicates jurisdiction with no executions since 1976.

The death row data at state links are valid as of April 1, 2001 and are taken from NAACP Legal Defense Fund's "[Death Row USA](#)," unless otherwise noted. More up-to-date information can be found at on the web at <http://www.deathpenaltyinfo.org/dpicreg.html>.

States Without The Death Penalty

There are currently 12 states without the death penalty

Alaska	Massachusetts	Rhode Island
Maine	North Dakota	Wisconsin
Minnesota	West Virginia	
Vermont	Iowa	-Plus
Hawaii	Michigan	District of Columbia